



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL AGENDA

Mayor Dave Potter, Council Members Jeff Baron,
Jan Reimers, Bobby Richards, and Carrie Theis
Contact: 831.620.2000 www.ci.carmel.ca.us

All meetings are held in the City Council Chambers
East Side of Monte Verde Street
Between Ocean and 7th Avenues

REGULAR MEETING Thursday, September 3, 2020

Governor Newsom's Executive Order N-29-20 has allowed local legislative bodies to hold public meetings via teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. Also, see the Order by the Monterey County Public Health Officer issued March 17, 2020. The health and well-being of our residents is the top priority for the City of Carmel-by-the-Sea. To that end, this meeting will be held via teleconference and web-streamed on the City's website ONLY.

To attend via Teleconference; Dial in number 1 252-656-5336 PIN: 409 276 356#

The public can also email comments to cityclerk@ci.carmel.ca.us. Comments must be received 2 hours before the meeting in order to be provided to the legislative body. Comments received after that time and up to the beginning of the meeting will be added to the agenda and made part of the record.

OPEN SESSION 5:00 PM

ADJOURNED REGULAR MEETING - ADJOURNED FROM SEPTEMBER 1, 2020

CALL TO ORDER AND ROLL CALL

PUBLIC APPEARANCES

Members of the Public are invited to speak on any item that does not appear on the Agenda and that is within the subject matter jurisdiction of the City Council. The exception is a Closed Session agenda, where speakers may address the Council on those items before the Closed Session begins. Speakers are usually given three (3) minutes to speak on any item; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak. If an individual wishes to submit written information, he or she may give it to the City Clerk. Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

ORDERS OF BUSINESS

Orders of Business are agenda items that require City Council, Board or Commission discussion, debate, direction to staff, and/or action.

1. Resolution 2020-059 approving the issuance and sale of Refunding Lease Revenue Bonds by the City of Carmel-by-the-Sea Public Improvement Authority to refinance outstanding bonds related to the Sunset Center Theater and approving related documents and actions and provide direction on savings option.

ADJOURNMENT

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, Harrison Memorial Library, NE corner of Ocean Avenue and Lincoln Street, and the Carmel-by-the-Sea Post Office, 5th Avenue between Dolores Street and San Carlos Street, and the City's webpage <http://www.ci.carmel.ca.us/carmel/> on in accordance with the applicable legal requirements.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this agenda, received after the posting of the agenda will be available for public review at City Hall located on Monte Verde Street between Ocean and Seventh Avenues during regular business hours.

SPECIAL NOTICES TO PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2000 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

September 3, 2020
ORDERS OF BUSINESS

TO: Honorable Mayor and City Council Members

SUBMITTED BY: Sharon Friedrichsen - Director, Contracts and Budgets

APPROVED BY: Chip Rerig, City Administrator

SUBJECT: Resolution 2020-059 approving the issuance and sale of Refunding Lease Revenue Bonds by the City of Carmel-by-the-Sea Public Improvement Authority to refinance outstanding bonds related to the Sunset Center Theater and approving related documents and actions and provide direction on savings option.

RECOMMENDATION:

Adopt Resolution 2020-059 approving the issuance and sale of Refunding Lease Revenue Bonds by the City of Carmel-by-the-Sea Public Improvement Authority to refinance outstanding bonds related to the Sunset Center Theater and approving related documents and actions.

BACKGROUND/SUMMARY:

Governmental entities issue bonds to secure capital to finance specific projects or general operations. When an entity issues the bond, it receives an infusion of cash and then is obligated to repay the bond purchasers over a period of time, with interest, until the bond matures. Some bonds have a call feature, which is the date when the issuer of the bonds may redeem the bonds earlier than the maturity date. In order to achieve debt savings, governments may commence with a bond refinancing whereby new bonds are issued with lower interest rates and the proceeds from the new bond issuance are used to pay off, or redeem, the existing bonds before the maturity date.

The City of Carmel-by-the-Sea (the "City") and the City of Carmel-by-the-Sea Public Improvement Authority (the "Authority") have previously financed improvements to the Sunset Center Theater beginning in 2001. Originally formed in 1988, the Authority is a joint powers agency created for the purpose of providing assistance to the City with its various financings. The 2001 financing was in the amount of \$9,900,000. In 2010, the City and Authority refinanced the 2001 obligation for lower interest rates by issuing \$7,575,000 of 2010 Refunding Lease Revenue Bonds ("2010 Bonds"). Both the 2001 Bonds and the 2010 Bonds were secured by lease payments payable by the City from the General Fund for the lease of the Sunset Center Theater. The final maturity date of the 2010 Bonds is November 1, 2031.

With interest rates near historical lows, the City and Authority have the opportunity to refinance the outstanding \$4,890,000 of 2010 Bonds on the November 1, 2020 call date for an estimated cash flow savings of \$950,000 (11%) over the remaining term of the 2010 Bonds (through November 1, 2031).

Under the proposed financing plan, a new series of 2020 Refunding Lease Revenue Bonds (“2020 Bonds”) will be issued at a lower interest rate and the proceeds will be used to redeem the 2010 Bonds.

Similar to the refinancing of the 2010 Bonds, the Authority will consider adopting its resolution authorizing the issuance and sale of the 2020 Bonds to refund the outstanding 2010 Bonds relating to the Sunset Center Theater and approving various related financing documents. Subsequently, the Council will consider adopting its resolution approving the issuance and sale of the Refunding Bonds by the Authority and approving various related financing documents. These documents include:

1. Second Amended and Restated Site Lease between the City as lessor and the Authority as lessee, whereby the City and the Authority amend and restate the Amended and Restated Site Lease entered into in connection with the 2010 Bonds, for the purpose of incorporating financing provisions relating to the 2020 Bonds.
2. Second Amended and Restated Lease Agreement between the Authority as lessor and the City as lessee, whereby the Authority and the City amend and restate the Amended and Restated Lease Agreement entered into in connection with the 2010 Bonds, for the purpose of incorporating financing provisions relating to the 2020 Bonds and reducing the amount of lease payments payable thereunder by the City to reflect the debt service savings resulting from the refinancing.
3. Escrow Agreement among the City, the Authority and MUFG Union Bank, N.A., as escrow agent, relating to the establishment and investment of funds to refinance the 2010 Bonds.

In addition, Council will consider other actions, as specified within Resolution 2020-057, which include, but are not limited to, approving the sale of the 2020 Bonds pursuant to a bond purchase agreement with the designated underwriting firm; approving the Preliminary Official Statement describing the 2020 Bonds and the distribution of the Final Official Statement by the Underwriter and approving the engagement of bond and disclosure counsel and a financial advisor and authorizing the City Administrator to execute agreements with these respective firms.

FISCAL IMPACT:

There are three options for structuring the refinancing of the 2010 Bonds.

Option 1 – Level Savings: The City has the option to reduce the annual payment from approximately \$515,000 to approximately \$431,000 for each year through FY 2031/32, saving approximately \$84,000 per year. This is the most conservative option and captures approximately the same amount each year.

Option 2 – Upfront Savings: The City can take all cash flow savings upfront to achieve savings of approximately \$428,000 in FY 2020/21, \$355,000 in FY 2021/22 and \$134,000 in FY 2022/23. There would be no additional savings as the new debt service payments would return to approximately \$515,000 per year (matching the existing 2010 Bond payments). This structure generates the greatest immediate cash flow savings to the City’s General Fund, but will create no financial benefits after FY 2022/23.

Option 3 – Extended Term: The City can extend the final maturity to 20 years, for example, which would reduce the annual payments from approximately \$515,000 to approximately \$283,000, saving approximately \$232,000 per year through November 1, 2031, but increase annual debt service by approximately \$283,000 per year through November 1, 2040. The City would pay an estimated \$921,000 of additional debt service over Option 1 over the life of the 2020 Bonds.

RECOMMENDATION:

Based on the current state of the economy and the severe impacts of COVID-19 to the City's revenue sources, it is recommended that Option 2 will provide the City the best financial solution to mitigate the lower revenue sources.

In addition to potential savings from refinancing the 2010 Bonds, there are also associated costs of issuance of the bonds. Given the size of this particular transaction, the Underwriter has proposed a flat fee of \$15,000 plus expenses. The total underwriting fee, inclusive of expenses, is estimated to be \$26,000. The City's municipal advisor is paid a flat fee for services that began in January when the advisor presented the refinancing opportunity to the City. This fee is \$61,500, inclusive of certain optional additional services requested by the City. The proposed underwriting and municipal advisor fees are in line with transactions of similar size, credit quality, and complexity. Similarly, the combined fee for bond and disclosure counsel is \$60,000 plus \$2,000 of expenses, which is very reasonable for a transaction of this type and size. Bond counsel fees are typically based on a percentage of the principal amount, including a minimal percentage, or floor, for the fees. Expenses will be paid from the proceeds of the Refunding Bonds.

PRIOR CITY COUNCIL ACTION:

None

ATTACHMENTS:

Attachment #1 - Resolution 2020-059 Approve Bond Issuance
Attachment #2- Indenture
Attachment #3-Site Lease
Attachment #4-Lease Agmt
Attachment #5-Escrow Agmt
Attachment #6-Bond Purchase Agmt
Attachment #7-Preliminary Official Statement
Attachment #8-Legal Services Agreement_Jones Hall_2010 Bond Refinancing
Attachment #9- Municipal Advisor Agreement_NHA_2010 Bond Refinancing
Attachment #10- NHA Agreement_Exhibit A-Carmel 2010 LRB Refunding - Disclosure Letter 200706
Supplemental Information - City Council and PIA Agenda Item Issuance of Bonds

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-059

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
APPROVING THE ISSUANCE AND SALE OF REFUNDING LEASE REVENUE BONDS
BY THE CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY TO
REFINANCE OUTSTANDING BONDS RELATING TO THE SUNSET CENTER
THEATER, AND APPROVING RELATED DOCUMENTS AND ACTIONS**

WHEREAS, the City of Carmel-by-the-Sea (the “City”) and the City of Carmel-by-the-Sea Public Improvement Authority (the “Authority”) have previously financed improvements to the Sunset Center Theater from the proceeds of the Sunset Center Lease Revenue Certificates of Participation, Series 2001 in the aggregate principal amount of \$9,900,000 (the “2001 Certificates”); and

WHEREAS, in order to realize debt service savings to the City, the Authority has previously issued its 2010 Refunding Lease Revenue Bonds in the aggregate principal amount of \$7,575,000 (the “2010 Bonds”), to refinance the 2001 Certificates and the related lease payment obligations of the City; and

WHEREAS, the 2010 Bonds are secured by a pledge of lease payments made by the City under an Amended and Restated Lease Agreement dated as of October 1, 2010, between the Authority as lessor and the City as lessee, as the rental for the Sunset Center Theater (the “Leased Property”); and

WHEREAS, the 2010 Bonds are subject to redemption at the option of the Authority on November 1, 2020, and the City and the Authority have determined that it is in their best interests to refund the 2010 Bonds for the purpose of realizing additional debt service savings to the City; and

WHEREAS, in order to provide funds for that purpose the Authority has proposed to issue its 2020 Refunding Lease Revenue Bonds (Sunset Center Theater Project) in the aggregate principal amount of not to exceed \$5,000,000 (the “Refunding Bonds”) under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the “Refunding Bond Law”); and

WHEREAS, pursuant to Government Code Section 5852.1 which became effective on January 1, 2018 by the enactment of Senate Bill 450, certain information relating to the Refunding Bonds is set forth in Appendix A attached to this Resolution, and such information is hereby disclosed and made public; and

WHEREAS, the City Council wishes at this time to approve the issuance and sale of the Refunding Bonds by the Authority and to approve the execution and delivery of all related financing documents and actions;

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

Section 1. Issuance and Sale of Refunding Bonds by the Authority. The City Council hereby approves the issuance of the Refunding Bonds by the Authority for the purpose of providing funds to refinance the 2010 Bonds. The Refunding Bonds shall be issued by the Authority under the Refunding Bond Law and under the provisions of an Indenture of Trust between the Authority and MUFG Union Bank, N.A., as trustee, in substantially the form on file with the City Clerk.

Section 2. Approval of Financing Documents. The City Council hereby approves each of the following financing documents relating to the Refunding Bonds (collectively, the "Financing Documents") in substantially the respective forms on file with the City Clerk together with any changes therein or additions thereto deemed advisable and approved by the City Administrator:

- Second Amended and Restated Site Lease between the City as lessor and the Authority as lessee, whereby the City and the Authority amend and restate the Amended and Restated Site Lease which was entered into in connection with the 2010 Bonds, for the purpose of incorporating financing provisions relating to the Refunding Bonds.
- Second Amended and Restated Lease Agreement between the Authority as lessor and the City as lessee, whereby the Authority and the City amend and restate the Amended and Restated Lease Agreement which was entered into in connection with the 2010 Bonds, for the purpose of incorporating financing provisions relating to the Refunding Bonds and for the purpose of reducing the amount of lease payments payable thereunder by the City to reflect the debt service savings resulting from the refinancing.
- Escrow Agreement among the City, the Authority and MUFG Union Bank, N.A., as escrow agent, relating to the establishment and investment of funds to refinance the 2010 Bonds.

The Mayor is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest to, the final form of each of the Financing Documents in the name and on behalf of the City. The execution of the Financing Documents by the Mayor shall be conclusive evidence of the approval of any changes therein or additions thereto by the City Administrator. The City Council hereby authorizes the execution, delivery, recordation and performance of the Financing Documents by the City.

Section 3. Sale of Refunding Bonds; Approval of Bond Purchase Agreement. The City Council hereby approves the sale of the Refunding Bonds by the Authority on a negotiated basis to Raymond James & Associates, Inc. (the "Underwriter"). The Refunding Bonds shall be sold to the Underwriter pursuant to a Bond Purchase Agreement among the Authority, the City and the Underwriter in substantially the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Administrator, and execution of the final form of the Bond Purchase Agreement by the City Administrator shall be conclusive evidence of the approval of any such changes or additions. The City Administrator is hereby authorized to approve an offer from the Underwriter to purchase the Refunding Bonds, provided that the amount of Underwriter's discount for the Bonds shall be not more than 0.75% of the par amount thereof and the true interest cost of the Refunding Bonds shall not exceed 2.75% per annum. The City Administrator is hereby authorized and directed to execute the final form of the Bond Purchase Agreement in the name and on behalf of the City.

Section 4. Official Statement. The City Council hereby approves and deems final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Refunding Bonds in the form on file with the City Clerk. The City Administrator is authorized, at the request of the Underwriter, to execute an appropriate certificate affirming the City Council's determination that the Preliminary Official Statement has been deemed final within the meaning of such Rule. Distribution of the Preliminary Official Statement by the Underwriter is hereby approved. The City Administrator is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by the City Administrator shall be conclusive evidence of approval of any such changes and additions. The City Council hereby authorizes the distribution of the Final Official Statement by the Underwriter. The Final Official Statement shall be executed in the name and on behalf of the City by the City Administrator.

Section 5. Engagement of Professional Services. The City Council hereby approves the engagement of Jones Hall, A Professional Law Corporation, as bond counsel and disclosure counsel to the City and the Authority in connection with the issuance and sale of the Refunding Bonds. The City Council further approves the engagement of NHA Advisors LLC as municipal advisor to the City and the Authority in connection with the issuance and sale of the Refunding Bonds. The City Administrator is hereby authorized and directed to execute an agreement with each of said firms, in the respective forms on file with the City Clerk.

Section 6. Official Actions. The Mayor, the City Administrator, the Assistant City Manager, the Director of Budget and Contracts, the City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all leases, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance or termination, warrants and other documents, which they or any of them deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 7. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 1st day of September, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

APPENDIX A

REQUIRED DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

1. True Interest Cost of the Refunding Bonds (Estimated): 1.29%
2. Finance charge of the Refunding Bonds in the estimated amount of \$186,000, being the sum of all fees and charges paid to third parties (consisting of costs of issuance in the estimated amount of \$160,000 and underwriter's compensation in the estimated amount of \$26,000).
3. Proceeds of the Refunding Bonds expected to be received by the Authority, net of proceeds for Costs of Issuance in (2) above to paid, capitalized interest and reserves (if any) from the principal amount of the Refunding Bonds (Estimated): \$3,668,739.
4. Total Payment Amount for the Refunding Bonds, being the sum of all debt service to be paid on the Refunding Bonds to final maturity (Estimated): \$4,743,842.

**All amounts and percentages are estimates, and are made in good faith by the Authority and the City based on information available as of the date of adoption of this Resolution. Estimates include certain assumptions regarding tax-exempt rates available in the bond market at the time of pricing the Refunding Bonds.*

INDENTURE OF TRUST

Dated as of October 1, 2020

between

MUFG UNION BANK, N.A.,
as Trustee

and the

CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY

Authorizing the Issuance of

\$ _____

**2020 Refunding Lease Revenue Bonds
(Sunset Center Theater Project)**

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[TO BE RUN WHEN DOCUMENT IS IN FINAL FORM]

APPENDIX A	DEFINITIONS
APPENDIX B	FORM OF BOND

INDENTURE OF TRUST

This INDENTURE OF TRUST (this "Indenture"), dated for convenience as of October 1, 2020, is between the CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the "Authority"), and MUFG UNION BANK, N.A., a national banking association organized and existing under the laws of the United States of America, with a corporate trust office in San Francisco, California, being qualified to accept and administer the trusts hereby created (the "Trustee").

B A C K G R O U N D :

1. The Authority has previously issued its City of Carmel-by-the-Sea Public Improvement Authority 2010 Refunding Lease Revenue Bonds in the aggregate principal amount of \$7,575,000 (the "2010 Bonds") for the purpose of providing funds to refinance the lease payment obligations of the City of Carmel-by-the-Sea (the "City") relating to an issue of the Sunset Center Lease Revenue Certificates of Participation, Series 2001 in the aggregate original principal amount of \$9,900,000.

2. The 2010 Bonds are secured by a pledge of lease payments which are made by the City under an Amended and Restated Lease Agreement dated as of October 1, 2010 (the "2010 Lease Agreement"), between the Authority as lessor and the City as lessee, as the rental for certain property consisting generally of the land and improvements which constitute the Sunset Center Theater (the "Leased Property").

3. The 2010 Bonds are subject to redemption at the option of the Authority on November 1, 2020, at a redemption price equal to 100% of the principal amount thereof together with accrued interest thereon to the redemption date, without premium.

4. The City and the Authority have determined that it is in their best interests to refund the 2010 Bonds and in order to provide funds for that purpose the Authority has authorized the issuance of its 2020 Refunding Lease Revenue Bonds (Sunset Center Theater Project) in the aggregate principal amount of \$_____ (the "Bonds") under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the "Bond Law").

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority and the City have amended and restated the 2010 Lease Agreement pursuant to a Second Amended and Restated Lease Agreement dated as of October 1, 2020, under which the City has agreed to pay semiannual lease payments (the "Lease Payments") as the rental for the Leased Property.

6. The Authority has assigned the Lease Payments to the Trustee for the security of the Bonds under an Assignment Agreement dated as of October 1, 2020, between the Authority as assignor and the Trustee as assignee.

7. In order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and to secure the payment of the principal thereof and interest thereon, the Authority has authorized the execution and delivery of this Indenture.

8. The Authority has found and determined, and hereby affirms, that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized.

A G R E E M E N T :

In order to secure the payment of the principal of and the interest on all the Outstanding Bonds under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in Appendix A when used in this Indenture.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

(d) Whenever the term “may” is used herein with respect to an action by one of the parties hereto, such action shall be discretionary and the party who “may” take such action shall be under no obligation to do so.

ARTICLE II

THE BONDS

SECTION 2.01. *Authorization of Bonds.* The Authority has reviewed all proceedings heretofore taken and, as a result of such review, hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now duly empowered, under each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

The Authority hereby authorizes the issuance of Bonds under the Bond Law for the purpose of providing funds to refund the 2010 Bonds. The Bonds shall be designated the “2020 Refunding Lease Revenue Bonds (Sunset Center Theater Project)” and shall be issued in the aggregate principal amount of \$_____. The Bonds are authorized and issued under and subject to the terms of this Indenture and the Bond Law.

SECTION 2.02. *Terms of the Bonds.*

(a) Payment Provisions. The Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond has more than one maturity date. The Bonds shall mature on November 1 in each of the years and in the amounts, and bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

<u>Maturity Date</u> <u>(November 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity Date</u> <u>(November 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2022			2027		
2023			2028		
2024			2029		
2025			2030		
2026			2031		

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,

- (b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (c) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee. The provisions of this Section are subject in all respects to the provisions of Section 2.04 relating to the payment of the principal of and interest on the Bonds held in book-entry form.

SECTION 2.03. *Transfer and Exchange of Bonds.*

(a) Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall collect any tax or other governmental charge on the transfer of any Bonds under this Section. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority shall pay the cost of any services rendered or expenses incurred by the Trustee (including the fees and expenses of counsel) in connection with any transfer of Bonds. Prior to any transfer of the Bonds outside the book-entry system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis report obligations under Section 6045 of the Tax Code. The Trustee shall conclusively rely on the information

provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(b) Exchange. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

SECTION 2.04. *Book-Entry System.*

(a) Original Delivery. The Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the Trustee shall register the ownership of each Bond on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, each of the Authority and the Trustee has no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Nominee holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, each of the Authority and the Trustee has no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed if the Authority elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal of or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal of and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and the interest on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Authority to make payments of principal and interest under this Indenture. Upon delivery by the Depository to the Authority of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. In addition to the execution and delivery of such letter, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

If the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Authority may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the Authority shall cooperate with the Depository in taking appropriate action (i) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (ii) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the Authority's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.05. *Registration Books.* The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

SECTION 2.06. *Form and Execution of Bonds.* The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Chairperson of the Authority shall execute, and the Secretary of the Authority shall attest each Bond. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond are the proper officers of the Authority, duly authorized to execute debt instruments on behalf of the Authority, although on the date of such Bond any such person was not an officer of the Authority.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.01. *Issuance of the Bonds.* Concurrently with the execution of this Indenture, the Authority shall execute and the Trustee shall authenticate and deliver the Bonds to the Original Purchaser, upon the Written Request of the Authority.

SECTION 3.02. *Application of Proceeds of Sale of Bonds.* On the Closing Date, the proceeds of the Bonds in the amount of \$_____ shall be paid to the Trustee by the Original Purchaser. The Trustee shall deposit such proceeds into a temporary account called the Proceeds Fund, which the Trustee shall establish and maintain. Amounts on deposit in the Proceeds Fund shall be applied by the Trustee on the Closing Date as follows:

- (a) The Original Purchaser shall transfer the amount of \$_____ to the Trustee for deposit into the Costs of Issuance Fund.
- (b) The Original Purchaser shall transfer the amount of \$_____, constituting the remainder of such proceeds, to the Escrow Agent for application pursuant to the Escrow Agreement.

Upon making the deposit or transfers set forth above, the Trustee shall close the Bond Proceeds Fund. The Trustee is authorized to establish any additional funds or accounts it considers necessary for administrative purposes.

SECTION 3.03. *Establishment and Application of Costs of Issuance Fund.* The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund" into which the Trustee shall deposit a portion of the proceeds of sale of the Bonds under Section 3.02(a). The Trustee shall disburse amounts in the Costs of Issuance Fund from time to time to pay the Costs of Issuance of the Bonds upon submission of Written Requisitions of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against the Costs of Issuance Fund. The Trustee may conclusively rely on such Written Requisitions and shall be fully protected in relying thereon. On December 1, 2020, or upon the earlier Written Request of the Authority, the Trustee shall transfer all amounts remaining in the Costs of Issuance Fund to the Interest Account and shall thereupon close the Costs of Issuance Fund.

SECTION 3.04. *Refunding of 2010 Bonds.* The Authority shall cause the proceeds of the Bonds to be applied to the payment and redemption of the 2010 Bonds in full in accordance with the provisions of the Escrow Agreement. From and after the Closing Date, the 2010 Bonds shall be fully discharged and satisfied and shall no longer be secured by a pledge of or lien on the Revenues, or any portion thereof.

SECTION 3.05. *Validity of Bonds.* The recital contained in the Bonds that the same are issued under the Constitution and laws of the State of California shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV

REDEMPTION OF BONDS

SECTION 4.01. *No Optional Redemption.* The Bonds shall not be subject to optional redemption prior to their respective stated maturity dates.

SECTION 4.02. *Mandatory Sinking Fund Redemption of Term Bonds.* The Term Bonds are subject to mandatory redemption in whole, or in part by lot, from sinking fund payments made under Section 5.02(b), at a redemption price equal to the principal amount thereof to be redeemed, without premium, plus accrued interest to the date of redemption, in the aggregate respective principal amounts and on November 1 in the years as set forth in the following table:

Payment Date <u>(November 1)</u>	Payment <u>Amount</u>
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If some but not all of the Term Bonds have been redeemed under Section 4.03, the total amount of all future sinking fund payments will be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking

fund payments on a pro rata basis as determined by the Authority, which shall notify the Trustee in writing of such determination.

SECTION 4.03. *Special Mandatory Redemption From Insurance or Condemnation Proceeds.* The Bonds are subject to redemption as a whole, or in part by lot on a pro rata basis among maturities, on any date, from any Net Proceeds required to be used for such purpose as provided in Section 5.06, at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

SECTION 4.04. *Selection of Bonds for Redemption.* Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of a single maturity, the Depository shall select the Bonds of that maturity or series in accordance with its rules and procedures. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

SECTION 4.05. *Notice of Redemption.* The Trustee shall mail notice of redemption of the Bonds by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Information Services. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Bonds within a maturity are called for redemption) Bond numbers of the Bonds to be redeemed and the maturity or maturities of the Bonds to be redeemed, and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

SECTION 4.06. *Partial Redemption of Bonds.* Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

SECTION 4.07. *Effect of Redemption.* Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed under the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed in accordance with the retention policy of the Trustee then in effect

ARTICLE V

REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

SECTION 5.01. *Security for the Bonds; Bond Fund.*

(a) Pledge of Revenues and Other Amounts. Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under this Indenture are hereby pledged to secure the payment of the principal of and interest on the Bonds in accordance with their terms and the provisions of this Indenture. Said pledge constitutes a lien on and security interest in the Revenues and such amounts and shall attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

(b) Assignment to Trustee. Under the Assignment Agreement, the Authority has transferred to the Trustee all of the rights of the Authority in the Lease Agreement (other than the rights of the Authority under Sections 4.4, 5.10, 7.3 and 8.4 thereof). The Trustee shall be entitled to collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee is also entitled to and shall, subject to the provisions of Article VIII, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease Agreement.

(c) Deposit of Revenues in Bond Fund. All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Bond Fund" which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required hereunder or under the Lease Agreement to be deposited in the Insurance and Condemnation Fund or the Redemption Fund shall be promptly deposited in such funds. All Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in this Indenture. Any surplus remaining in the Bond Fund, after payment in full of (i) the principal of and interest on the Bonds, or provision therefore under Article X, and (ii) any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

SECTION 5.02. *Allocation of Revenues.* On or before each Interest Payment Date, the Trustee shall transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Bond Fund), the following amounts in the following order of priority:

- (a) Deposit to Interest Account. The Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding.
- (b) Deposit to Principal Account. The Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date, including the principal amount of any Term Bonds which are subject to mandatory sinking fund redemption on such Interest Payment Date under Section 4.02.

SECTION 5.03. *Interest Account.* All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it comes due and payable (including accrued interest on any Bonds purchased prior to maturity).

SECTION 5.04. *Principal Account.* All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates, including the principal amount of any Term Bonds which are subject to mandatory sinking fund redemption under Section 4.02.

SECTION 5.05. *Redemption Fund.* Upon the receipt of any funds which are required to be applied to the redemption of Bonds under Section 4.03, the Trustee shall establish and maintain the Redemption Fund, into which the Trustee shall deposit such funds, in accordance with a Written Request of the Authority. Amounts on deposit in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds to be redeemed under Section 4.03.

SECTION 5.06. *Insurance and Condemnation Fund.*

(a) Establishment of Fund. Upon the receipt of proceeds of insurance or eminent domain with respect to the Leased Property, the Trustee shall establish and maintain the Insurance and Condemnation Fund, to be held and applied as hereinafter set forth in this Section.

(b) Application of Insurance Proceeds. Any Net Proceeds of insurance against accident to or destruction of the Leased Property collected by the City or the Authority in the event of any such accident or destruction shall be paid to the Trustee and, at the written direction of the City, be deposited by the Trustee promptly upon receipt thereof in the Insurance and Condemnation Fund. If the City fails to determine and notify the Trustee in writing of its determination, within 45 days following the date of such deposit, to replace, repair, restore, modify or improve the Leased Property which has been damaged or destroyed, then such Net Proceeds shall be promptly transferred by the Trustee to the Redemption Fund and applied to the redemption of Bonds on the next available redemption date under Section 4.03. Notwithstanding the foregoing sentence, however, if the Leased Property is damaged or destroyed in full, the Net Proceeds of such insurance shall be used by the City to rebuild or replace the Leased Property if such proceeds are not sufficient to defease Outstanding Bonds.

All proceeds deposited in the Insurance and Condemnation Fund and not so applied to redeem the Outstanding Bonds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the City, upon receipt of a Written Request of the City which: (i) states with respect to each payment to be made (A) the requisition number, (B) the name and address of the person to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund and has not been the basis of any previous withdrawal; and (ii) specifies in reasonable detail the nature of the obligation. Each such Written Request of the City shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Any balance of the proceeds remaining after such work has been completed as certified by the City under a Written Certificate to the Trustee shall be paid to the City. The Trustee shall be entitled to conclusively rely on any Written Request or Written Certificate received under this subsection (b) of this Section and in each case, shall be fully protected in relying thereon.

(c) Application of Eminent Domain Proceeds. If all or any part of the Leased Property is taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Authority shall deposit or cause to be deposited with the Trustee the Net Proceeds therefrom, which the Trustee shall, at the written direction of the City, deposit in the Insurance and Condemnation Fund, to be applied and disbursed by the Trustee as follows:

- (i) If the City has not given written notice to the Trustee, within 45 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for the replacement of the Leased Property or such portion thereof, the Trustee shall deposit such Net Proceeds in the Redemption Fund, to be applied to redeem Outstanding Bonds under Section 4.03.
- (ii) If the City has given written notice to the Trustee, within 45 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for replacement of the Leased Property or such portion thereof, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such replacement, upon the filing of Written Requisitions of the City as agent for the Authority.

In each case, the Trustee may conclusively rely upon any notice received under this subsection (c)(ii) of this Section and is protected in relying thereon.

(d) Reliance on Independent Advice. In making any such determination whether to repair, replace or rehabilitate the Leased Property under this Section, the City may obtain, but is not required to obtain, at its expense, the report of an independent engineer or other independent professional consultant. Any such determination by the City shall be final.

SECTION 5.07. *Investments.* All moneys in any of the funds or accounts established with the Trustee under this Indenture shall be invested by the Trustee solely in Permitted Investments. Such investments shall be directed by the Authority in a Written Request of the Authority filed with the Trustee at least two Business Days in advance of the making of such investments. In the absence of any such directions from the Authority, the Trustee shall hold such funds uninvested. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. To the extent Permitted Investments are registrable, such Permitted Investments shall be registered in the name of the Trustee.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the Bond Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made under this Section.

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder. The Trustee is hereby authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or is dealing as a principal for its own account.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority will not receive such confirmations to the extent permitted by law. The Trustee will furnish the Authority a periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

SECTION 5.08. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or under this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued at the Fair Market Value thereof as such term is defined in subsection (d) below. The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority in any Written Request of the Authority.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at cost thereof, (consisting of present value thereof within the meaning of Section 148 of the Tax Code); provided that the Authority shall inform the Trustee which funds are subject to a yield restriction.

(c) Except for funds or accounts described in subsection (b), for the purpose of determining the amount in any fund or account established hereunder, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least annually on or before October 15. The Trustee may sell or present for redemption, any Permitted Investment so purchased by the Trustee whenever it is necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, or (iii) the investment is a United States Treasury Security -- State and Local Government Series which is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

(e) To the extent of any valuations made by the Trustee hereunder, the Trustee may utilize and rely upon computerized securities pricing services that may be available to it, including those available through its regular accounting system.

ARTICLE VI

COVENANTS OF THE AUTHORITY

SECTION 6.01. *Punctual Payment.* The Authority shall punctually pay or cause to be paid the principal of and interest on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of the Revenues and other amounts pledged for such payment as provided in this Indenture.

SECTION 6.02. *Extension of Payment of Bonds.* The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which have not been so extended. Nothing in this Section limits the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance does not constitute an extension of maturity of the Bonds.

SECTION 6.03. *Against Encumbrances.* The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 6.04. *Power to Issue Bonds and Make Pledge and Assignment.* The Authority is duly authorized under law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other amounts purported to be pledged and assigned, respectively, under this Indenture and under the Assignment Agreement in the manner and to the extent provided in this Indenture and the Assignment Agreement. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 6.05. *Accounting Records.* The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds and all funds and accounts established under this Indenture. The Trustee shall make such books of record and account available for inspection by the Authority and the City, during business hours, upon reasonable notice, and under reasonable circumstances.

SECTION 6.06. *Limitation on Additional Obligations.* The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

SECTION 6.07. *Tax Covenants.*

(a) Private Business Use Limitation. The Authority shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The Authority may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The Authority may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The Authority shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the

Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The Authority shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The Authority shall pay when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from amounts paid by the City for that purpose under Section 4.4(d) of the Lease Agreement. The Authority shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e).

SECTION 6.08. *Enforcement of Lease Agreement.* Subject to the provisions of Article VIII, the Trustee may enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations of the City under the Lease Agreement.

SECTION 6.09. *Waiver of Laws.* The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 6.10. *Further Assurances.* The Authority will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. *Events of Default.* The following events constitute Events of Default hereunder:

- (a) Failure to pay any installment of the principal of any Bonds when due, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due.
- (c) Failure by the Authority to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure has continued for a period of

30 days after written notice thereof, specifying such failure and requiring the same to be remedied, has been given to the Authority by the Trustee; provided, however, if in the reasonable opinion of the Authority the failure stated in the notice can be corrected, but not within such 30-day period, such failure shall not constitute an Event of Default if the Authority institutes corrective action within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.

- (d) The commencement by the Authority of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.
- (e) The occurrence and continuation of an event of default under and as defined in the Lease Agreement.

SECTION 7.02. *Remedies Upon Event of Default.* If any Event of Default occurs, then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding shall, in each case, upon receipt of indemnification satisfactory to Trustee against the costs, expenses and liabilities to be incurred in connection with such action, upon notice in writing to the Authority, declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding.

Any such declaration is subject to the condition that if, at any time after such declaration and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority deposits with the Trustee a sum sufficient to pay all the principal of and installments of interest on the Bonds payment of which is overdue, with interest on such overdue principal at the rate borne by the respective Bonds to the extent permitted by law, and the reasonable fees, charges and expenses (including those of its legal counsel, including the allocated costs of internal attorneys) of the Trustee, and any and all other Events of Default known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Authority, the City and the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences and waive such Event of Default; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.03. *Application of Revenues and Other Funds After Default.* If an Event of Default occurs and is continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee in the following order of priority:

- (a) To the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its legal

counsel including outside counsel and the allocated costs of internal attorneys) incurred in and about the performance of its powers and duties under this Indenture;

- (b) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping or otherwise noting thereon of the payment if only partially paid, or surrender thereof if fully paid) in accordance with the provisions of this Indenture, as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal at the rate borne by the respective Bonds (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference.

SECTION 7.04. *Trustee to Represent Bond Owners.* The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Indenture and applicable provisions of any law. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Indenture.

SECTION 7.05. *Limitation on Bond Owners' Right to Sue.* Notwithstanding any other provision hereof, no Owner of any Bonds has the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Lease Agreement or any other applicable law with respect to such Bonds, unless (a) such Owner has given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of the Bonds then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee has failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee; and (e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Bonds, this Indenture, the Lease Agreement or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

SECTION 7.06. *Absolute Obligation of Authority.* Nothing herein or in the Bonds contained affects or impairs the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon acceleration or call for redemption, as herein provided, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

SECTION 7.07. *Termination of Proceedings.* In case any proceedings taken by the Trustee or by any one or more Bond Owners on account of any Event of Default have been discontinued or abandoned for any reason or have been determined adversely to the Trustee or the Bond Owners, then in every such case the Authority, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee and the Bond Owners shall continue as though no such proceedings had been taken.

SECTION 7.08. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Trustee, to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.09. *No Waiver of Default.* No delay or omission of the Trustee or any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Bond Owners.

SECTION 7.10. *Notice to Bond Owners of Default.* Five Business Days following a responsible officer of the Trustee obtaining actual knowledge of the occurrence of an Event of Default, the Trustee shall promptly give written notice thereof by first class mail,

postage prepaid, to the Owner of each Outstanding Bond, unless such Event of Default has been cured before the giving of such notice; *provided, however* that except in the case of an Event of Default described in Sections 7.01(a) or 7.01(b), the Trustee may elect not to give such notice to the Bond Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

ARTICLE VIII

THE TRUSTEE

SECTION 8.01. *Appointment of Trustee.* MUFG Union Bank, N.A. is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority will maintain a Trustee which is qualified under the provisions of the foregoing provisions of this Article, so long as any Bonds are Outstanding.

SECTION 8.02. *Acceptance of Trusts; Removal and Resignation of Trustee.* The Trustee hereby accepts the express trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

- (a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants shall be read into this Indenture against the Trustee.
- (b) The Authority may remove the Trustee at any time, unless an Event of Default has occurred and is then continuing, and shall remove the Trustee (a) if at any time requested to do so by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 8.02, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation.
- (c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City, and by giving the Bond Owners notice of such resignation by mail at the addresses shown on the Registration Books.
- (d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. In the event of the removal or resignation of the Trustee under subsections (b) or (d), respectively, the Authority shall promptly appoint a successor Trustee.

If no successor Trustee has been appointed and accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, shall signify its acceptance of such appointment by executing and delivering to the Authority, to its predecessor Trustee a written acceptance thereof, and after payment by the Authority of all unpaid fees and expenses of the predecessor Trustee, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to the Leased Property held by such predecessor Trustee under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall promptly mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

- (e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the City of Columbia, shall be authorized under such laws to exercise corporate trust powers, shall have (or, in the case of a corporation or association that is a member of a bank holding company system, the related bank holding company has) a combined capital and surplus of at least \$50,000,000, and shall be subject to supervision or examination by a federal or state agency, so long as any Bonds are Outstanding. If such corporation or association publishes a report of condition at least annually under law or to the requirements of any supervising or

examining agency above referred to, then for the purpose of this subsection (e), the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee at any time ceases to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

SECTION 8.03. *Merger or Consolidation.* Any bank, federal savings association, or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank, federal savings association, or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank, federal savings association, or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank, federal savings association, or trust company shall be eligible under subsection (e) of Section 8.02 shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 8.04. *Liability of Trustee.*

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Bonds or the Lease Agreement (including any right to receive moneys thereunder or the value of or title to the premises upon which the Leased Property is located), nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations of Trustee herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or willful misconduct. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee is not liable for any error of judgment made by a responsible officer, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts.

(c) The Trustee is not liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture or assigned to it under the Assignment Agreement.

(d) The Trustee is not liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or a corporate trust officer shall have received written notice thereof at its Office from the City, the Authority or the Owners of at least 25% in aggregate principal amount of the Outstanding Bonds. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements herein, under the Lease Agreement or the Bonds or of any of the documents executed in connection with the Bonds, or as to the existence of a default or an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee is not responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City or the Authority of the terms, conditions, covenants or agreements set forth in the Lease Agreement.

(f) No provision of this Indenture requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, receivers or attorneys and the Trustee shall not be responsible for any willful misconduct or negligence on the part of any agent, receiver or attorney appointed with due care by it hereunder.

(h) The Trustee has no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Bond Owners under this Indenture, unless such Owners have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities (including but not limited to fees and expenses of its attorneys) which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of Section 8.02(a), this Section and Section 8.05, and shall be applicable to the assignment of any rights under the Lease Agreement to the Trustee under the Assignment Agreement.

(j) The Trustee is not accountable to anyone for the subsequent use or application of any moneys which are released or withdrawn in accordance with the provisions hereof.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or the City of the Leased Property. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Lease Agreement or this Indenture for the existence, furnishing or use of the Leased Property.

(l) The Trustee has no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(m) The Trustee is authorized and directed to execute the Assignment Agreement in its capacity as Trustee hereunder.

SECTION 8.05. *Right to Rely on Documents.* The Trustee shall be protected and shall incur no liability in acting or refraining from acting in reliance upon any notice, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee is under no duty to make any investigation or inquiry as to any statements contained or matter referred to in any paper or document but may accept and conclusively rely upon the same as conclusive evidence of the truth and accuracy of any such statement or matter and shall be fully protected in relying thereon. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City or an opinion of counsel satisfactory to the Trustee, and such Written Certificate, Written Request or Written Requisition or opinion of counsel shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, or opinion of counsel, and the Trustee shall be fully protected in relying thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

SECTION 8.06. *Preservation and Inspection of Documents.* All documents received by the Trustee under the provisions of this Indenture shall be retained in its respective possession and in accordance with its retention policy then in effect and shall, upon reasonable notice to Trustee, be subject to the inspection of the Authority, the City and any Bond Owner, and their agents and representatives duly authorized in writing, during business hours and under reasonable conditions as agreed to by the Trustee.

SECTION 8.07. *Compensation and Indemnification.* The Authority shall pay to the Trustee from time to time, such compensation as the Authority and the Trustee shall from time to time agree in writing for all services rendered under this Indenture and also all reasonable expenses, advances (including any interest on advances), charges, legal (including outside counsel and the allocated costs of internal attorneys) and consulting fees and other disbursements, incurred in and about the performance of its powers and

duties under this Indenture (including the costs and expenses of defending itself against any claim (whether asserted by the Authority, District or any Owner of the Bonds or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section).

The Authority shall indemnify the Trustee, its officers, directors, employees and agents against any cost, loss, liability or expense whatsoever (including but not limited to fees and expenses of its attorneys) incurred without gross negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust and this Indenture, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder or under the Assignment Agreement or the Lease Agreement and including costs and expenses of enforcing this Section. As security for the performance of the obligations of the Authority under this Section and the obligation of the Authority to make Additional Rental Payments to the Trustee, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such. The rights of the Trustee and the obligations of the Authority under this Section shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture and the Lease Agreement.

ARTICLE IX

MODIFICATION OR AMENDMENT HEREOF

SECTION 9.01. *Amendments Permitted.*

(a) Amendments With Bond Owner Consent. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by Supplemental Indenture, which the Authority and the Trustee may enter into when the written consents of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding are filed with the Trustee. No such modification or amendment may (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or deprive the Owners of the Bonds of the lien created by this Indenture on such Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It is not necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it is sufficient if such consent approves the substance thereof.

(b) Amendments Without Owner Consent. This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of

such Supplemental Indenture do not materially adversely affect the interests of the Bond Owners, including, without limitation, for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority;
- (ii) to cure any ambiguity, inconsistency or omission, or to cure or correct any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority deems necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the Trustee;
- (iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;
- (iv) to modify, amend or supplement this Indenture in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code;
- (v) to facilitate the issuance of additional obligations of the City under the Lease Agreement as provided in Section 7.5(b)(v) thereof; or
- (vi) to facilitate the release or substitution of property under Sections 3.3 or 3.4, respectively, of the Lease Agreement.

(c) Limitation. The Trustee is not obligated to enter into any Supplemental Indenture authorized by subsections (a) or (b) of this Section which materially adversely affects the Trustee's rights, duties or immunities hereunder or otherwise.

(d) Bond Counsel Opinion. Prior to the Trustee entering into any Supplemental Indenture hereunder, the Authority shall deliver to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect the exclusion from gross income for purposes of federal income taxes of interest on the Bonds.

(e) Notice of Amendments. The Authority shall deliver or cause to be delivered a draft of any Supplemental Indenture to each rating agency which then maintains a rating on the Bonds, at least 10 days prior to the effective date of such Supplemental Indenture under this Section.

SECTION 9.02. *Effect of Supplemental Indenture*. Upon the execution of any Supplemental Indenture under this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations

under this Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. *Amendment of Particular Bonds.* The provisions of this Article do not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by such Owner.

ARTICLE X

DEFEASANCE

SECTION 10.01. *Discharge of Indenture.* Any or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

- (a) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee or an escrow agent, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Bonds; or
- (c) by delivering all of such Bonds to the Trustee for cancellation.

If the Authority also pays or causes to be paid all other sums payable hereunder by the Authority, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any of such Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied, subject to Section 10.02. In such event, upon the Written Request of the Authority, the Trustee shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it under this Indenture which are not required for the payment or redemption of any of such Bonds not theretofore surrendered for such payment or redemption. The Trustee is entitled to conclusively rely on any such Written Certificate or Written Request and, in each case, is fully protected in relying thereon.

SECTION 10.02. *Discharge of Liability on Bonds.* Upon the deposit with the Trustee or with an escrow agent, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay any Outstanding Bonds (upon the maturity of such Bonds), then all liability of the Authority in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be

entitled only to payment out of such money or securities deposited with the Trustee or such escrow agent as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

The Authority may at any time surrender to the Trustee, for cancellation by Trustee, any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. *Deposit of Money or Securities with Trustee.* Whenever in this Indenture it is provided or permitted that there be deposited with or held by the Trustee or an escrow agent money or securities in the necessary amount to pay any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established under this Indenture and shall be:

- (a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity; or
- (b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the City, the Authority and the Trustee, provide money sufficient to pay the principal of and interest on the Bonds to be paid, as such principal and interest become due;

provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such money to the payment of such principal and interest with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with this Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's opinion referred to above). The Trustee shall be entitled to conclusively rely on such Written Request or opinion and shall be fully protected, in each case, in relying thereon.

SECTION 10.04. *Unclaimed Funds.* Notwithstanding any provisions of this Indenture, any moneys held by the Trustee for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Indenture), if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the Authority free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however*, that before the repayment of such moneys to the Authority as aforesaid, the Trustee shall (at the cost of the Authority) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. *Liability of Authority Limited to Revenues.* Notwithstanding anything in this Indenture or in the Bonds contained, the Authority is not required to advance any moneys derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but is not required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

SECTION 11.02. *Limitation of Rights to Parties and Bond Owners.* Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the City and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the City and the Owners of the Bonds.

SECTION 11.03. *Funds and Accounts.* Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with industry standards to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary or appropriate to perform its obligations under this Indenture.

SECTION 11.04. *Waiver of Notice; Requirement of Mailed Notice.* Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice is required to be given by mail, such requirement may be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

SECTION 11.05. *Destruction of Bonds.* Whenever in this Indenture provision is made for the cancellation by the Trustee, and the delivery to the Authority, of any Bonds, the Trustee may, in lieu of such cancellation and delivery, destroy such Bonds as may be allowed by law, and at the written request of the Authority the Trustee shall deliver a certificate of such destruction to the Authority.

SECTION 11.06. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such

invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

SECTION 11.07. *Notices.* All notices or communications to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by telephone, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

<i>If to the City or the Authority:</i>	City of Carmel-by-the-Sea Post Office Box CC Carmel-by-the-Sea, California 93921 Attention: City Administrator
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<i>If to the Trustee:</i>	MUFG Union Bank, N.A. 350 California Street, 17th Floor San Francisco, California 94104 Attention: Corporate Trust Services Fax: 415-273-2492 E-mail: SFCT@unionbank.com
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The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 11.08. *Evidence of Rights of Bond Owners.* Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bond Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Authority if made in the manner provided in this Section.

The ownership of Bonds shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

SECTION 11.09. *Disqualified Bonds.* In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which the Trustee has actual knowledge are owned or held by or for the account of the Authority or the City, or by any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds. In case of a dispute as to such right, the Trustee shall be entitled to rely upon the advice of counsel in any decision by Trustee and shall be fully protected in relying thereon.

Upon request, the Authority shall specify to the Trustee those Bonds disqualified under this Section and the Trustee may conclusively rely thereon.

SECTION 11.10. *Money Held for Particular Bonds.* The money held by the Trustee for the payment of the interest or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, *subject, however*, to the provisions of Section 10.04 but without any liability for interest thereon.

SECTION 11.11. *Waiver of Personal Liability.* No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.12. *Successor Is Deemed Included in All References to Predecessor.* Whenever in this Indenture either the Authority, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.13. *Execution in Several Counterparts.* This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original indenture and signature pages for all purposes. The exchange of copies of this Indenture and of

signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes.

SECTION 11.14. *Payment on Non-Business Day.* In the event any payment is required to be made hereunder on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and with the same effect as if made on such preceding non-Business Day.

SECTION 11.15. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 11.16. *U.S.A. Patriot Act.* The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Authority agrees that it will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

SECTION 11.17 *Waiver of Jury Trial.* THE AUTHORITY, THE OWNERS OF THE BONDS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE BONDS OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 11.18. *Governing Law.* This Indenture shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY has caused this Indenture to be signed in its name by its Executive Director and attested to by its Secretary, and MUFG UNION BANK, N.A., in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

**CITY OF CARMEL-BY-THE-SEA PUBLIC
IMPROVEMENT AUTHORITY**

By _____
Executive Director

Attest:

Secretary

MUFG UNION BANK, N.A.,
as Trustee

By _____
Authorized Officer

APPENDIX A

DEFINITIONS

“Assignment Agreement” means the Assignment Agreement dated as of October 1, 2020, between the Authority as assignor and the Trustee as assignee, as originally executed or as thereafter amended.

“Authority” means the City of Carmel-by-the-Sea Public Improvement Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California.

“Authorized Representative” means: (a) with respect to the Authority, its Executive Director, Treasurer, Finance Director, or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Executive Director and filed with the City and the Trustee; and (b) with respect to the City, its Mayor, City Administrator, Finance Director or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its Mayor, City Administrator or Finance Director and filed with the Authority and the Trustee.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

“Bond Fund” means the fund by that name established and held by the Trustee under Section 5.01.

“Bond Law” means Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code.

“Bond Year” means each twelve-month period extending from November 2 in one calendar year to November 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year commences on the Closing Date and extends to and including November 1, 2022.

“Bonds” means the \$_____ aggregate principal amount of 2020 Refunding Lease Revenue Bonds (Sunset Center Theater Project) authorized by and at any time Outstanding under this Indenture.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the city in which the Office of the Trustee is located.

“City” means the City of Carmel-by-the-Sea, a municipal corporation organized and existing under the laws of the State of California.

“Closing Date” means October __, 2020, being the date of delivery of the Bonds to the Original Purchaser.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the authorization, issuance, sale and delivery of the Bonds and the refunding of the 2010 Bonds, including but not limited to: printing expenses; rating agency fees; filing and recording fees; initial fees, expenses and charges of the Trustee and their respective counsel, including the Trustee’s first annual administrative fee; fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals; fees and charges for title insurance; fees and charges for preparation, execution and safekeeping of the Bonds; and any other cost, charge or fee in connection with the original issuance of the Bonds and the refunding of the 2010 Bonds.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 3.03.

“Depository” means (a) initially, DTC, and (b) any other Securities Depositories acting as Depository under Section 2.04.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Escrow Agent” means MUFG Union Bank, N.A., its successors and assigns, as trustee for the 2010 Bonds and as escrow agent under the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreement dated the Closing Date, among the Authority, the City and the Escrow Agent, relating to the refunding and defeasance of the 2010 Bonds in full.

“Event of Default” means any of the events specified in Section 7.01.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Bonds at a yield in excess of the yield on the Bonds.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

“Indenture” means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture under the provisions hereof.

“Independent Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the City, and who, or each of whom (a) is in fact independent and not under domination of the Authority or the City; (b) does not have any substantial interest, direct or indirect, in the Authority or the City; and (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

“Insurance and Condemnation Fund” means the fund by that name established and held by the Trustee under Section 5.06.

“Interest Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Interest Payment Date” means each May 1 and November 1, commencing May 1, 2021, so long as any Bonds remain unpaid.

“Lease Agreement” means the Second Amended and Restated Lease Agreement dated as of October 1, 2020, between the Authority as lessor and the City as lessee of the Leased Property, as amended from time to time in accordance with its terms.

“Lease Payment Date” means, with respect to any Interest Payment Date, the 5th Business Day immediately preceding such Interest Payment Date.

“Lease Payments” means the amounts payable by the City under Section 4.2(a) of the Lease Agreement, including any early payment thereof and including any amounts payable upon a delinquency in the payment thereof.

“Leased Property” means the real property described in Appendix A to the Lease Agreement, together with all improvements and facilities at any time situated thereon, consisting generally of the land and improvements which constitute the Sunset Center Theater.

“Net Proceeds” means amounts derived from any policy of casualty insurance or title insurance with respect to the Leased Property, or the proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings (including sale under threat of such proceedings), to the extent remaining after payment therefrom of all expenses incurred in the collection and administration thereof.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.04(a).

“Office” means such office or offices as the Trustee may designate in writing to the Authority from time to time as the corporate trust office for purposes of the Indenture.

“Original Purchaser” means Raymond James & Associates, Inc., as original purchaser of the Bonds on the Closing Date.

“Outstanding”, when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02, including Bonds (or portions thereof) described in Section 11.09; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee under this Indenture.

“Owner”, whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

“Permitted Encumbrances” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article V of the Lease Agreement; (b) the Site Lease, the Lease Agreement and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, material man, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Stewart Title Guaranty Company; and (e) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Leased Property for its intended purposes.

“Permitted Investments” means any of the following:

- (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged.
- (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.
- (c) Any direct or indirect obligations of an agency or department of the United States of America whose obligations represent the full faith and credit of the United States of America, or which are rated A or better by S&P.
- (d) Bank deposit products and interest-bearing deposit accounts (including certificates of deposit) in federal or State chartered savings and loan associations or in federal or State of California banks (including the Trustee) which may include the Trustee and its affiliates, provided that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P; or (ii) such deposits are fully insured by the Federal Deposit Insurance Corporation or are collateralized by Permitted Investments described in clauses (a), (b) or (c) above.

- (e) Commercial paper rated, at the time of purchase, “A-1+” or better by S&P.
- (f) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of “A-1+” or better by S&P.
- (g) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAm-G, AAAm or AAm, which funds may include funds for which the Trustee, its affiliates, parent or subsidiaries receives and retains a fee for services provided to the fund, whether as a custodian, transfer agent, investment advisor or otherwise.

“Principal Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Record Date” means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

“Redemption Fund” means the fund by that name established and held by the Trustee under Section 5.05.

“Registration Books” means the records maintained by the Trustee under Section 2.05 for the registration and transfer of ownership of the Bonds.

“Revenues” means: (a) all amounts received by the Authority or the Trustee under or with respect to the Lease Agreement, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source); and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established under this Indenture.

“Securities Depositories” means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority designates in written notice filed with the Trustee.

“Site Lease” means the Second Amended and Restated Site Lease dated as of October 1, 2020, between the City as lessor and the Authority as lessee, as amended from time to time in accordance with its terms.

“S&P” means S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, of New York, New York, its successors and assigns.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

"Term" means, with reference to the Lease Agreement, the time during which the Lease Agreement is in effect, as provided in Section 4.2 thereof.

"Term Bonds" means the Bonds maturing on November 1, 20__.

"Trustee" means MUFG Union Bank, N.A., a national banking association organized and existing under the laws of United States of America, or its successor or successors, as Trustee hereunder as provided in Article VIII.

"2010 Bonds" means the City of Carmel-by-the-Sea Public Improvement Authority 2010 Refunding Lease Revenue Bonds issued by the Authority in the aggregate original principal amount of \$7,575,000.

"Written Certificate," "Written Request" and "Written Requisition" of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

APPENDIX B**BOND FORM**

NO. R-_____

\$_____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA**CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT
AUTHORITY****2020 REFUNDING LEASE REVENUE BOND
(Sunset Center Theater Project)**

INTEREST RATE: _____% MATURITY DATE: _____ 1, _____ ORIGINAL ISSUE DATE: _____ 2020 CUSIP: _____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: *** ***

The City of Carmel-by-the-Sea Public Improvement Authority, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns (the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the 15th day of the month preceding such interest payment date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before April 15, 2021, in which event it shall bear interest from the Original Issue Date specified above, or (iii) interest on this Bond is in default as of the date of authentication hereof, in which event interest hereon shall be payable from the date to which interest has been paid in full. Interest on this Bond shall accrue at the Interest Rate per annum specified above, and shall be payable semiannually on May 1 and November 1 in each year, commencing May 1, 2021 (the "Interest Payment Dates"), calculated on the basis of a 360-day year composed of twelve 30-day months.

Principal hereof is payable upon presentation and surrender hereof at the corporate trust office of MUFG Union Bank, N.A., in San Francisco, California (the "Trust Office"), as trustee (the "Trustee"). Interest hereon is payable by check of the Trustee mailed to the Registered Owner hereof at the Registered Owner's address as it appears

on the registration books of the Trustee as of the close of business on the fifteenth day of the month preceding each Interest Payment Date (a "Record Date"), or, upon written request filed with the Trustee as of such Record Date by a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account in the United States designated by such registered owner in such written request.

This Bond is not a debt of the City of Carmel-by-the-Sea (the "City"), the County of Monterey, the State of California, or any of its political subdivisions, and neither the City, said County, said State, nor any of its political subdivisions, is liable hereon nor in any event shall this Bond be payable out of any funds or properties of the Authority other than the Revenues.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "City of Carmel-by-the-Sea Public Improvement Authority 2020 Refunding Lease Revenue Bonds (Sunset Center Theater Project) (the "Bonds"), in an aggregate principal amount of \$_____, all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates) and all issued under the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code, and under an Indenture of Trust dated as of October 1, 2020, between the Authority and the Trustee (the "Indenture") and a resolution of the Authority adopted on September 1, 2020, authorizing the issuance of the Bonds. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Revenues, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Authority to refinance certain outstanding obligations of the Authority. This Bond and the interest hereon are special obligations of the Authority, payable from the Revenues, and secured by a charge and lien on the Revenues as defined in the Indenture, consisting principally of lease payments made by the City under an Second Amended and Restated Lease Agreement dated as of October 1, 2020 (the "Lease Agreement"), between the Authority as lessor and the City as lessee. As and to the extent set forth in the Indenture, all of the Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture, to the payment of the principal of and interest on the Bonds.

The rights and obligations of the Authority and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the owner of each Bond so affected.

The Bonds maturing are not subject to optional redemption prior to their respective stated maturity dates.

The Bonds maturing on November 1, 20__, are subject to mandatory sinking fund redemption in whole or in part by lot, at a redemption price equal to the principal amount thereof to be redeemed, without premium, plus accrued interest to the date of redemption, in the aggregate respective principal amounts and on November 1 in the years as set forth in the following table:

<u>Payment Date</u> <u>(November 1)</u>	<u>Payment</u> <u>Amount</u>
--	---------------------------------

The Bonds are subject to redemption as a whole, or in part by lot, on any date, from the net proceeds or eminent domain or insurance award with respect to the property which is leased under the Lease Agreement and which are required to be used for such purpose under the Indenture, at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

As provided in the Indenture, notice of redemption will be mailed by the Trustee by first class mail not less than 20 nor more than 60 days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption or the cessation of accrual of interest thereon from and after the date fixed for redemption.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer, a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. This Bond may be exchanged at the Trust Office for Bonds of the same tenor, aggregate principal amount, interest rate and maturity, of other authorized denominations.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Authority or the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE

HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

It is hereby certified by the Authority that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the _____ has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chairperson and attested to by the facsimile signature of its Secretary, all as of the Original Issue Date specified above.

Attest:

By _____ Chairperson
 _____ Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

MUFG UNION BANK, N.A., as Trustee

By _____
 Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby irrevocably _____ constitute(s) _____ and _____ appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

Note: Signature(s) shall be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment shall correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

RECORDING REQUESTED BY:
Stewart Title Guaranty Company
Commercial Services San Francisco

TO BE RECORDED MAIL TO:
Jones Hall, A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Charles F. Adams, Esq.

File No.
APN:

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SECOND AMENDED AND RESTATED SITE LEASE

This SECOND AMENDED AND RESTATED SITE LEASE (this "Site Lease"), dated for convenience as of October 1, 2020, is between the CITY OF CARMEL-BY-THE-SEA, a municipal corporation duly organized and existing under the laws of the State of California, as lessor (the "City"), and the CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California, as lessee (the "Authority").

BACKGROUND:

1. The Authority has previously issued its City of Carmel-by-the-Sea Public Improvement Authority 2010 Refunding Lease Revenue Bonds in the aggregate principal amount of \$7,575,000 (the "2010 Bonds") for the purpose of providing funds to refinance the lease payment obligations of the City relating to an issue of the Sunset Center Lease Revenue Certificates of Participation, Series 2001 in the aggregate original principal amount of \$9,900,000.

2. In order to secure the payment of the 2010 Bonds, the City has previously leased certain property, consisting generally of the land and improvements which constitute the Sunset Center Theater, as described more fully in Appendix A which is attached hereto and by this reference incorporated herein (the "Leased Property"), to the Authority under an Amended and Restated Site Lease dated as of October 1, 2010, which was recorded on October 28, 2010, as Document No. 2010063642 in the Office of the Monterey County Recorder (the "2010 Site Lease"); and the Authority has leased the Leased Property back to the City under an Amended and Restated Lease Agreement dated as of October 1, 2010, which was recorded on October 28, 2010, as Document No.

2010063643 in the Office of the Monterey County Recorder (the "2010 Lease Agreement").

3. The 2010 Bonds are subject to redemption at the option of the Authority on November 1, 2020, at a redemption price equal to 100% of the principal amount thereof together with accrued interest thereon to the redemption date, without premium.

4. The City and the Authority have determined that it is in their best interests to refund the 2010 Bonds and in order to provide funds for that purpose the Authority has authorized the issuance of its 2020 Refunding Lease Revenue Bonds (Sunset Center Theater Project) in the aggregate principal amount of \$_____ (the "Bonds"), under an Indenture of Trust dated as of October 1, 2020 (the "Indenture"), between the Authority and MUFG Union Bank, N.A., as trustee (the "Trustee").

5. The City and the Authority have amended and restated the 2010 Lease Agreement pursuant to a Second Amended and Restated Lease Agreement dated as of October 1, 2020, which has been recorded concurrently herewith (the "Lease Agreement"), for the purpose of providing for the payment of lease payments by the City (the "Lease Payments") which have been pledged for the security of the Bonds and which have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement dated as of October 1, 2020, which has been recorded concurrently herewith, between the Authority as assignor and the Trustee as assignee.

6. The Authority and the City have agreed to amend and restate the 2010 Site Lease as provided herein, for the purpose of incorporating provisions relating to the Bonds.

7. The Authority has been organized for the purpose of providing financial assistance to the City and is authorized to enter into financing documents for that purpose.

A G R E E M E N T :

In consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

SECTION 1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Site Lease have the respective meanings given them in the Indenture.

SECTION 2. *Restatement of 2010 Site Lease.* This Site Lease constitutes an amendment and restatement in full of the 2010 Site Lease. Concurrently with the execution and delivery hereof the 2010 Site Lease, in the form heretofore executed and delivered by the City and the Authority, will be of no further force and effect and will be deemed to be restated in full hereby. The City continues to and does hereby lease the Leased Property to the Authority, upon the terms and conditions set forth in this Site Lease, without interruption by virtue of the amendment and restatement of the 2010 Site Lease hereby.

SECTION 3. *Term; Possession.* The term of this Site Lease shall commence on the Closing Date. This Site Lease shall end, and the right of the Authority hereunder to possession of the Leased Property shall thereupon cease, on November 1, 2031 (unless the term of the Lease Agreement has been extended under the provisions thereof), or such earlier or later date on which the Lease Payments are paid in full or provisions made for such payment, but in any event not later than November 1, 2041.

SECTION 4. *Consideration.* In consideration for the agreement by the City to amend and restate the 2010 Site Lease as provided herein, the Authority hereby agrees to issue the Bonds and to apply the proceeds as set forth in Section 3.02 of the Indenture for the purpose of providing funds to refund the 2010 Bonds in full. No other amounts of rental shall be due and payable by the Authority for the use and occupancy of the Leased Property under this Site Lease.

SECTION 5. *Assignments and Subleases.* Unless the City shall be in default under the Lease Agreement, the Authority may not assign its rights under this Site Lease or sublet all or any portion of the Leased Property, except as provided in the Lease Agreement, without the prior written consent of the City.

SECTION 6. *Substitution or Release of Property.* If the City exercises its option under Section 3.3 of the Lease Agreement to substitute property for the Leased Property in whole or in part, such substitution shall also operate to substitute property for the Leased Property which is leased hereunder. If the City exercises its option under Section 3.4 of the Lease Agreement to release a portion of the Leased Property from the Lease Agreement, such substitution shall also operate to release such portion of the Leased Property hereunder. The description of the Leased Property which is leased hereunder shall conform at all times to the description of the Leased Property which is leased under the Lease Agreement.

SECTION 7. *Right of Entry.* The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 8. *Termination.* The Authority agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted, and agrees that all buildings, improvements and structures then existing upon the Leased Property shall remain thereon and all right, title and interest of the Authority thereto shall vest thereupon in the City for no additional consideration.

SECTION 9. *Default.* In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease Agreement shall be deemed to occur as a result thereof; *provided, however*, that so long as the Lease Agreement remains in effect, the Lease Payments payable by the City under the Lease Agreement shall continue to be paid to the Trustee.

SECTION 10. *Quiet Enjoyment.* The Authority at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease Agreement and subject only to Permitted Encumbrances.

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Authority are solely liabilities of the Authority, and the City hereby releases each and every member and officer of the Authority of and from any personal or individual liability under this Site Lease. No member or officer of the Authority or its governing board shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Authority hereunder.

SECTION 12. *Taxes.* The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 13. *Eminent Domain.* In the event the whole or any part of the Leased Property or any improvements thereon shall be taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid principal components of the Lease Payments payable under the Lease Agreement and the balance of the award, if any, shall be paid to the City.

SECTION 14. *Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 15. *Notices.* Any notice, request, complaint, demand or other communication under this Site Lease shall be given by first class mail, electronic transmission or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Authority:*

City of Carmel-by-the-Sea
Post Office Box CC
Carmel-by-the-Sea, California 93921
Attention: City Administrator

If to the Trustee:

MUFG Union Bank, N.A.
350 California Street, 17th Floor
San Francisco, California 94104
Attention: Corporate Trust Services
Facsimile: (415) 273-2492
E-mail: SFCT@unionbank.com

The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 16. *Amendment of this Site Lease.* The Authority and the City may at any time amend or modify any of the provisions of this Site Lease, but only (a) with the prior written consent of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to make cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds;
- (ii) to amend any provision hereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on the Bonds under the Tax Code, in the opinion of Bond Counsel;
- (iii) to conform to any amendment of the Indenture which is made thereto in accordance with applicable provisions of the Indenture; or
- (iv) to amend the description of the Leased Property to reflect accurately the property originally intended to be included therein, or in connection with any substitution or release of property under Section 6.

SECTION 17. *Governing Law.* This Site Lease shall be construed in accordance with and governed by the Constitution and laws of the State of California.

SECTION 18. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary under this Site Lease with all rights of a third party beneficiary.

SECTION 19. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 20. *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 Site Lease.

SECTION 21. *Execution in Counterparts.* This Site 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 lease. It is also agreed that separate counterparts

of this Site Lease may be separately executed by the Authority and the City, all with the same force and effect as though the same counterpart had been executed by both the Authority and the City.

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

CITY OF CARMEL-BY-THE-SEA, as lessor

By _____
City Administrator

Attest:

City Clerk

**CITY OF CARMEL-BY-THE-SEA PUBLIC
IMPROVEMENT AUTHORITY, as lessee**

By _____
Executive Director

Attest:

Secretary

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property situated in the City of Carmel-by-the-Sea, County of Monterey, which is more particularly described as follows:

PARCEL ONE:

Lots 1 to 20 inclusive, in Block 97, as said lots and block are shown on that certain map entitled "Map of Carmel-By-The-Sea, Monterey County, California" filed for record March 7, 1902 in the Office of the County recorder of the County of Monterey, State of California, in Volume 1 of Maps, "Cities and Towns", at Page 2.

All that portion of Ninth Avenue situate lying and being between the east line of San Carlos street and the west line of Mission street, public streets of and in said City, which portion of said Ninth Avenue is more particularly described as follows:

That portion of said Ninth Avenue bounded on the North by Block 97, on the East by the West line of Mission Street, on the South by Block 110 and on the West by the East line of San Carlos Street, as said Avenue, Streets and Block are shown and so designated upon the "Map of Carmel By The Sea, Monterey County, California", filed for record March 7, 1902 in the Office of the County Recorder of Monterey County, California in Volume 1 of Maps, "Cities and Towns", at Page 2.

APN: 010-143-001

PARCEL TWO:

Lots numbered 1 to 20 inclusive in Block 110, as said lots and Block are shown on that certain map entitled, map of Carmel-By-The-Sea, Monterey County California", filed for record March 7, 1902 in the Office of the County Recorder of the County of Monterey, State of California, in Volume 1 of Maps, "Cities and Towns", at Page 2.

APN: 010-151-001

RECORDING REQUESTED BY:
Stewart Title Guaranty Company
Commercial Services San Francisco

TO BE RECORDED MAIL TO:
Jones Hall, A Professional Law Corporation
475 Sansome Street, Suite 1700
San Francisco, California 94111
Attention: Charles F. Adams, Esq.

File No.

APN:

SECOND AMENDED AND RESTATED LEASE AGREEMENT

This SECOND AMENDED AND RESTATED LEASE AGREEMENT (this "Lease Agreement"), dated for convenience as of October 1, 2020, is between the CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF CARMEL-BY-THE-SEA, a municipal corporation duly organized and existing under the laws of the State of California, as lessee (the "City").

B A C K G R O U N D :

1. The Authority has previously issued its City of Carmel-by-the-Sea Public Improvement Authority 2010 Refunding Lease Revenue Bonds in the aggregate principal amount of \$7,575,000 (the "2010 Bonds") for the purpose of providing funds to refinance the lease payment obligations of the City relating to an issue of the Sunset Center Lease Revenue Certificates of Participation, Series 2001 in the aggregate original principal amount of \$9,900,000.

2. The 2010 Bonds are secured by a pledge of lease payments which are made by the City under an Amended and Restated Lease Agreement dated as of October 1, 2010, which was recorded on October 28, 2010, as Document No. 20102010063643 in the Office of the Monterey County Recorder (the "2010 Lease Agreement"), between the Authority as lessor and the City as lessee, as the rental for certain property consisting generally of the land and improvements which constitute the Sunset Center Theater, as such property is described more fully in Appendix A attached hereto and by this reference incorporated herein (the "Leased Property").

3. The 2010 Bonds are subject to redemption at the option of the Authority on November 1, 2020, at a redemption price equal to 100% of the principal amount thereof together with accrued interest thereon to the redemption date, without premium.

4. The City and the Authority have determined that it is in their best interests to refund the 2010 Bonds and in order to provide funds for that purpose the Authority has authorized the issuance of its 2020 Refunding Lease Revenue Bonds (Sunset Center

Theater Project) in the aggregate principal amount of \$_____ (the "Bonds"), under an Indenture of Trust dated as of October 1, 2020 (the "Indenture"), between the Authority and MUFG Union Bank, N.A., as trustee (the "Trustee").

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority and the City have agreed to amend and restate the 2010 Lease Agreement as provided herein, and the lease payments made by the City hereunder will be assigned by the Authority to the Trustee under an Assignment Agreement dated as of October 1, 2020 (the "Assignment Agreement"), which has been recorded concurrently herewith, between the Authority as assignor and the Trustee as assignee.

6. The Authority has been organized for the purpose of providing financial assistance to the City and is authorized to enter into financing documents for that purpose.

A G R E E M E N T :

In consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease Agreement have the respective meanings given them in the Indenture.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular includes the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

(d) Whenever the term "may" is used herein with respect to an action by one of the parties hereto, such action shall be discretionary and the party who "may" take such action shall be under no obligation to do so.

ARTICLE II

COVENANTS, REPRESENTATIONS AND WARRANTIES

SECTION 2.1. *Covenants, Representations and Warranties of the City.* The City makes the following covenants, representations and warranties to the Authority and the Trustee as of the date of the execution and delivery of this Lease Agreement:

- (a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into the Site Lease, the Escrow Agreement and this Lease Agreement and to carry out and consummate all transactions contemplated hereby, and by proper action the City has duly authorized the execution and delivery of the Site Lease, the Escrow Agreement and this Lease Agreement.
- (b) Due Execution. The representatives of the City executing the Site Lease, the Escrow Agreement and this Lease Agreement have been fully authorized to execute the same under a resolution duly adopted by the City Council of the City.
- (c) Valid, Binding and Enforceable Obligations. The Site Lease, the Escrow Agreement and this Lease Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of the Site Lease, the Escrow Agreement and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease, the Escrow Agreement and this Lease Agreement or the financial condition, assets, properties or operations of the City.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and

no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Site Lease, the Escrow Agreement and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site Lease, the Escrow Agreement and this Lease Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease, the Escrow Agreement and this Lease Agreement or the financial conditions, assets, properties or operations of the City.

SECTION 2.2. *Covenants, Representations and Warranties of the Authority.* The Authority makes the following covenants, representations and warranties to the City and the Trustee as of the date of the execution and delivery of this Lease Agreement:

- (a) Due Organization and Existence. The Authority is a joint exercise of powers authority duly organized and existing under a joint powers agreement and the laws of the State of California; has power to enter into this Lease Agreement, the Site Lease, the Escrow Agreement, the Assignment Agreement and the Indenture; is possessed of full power to own and hold, improve and equip real and personal property, and to lease the same; and has duly authorized the execution and delivery of each of the aforesaid agreements and such agreements constitute the legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms.
- (b) Due Execution. The representatives of the Authority executing this Lease Agreement, the Site Lease, the Escrow Agreement, the Assignment Agreement and the Indenture are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.
- (c) Valid, Binding and Enforceable Obligations. This Lease Agreement, the Site Lease, the Escrow Agreement, the Assignment Agreement and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding

agreements of the Authority, enforceable against the Authority in accordance with their respective terms.

- (d) No Conflicts. The execution and delivery of this Lease Agreement, the Site Lease, the Escrow Agreement, the Assignment Agreement and the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, the Site Lease, the Escrow Agreement, the Assignment Agreement and the Indenture or the financial condition, assets, properties or operations of the Authority.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease Agreement, the Site Lease, the Escrow Agreement, the Assignment Agreement or the Indenture, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease Agreement, the Site Lease, the Escrow Agreement, the Assignment Agreement or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, the Site Lease, the Escrow Agreement, the Assignment

Agreement or the Indenture or the financial conditions, assets, properties or operations of the Authority.

ARTICLE III

LEASE TO THE CITY; ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS; SUBSTITUTION AND RELEASE OF LEASED PROPERTY

SECTION 3.1. *Lease of Leased Property.* This Lease Agreement constitutes an amendment and restatement in full of the 2010 Lease Agreement. From and after the Closing Date, the 2010 Lease Agreement, in the form heretofore executed and delivered by the City and the Authority, shall be of no further force and effect and shall be deemed to be restated in full hereby. The Authority continues to and does hereby lease the Leased Property to the City upon the terms and conditions set forth in this Lease Agreement, without interruption by virtue of the amendment and restatement of the 2010 Lease Agreement hereby.

SECTION 3.2. *Issuance of Bonds; Application of Proceeds.* In consideration for the agreement by the City to amend and restate the 2010 Lease Agreement as provided herein, the Authority hereby agrees to issue the Bonds under the Bond Law for the purpose of providing funds to refund the 2010 Bonds in full. The proceeds received by the Authority from the sale of the Bonds to the Original Purchaser shall be applied on the Closing Date in the amounts and for the purposes set forth in Section 3.02 of the Indenture.

SECTION 3.3. *Substitution of Property.* The City has the option at any time and from time to time to substitute other real property (the "Substitute Property") for the Leased Property or any portion thereof (the "Former Property"), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such substitution:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Monterey County Recorder sufficient memorialization of, an amendment hereof and an amendment of the Site Lease which removes the Former Property from this Lease Agreement and the Site Lease and which adds the Substitute Property to this Lease and the Site Lease.
- (c) The City has obtained a CLTA policy of title insurance insuring the City's leasehold estate hereunder in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.
- (d) The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to serve a governmental function of the City.

- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.
- (f) The City and the Authority have filed with the Trustee a written certificate stating that (a) based on the estimated value of the Substitute Property, the remaining Lease Payments constitute fair rental value for the use and occupancy of the Substitute Property, taking into consideration the factors set forth in Section 4.2(d), and (b) the useful life of the Substitute Property at least extends to November 1, 2041.
- (g) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement and the term of the Site Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property herein and therein will apply with full force and effect to the Substitute Property. The City shall not be entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this Section. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease Agreement and the Assignment Agreement of record against the Former Property and to cause the Substitute Property to become subject to all of the terms and conditions of the Site Lease, this Lease Agreement and the Assignment Agreement.

SECTION 3.4. *Release of Property.* The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease Agreement and the Site Lease (the "Released Property"), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such release:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Monterey County Recorder sufficient memorialization of, an amendment hereof and an amendment of the Site Lease which removes the Released Property from this Lease Agreement and the Site Lease.
- (c) The City and the Authority have filed with the Trustee a written certificate stating that based on the estimated value of the property which remains subject to this Lease Agreement following such release, the remaining Lease Payments constitute fair rental value for the use and occupancy of such property, taking into consideration the factors set forth in Section 4.2(d).
- (d) The City has mailed written notice of such release to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement and the term of the Site Lease will thereupon end as to the Released Property. The City shall not be entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease Agreement and the Assignment Agreement of record against the Released Property.

SECTION 3.5. *No Merger.* It is the express intention of the Authority and the City that this Lease Agreement and the obligations of the parties hereunder shall be and remain separate and distinct from the Site Lease and the obligations of the parties thereunder, and that during the term of the Site Lease and this Lease Agreement no merger of title or interest shall occur or be deemed to occur as a result of the respective positions of the Authority and the City thereunder and hereunder.

ARTICLE IV

TERM OF THIS LEASE AGREEMENT; LEASE PAYMENTS

SECTION 4.1. *Term.* The Term of this Lease Agreement shall commence on the Closing Date and end on the date on which the Indenture is discharged in accordance with Section 10.01, unless such term is extended as hereinafter provided. If on November 1, 2031, the Indenture shall not be discharged by its terms, or if the Lease Payments payable hereunder shall have been abated at any time and for any reason, then the Term of this Lease Agreement shall be extended until the Indenture shall be discharged by its terms, but not to exceed November 1, 2041.

SECTION 4.2. Lease Payments.

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments in the respective amounts specified in Appendix B attached to this Lease Agreement, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in Appendix B, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in Appendix B. Any amount held in the Bond Fund, the Interest Account and the Principal Account on any Lease Payment Date (other than amounts required for payment of past due principal or interest on any Bonds not presented for payment) will be credited towards the Lease Payment then required to be paid hereunder. The City shall not be required to deposit any Lease Payment with the Trustee on any Lease Payment Date if the amounts then held in the Bond Fund, the Interest Account and the Principal Account are at least equal to the Lease Payment then required to be deposited with the Trustee.

(b) Effect of Prepayment. If the City prepays all Lease Payments in full under Section 9.3, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Section 9.3, the principal and interest components of the remaining Lease Payments will be reduced to correspond to the payments of principal of and interest on the Bonds coming due and payable following the resulting redemption of the Bonds under the Indenture.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest on any Outstanding Bond.

(d) Fair Rental Value. The aggregate amount of the Lease Payments and Additional Rental Payments coming due and payable during each Rental Period shall constitute the total rental for the Leased Property for such Rental Period, and shall be payable by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during such Rental Period. The parties hereto have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property and constitute reasonable rent for the use and occupancy of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property, other obligations of the City and the Authority under this Lease Agreement, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(e) Assignment. The City understands and agrees that all Lease Payments have been assigned by the Authority to the Trustee in trust under the Assignment Agreement, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay all amounts due under this Section to the Trustee at its Office.

SECTION 4.3. *Source of Payments; Covenant to Budget and Appropriate.* The Lease Payments shall be payable from any source of available funds of the City, subject to the provisions of Sections 6.2 and 6.3. The City covenants to take all actions required to include the Lease Payments in each of its budgets during the Term of this Lease Agreement and to make the necessary appropriations for all Lease Payments and Additional Rental Payments. The foregoing covenant of the City constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

SECTION 4.4. *Additional Rental Payments.* In addition to the Lease Payments, the City shall pay when due the following amounts of Additional Rental Payments in consideration of the lease of the Leased Property by the City from the Authority hereunder:

- (a) all fees and expenses incurred by the Authority in connection with or by reason of its leasehold estate in the Leased Property, when due;
- (b) compensation to the Trustee for its services rendered under the Indenture and for all expenses, charges, costs, liabilities, legal fees and other disbursements incurred by the Trustee in and about the performance of its powers and duties under the Indenture;
- (c) all fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee

to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease Agreement or the Indenture;

- (d) all amounts coming due and payable as Excess Investment Earnings in accordance with Section 7.6(e); and
- (e) all out-of-pocket expenses of the Authority in connection with the execution and delivery of this Lease Agreement or the Indenture, or in connection with the issuance of the Bonds, including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Bonds, or incurred by the Authority in connection with any litigation which may at any time be instituted involving this Lease Agreement, the Bonds, the Indenture or any of the other documents contemplated hereby or thereby, or otherwise incurred in connection with the administration of this Lease Agreement.

SECTION 4.5. *Quiet Enjoyment.* Throughout the Term of this Lease Agreement, the Authority shall provide the City with quiet use and enjoyment of the Leased Property and the City will peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease Agreement. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority has the right to inspect the Leased Property as provided in Section 7.2.

SECTION 4.6. *Title.* Upon the termination of this Lease Agreement (other than as a result of the occurrence of an Event of Default under Article VIII), all right, title and interest of the Authority in and to the Leased Property shall transfer to and vest in the City. The Authority shall take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease Agreement, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and will pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Leased Property. The City waives the benefits of subsections 1 and 2 of Section 1932, Section

1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease Agreement.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Leased Property 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 City shall pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

The City may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority notifies the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

SECTION 5.2. *Modification of Leased Property.* The City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease Agreement. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, shall be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City under this Section; except that if any such lien is established and the City first notifies or causes to be notified the Authority of the City's intention to do so, the City may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

SECTION 5.3. *Liability Insurance.* The City shall maintain or cause to be maintained throughout the Term of this Lease Agreement, but only if and to the extent available from reputable insurers at reasonable cost in the opinion of the City, a standard commercial general liability insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the City deems

adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.7, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which it has been paid.

SECTION 5.4. *Casualty Insurance.* The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, casualty insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Outstanding Bonds. Such 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; provided that earthquake insurance shall not be required under any circumstances. Such insurance may be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance shall be applied as provided in Section 6.1.

SECTION 5.5. *Rental Interruption Insurance.* The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum such Lease Payments coming due and payable during any consecutive two Fiscal Years. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The proceeds of such insurance, if any, shall be paid to the Trustee and deposited in the Bond Fund, to be applied as a credit towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 5.6. *Recordation Hereof; Title Insurance.* On or before the Closing Date the City shall, at its expense, (a) cause the Site Lease, the Assignment Agreement and this Lease Agreement, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Monterey County Recorder, and (b) obtain a CLTA title insurance policy insuring the City's leasehold estate hereunder in the Leased Property, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Bonds. All Net Proceeds received under any such title insurance policy shall be deposited with the Trustee and applied in accordance with the provisions of the Indenture.

SECTION 5.7. *Insurance Net Proceeds; Form of Policies.* Each policy of insurance maintained under Sections 5.4, 5.5 and 5.6 shall name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The City shall pay or

cause to be paid when due the premiums for all insurance policies required by this Lease Agreement. All such policies shall provide that the Trustee is given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The City shall file with the Trustee, upon the written request of the Trustee, a certificate of the City stating that all policies of insurance required hereunder are then in full force and effect. The Trustee has no responsibility for the sufficiency, adequacy or amount of any insurance or self-insurance herein required and is fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

If any insurance maintained under Section 5.3 is provided in the form of self-insurance, the City shall file with the Trustee annually, within 90 days following the close of each Fiscal Year, a statement of the risk manager of the City or an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. If any such insurance is provided in the form of self-insurance by the City, the City has no obligation to make any payment with respect to any insured event except from those reserves.

SECTION 5.8. *Installation of City's Personal Property.* The City 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 Leased Property. All such items shall remain the sole property of the City, in which neither the Authority nor the Trustee has any interest, and may be modified or removed by the City at any time, provided that the City shall repair all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, so long as no such lien or security interest attaches to any part of the Leased Property.

SECTION 5.9. *Liens.* The City may not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Trustee do not materially and adversely affect the leasehold estate of the City in the Leased Property hereunder. If any such mortgage, pledge, lien, charge, encumbrance or claim does materially and adversely affect the leasehold estate of the City in the Leased Property hereunder, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible; provided that the City is not required to do so prior to the time when such mortgage, pledge, lien, charge, encumbrance or claim actually causes such material adverse effect. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.10. *Advances.* If the City fails to perform any of its obligations under this Article, the Authority may take such action as it deems necessary to cure such failure, including the advancement of money, and the City shall repay all such advances as Additional Rental Payments hereunder, with interest at the rate set forth in Section 4.2(c).

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. *Application of Net Proceeds.* The Trustee, as assignee of the Authority under the Assignment Agreement, shall have the right to receive all Net Proceeds. As provided in the Indenture, the Trustee shall deposit all Net Proceeds in the Insurance and Condemnation Fund to be applied as set forth in Section 5.05 of the Indenture.

SECTION 6.2. *Termination or Abatement Due to Eminent Domain.* If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease Agreement thereupon ceases as of the day possession is taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, then:

- (a) this Lease Agreement shall continue in full force and effect with respect thereto and does not terminate by virtue of such taking, and the parties waive the benefit of any law to the contrary; and
- (b) the Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

SECTION 6.3. *Abatement Due to Damage or Destruction.* The Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof. The Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. Notwithstanding the foregoing provisions of this Section, the Lease Payments may be paid with proceeds of rental interruption insurance during any period in which the Lease Payments would otherwise be subject to abatement, it being hereby declared that such proceeds constitute a special fund for the payment of the Lease Payments. In the event of any such damage or destruction, this Lease Agreement continues in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction.

ARTICLE VII

OTHER COVENANTS OF THE CITY

SECTION 7.1. *Disclaimer of Warranties.* THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. The Authority has no liability for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease Agreement for the existence, furnishing, functioning or use of the Leased Property by the City.

SECTION 7.2. *Access to the Leased Property.* The City agrees that the Authority and any Authorized Representative of the Authority, and the Authority's successors or assigns, have the right at all reasonable times to enter upon and to examine and inspect the Leased Property or any part thereof. The City further agrees that the Authority, any Authority Representative and the Authority's successors or assigns may have such rights of access to the Leased Property or any component thereof as reasonably necessary to cause the proper maintenance of the Leased Property if the City fails to perform its obligations hereunder; *provided, however*, that neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the City,
- (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement,
- (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property,
- (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Leased Property,
- (e) the acquisition, construction, improvement and equipping of the Leased Property, or the authorization of payment of the costs thereof, or

- (f) the acceptance and performance of the duties of the Trustee under the Indenture and under this Lease Agreement.

No indemnification is made under this Section or elsewhere in this Lease Agreement for willful misconduct or negligence under this Lease Agreement by the Authority, the Trustee or their respective officers, agents, employees, successors or assigns.

SECTION 7.4. *Assignment and Subleasing by the City.* The City may sublease the Leased Property, or any portion thereof, subject to all of the following conditions:

- (a) this Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City;
- (b) the City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease;
- (c) no such sublease by the City may cause the Leased Property to be used for a purpose which is not authorized under the provisions of the laws of the State of California; and
- (d) the City shall furnish to the Authority and the Trustee a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become included in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

SECTION 7.5. *Amendment Hereof.* The Authority and the City may at any time amend or modify any of the provisions of this Lease Agreement, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of the Trustee or any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Lease Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- (ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;
- (iii) to modify, amend or supplement this Lease Agreement in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code;
- (iv) to amend the description of the Leased Property to reflect accurately the property originally intended to be included therein, or in

connection with any substitution or release of property under Sections 3.3 or 3.4;

- (v) to obligate the City to pay additional amounts of rental for the use and occupancy of the Leased Property, but only if (A) such additional rent payments are pledged or assigned for the payment of any bonds, notes or other obligations the proceeds of which are applied to finance or refinance the acquisition or construction of any real or personal property for which the City is authorized to expend funds subject to its control, (B) the City has filed with the Trustee a Written Certificate of the City stating that the estimated value of the Leased Property is, or following the completion of the acquisition and construction of any improvements to be financed from the proceeds of such bonds, notes or other obligations will be, at least equal to the aggregate original principal amount of the Bonds and all such other bonds, notes or other obligations, and (C) the City has filed with the Trustee written evidence that the amendments made under this clause (v) will not of themselves cause a reduction or withdrawal of any rating then assigned to the Bonds; or
- (vi) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds.

No such modification or amendment shall (a) extend or have the effect of extending any Lease Payment Date or reducing any Lease Payment, without the express consent of the Owners of the affected Bonds, or (b) modify any of the rights or obligations of the Trustee without its written assent thereto.

SECTION 7.6. *Tax Covenants*

(a) Private Business Use Limitation. The City shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The City shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the City from any source of legally available funds of the City, and shall constitute Additional Rental Payments hereunder.

The City shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements under this subsection (e).

SECTION 7.7. *Continuing Disclosure.* The City shall comply with and carry out all of the provisions of the Continuing Disclosure Certificate executed by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Lease Agreement, failure of the City to comply with such Continuing Disclosure Certificate will not constitute an Event of Default, although any Participating Underwriter (as that term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. *Events of Default Defined.* Any one or more of the following events constitute an Event of Default hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee. If in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the failure will not constitute an Event of Default if the City commences to cure the failure within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.

- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 8.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease Agreement. Notwithstanding anything herein or in the Indenture to the contrary, neither the Authority nor the Trustee may accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; except that no termination of this Lease Agreement may be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority may exercise each and every one of the following remedies, subject in all respects to the limitations set forth in Section 8.3.

- (a) Enforcement of Payments Without Termination. If the Authority does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Property, or, if the Authority is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place the Leased Property in storage or other suitable place in the County of Monterey for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of the Leased Property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Leased Property in

the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease Agreement shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Leased Property upon demand of the Authority for the purpose of enabling the Leased Property to be re-let under this paragraph, and the City further waives the right to any rental obtained by the Authority in excess of the Lease Payments and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-leasing the Leased Property.

- (b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease Agreement and re-lease all or any portion of the Leased Property. If the Authority terminates this Lease Agreement at its option and in the manner hereinafter provided on account of default by the City (and notwithstanding any re-entry upon the Leased Property by the Authority in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Rental Payments. Any surplus received by the Authority from such re-leasing shall be deposited in the Bond Fund. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.
- (c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

SECTION 8.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy is cumulative

and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article it is not necessary to give any notice, other than as expressly required in this Article or by law.

SECTION 8.4. *Agreement to Pay Attorneys' Fees and Expenses.* If the Authority or the City defaults under any of the provisions of this Lease Agreement and the non-defaulting party employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If the Authority or the City breaches any agreement in this Lease Agreement and thereafter the other party waives the breach, such waiver is limited to the particular breach so waived and does not operate to waive any other breach hereunder.

SECTION 8.6. *Application of Proceeds.* All net proceeds received from the re-lease of the Leased Property under this Article, and all other amounts derived by the Authority or the Trustee as a result of the occurrence of an Event of Default, shall be paid to and applied by the Trustee in accordance with Section 7.03 of the Indenture.

SECTION 8.7. *Trustee and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article have been assigned by the Authority to the Trustee under the Assignment Agreement for the benefit of the Bond Owners. The Trustee and the Bond Owners shall exercise such rights and remedies in accordance with the Indenture.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. *Security Deposit.* Notwithstanding any other provision of this Lease Agreement, the City may on any date secure the payment of the Lease Payments allocable to the Leased Property in whole or in part by depositing with the Trustee or an escrow agent an amount of cash which, together with other available amounts on deposit in the funds and accounts established under the Indenture, is either:

- (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Appendix B, or
- (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an independent certified public accountant, (which opinion must be addressed and delivered to the Trustee), together with interest to accrue thereon and together with

any cash which is so deposited, be fully sufficient to pay such Lease Payments when due under Section 4.2(a), as the City instructs at the time of said deposit.

If the City makes a security deposit under this Section with respect to all unpaid Lease Payments, and notwithstanding the provisions of Section 4.2, (a) the Term of this Lease Agreement will continue, (b) all obligations of the City under this Lease Agreement, and all security provided by this Lease Agreement for said Lease Payments, will thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made all of said Lease Payments from such security deposit, and (c) under Section 4.6, title to the Leased Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said security deposit constitutes a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement.

SECTION 9.2. *No Optional Prepayment.* The City does not have the option to prepay the principal components of the Lease Payments prior to their respective Lease Payment Dates.

SECTION 9.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City shall prepay the principal components of the Lease Payments in whole or in part on any date, from and to the extent of any Net Proceeds of insurance award or eminent domain award with respect to the Leased Property which is required to be used for that purpose under Article VI hereof and Section 5.05 of the Indenture. Such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be deposited by the Trustee in the Redemption Fund to be applied to the corresponding redemption of Bonds under Section 4.03 of the Indenture.

SECTION 9.4. *Credit for Amounts on Deposit.* If the principal components of the Lease Payments are prepaid in full under Section 9.3, such that the Indenture is discharged by its terms as a result of such prepayment, at the written election of the City filed with the Trustee any or all amounts then on deposit in the Bond Fund (and the accounts therein) and in the Insurance and Condemnation Fund, will be credited towards the amounts then required to be so prepaid.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. *Notices.* Any notice, request, complaint, demand or other communication under this Lease Agreement shall be given by first class mail, electronic transmission or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Authority:* City of Carmel-by-the-Sea
Post Office Box CC
Carmel-by-the-Sea, California 93921
Attention: City Administrator

If to the Trustee: MUFG Union Bank, N.A.
350 California Street, 17th Floor
San Francisco, California 94104
Attention: Corporate Trust Services
Facsimile: (415) 273-2492
E-mail: SFCT@unionbank.com

The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 10.2. *Binding Effect.* This Lease Agreement inures to the benefit of and binds the Authority, the City and their respective successors and assigns.

SECTION 10.3. *Severability.* If any provision of this Lease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 10.4. *Net-net-net Lease.* This Lease Agreement shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.5. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.6. *Further Assurances and Corrective Instruments.* The Authority and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

SECTION 10.7. *Execution in Counterparts.* This Lease Agreement may be executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument. It is also agreed that separate counterparts of this Lease Agreement may be separately executed by the Authority and the City, all with the same force and effect as though the same counterpart had been executed by both the Authority and the City.

SECTION 10.8. *Applicable Law.* This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 10.9. *Authority and City Representatives.* Whenever under the provisions of this Lease Agreement the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority and for the City by an Authorized Representative thereof, and any party hereto may conclusively rely upon any such approval or request.

SECTION 10.10. *Captions.* The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease Agreement.

IN WITNESS WHEREOF, the Authority and the City have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**CITY OF CARMEL-BY-THE-SEA PUBLIC
IMPROVEMENT AUTHORITY, as lessor**

By _____
Executive Director

Attest:

Secretary

**CITY OF CARMEL-BY-THE-SEA, as
lessee**

By _____
City Administrator

Attest:

City Clerk

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property situated in the City of Carmel-by-the-Sea, County of Monterey, which is more particularly described as follows:

PARCEL ONE:

Lots 1 to 20 inclusive, in Block 97, as said lots and block are shown on that certain map entitled "Map of Carmel-By-The-Sea, Monterey County, California" filed for record March 7, 1902 in the Office of the County recorder of the County of Monterey, State of California, in Volume 1 of Maps, "Cities and Towns", at Page 2.

All that portion of Ninth Avenue situate lying and being between the east line of San Carlos street and the west line of Mission street, public streets of and in said City, which portion of said Ninth Avenue is more particularly described as follows:

That portion of said Ninth Avenue bounded on the North by Block 97, on the East by the West line of Mission Street, on the South by Block 110 and on the West by the East line of San Carlos Street, as said Avenue, Streets and Block are shown and so designated upon the "Map of Carmel By The Sea, Monterey County, California", filed for record March 7, 1902 in the Office of the County Recorder of Monterey County, California in Volume 1 of Maps, "Cities and Towns", at Page 2.

APN: 010-143-001

PARCEL TWO:

Lots numbered 1 to 20 inclusive in Block 110, as said lots and Block are shown on that certain map entitled, map of Carmel-By-The-Sea, Monterey County California", filed for record March 7, 1902 in the Office of the County Recorder of the County of Monterey, State of California, in Volume 1 of Maps, "Cities and Towns", at Page 2.

APN: 010-151-001

APPENDIX B

SCHEDULE OF LEASE PAYMENTS

<u>Lease Payment Date*</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Lease Payment</u>
May 1, 2021			
November 1, 2021			
May 1, 2022			
November 1, 2022			
May 1, 2023			
November 1, 2023			
May 1, 2024			
November 1, 2024			
May 1, 2025			
November 1, 2025			
May 1, 2026			
November 1, 2026			
May 1, 2027			
November 1, 2027			
May 1, 2028			
November 1, 2028			
May 1, 2029			
November 1, 2029			
May 1, 2030			
November 1, 2030			
May 1, 2031			
November 1, 2031			

* Lease Payment Dates are the 5th Business Day immediately preceding each date listed in the schedule

ESCROW AGREEMENT

Relating to

\$7,575,000

**City of Carmel-by-the-Sea Public Improvement Authority
2010 Refunding Lease Revenue Bonds**

This ESCROW AGREEMENT (this "Agreement"), dated as of October 1, 2020, is between the CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the "Authority"), the CITY OF CARMEL-BY-THE-SEA, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), and MUFG UNION BANK, N.A., a national banking association organized and existing under the laws of the United States of America, acting as escrow agent (the "Escrow Agent") and as trustee for the 2010 Bonds described below.

BACKGROUND:

1. In order to refinance certain obligations of the City, the Authority has previously issued its City of Carmel-by-the-Sea Public Improvement Authority 2010 Refunding Lease Revenue Bonds in the aggregate principal amount of \$7,575,000 (the "2010 Bonds") under an Indenture of Trust dated as of October 1, 2010 (the "2010 Bond Indenture"), between the City and MUFG Union Bank, N.A., as trustee (the "2010 Bond Trustee").

2. The Authority has the right under the 2010 Bond Indenture, at its option, to redeem the 2010 Bonds on any date on or after November 1, 2020 (the "Redemption Date"), from any available source of funds, at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

3. In order to provide funds to pay and redeem the 2010 Bonds in full on the Redemption Date, the Authority has issued its City of Carmel-by-the-Sea Public Improvement Authority 2020 Refunding Lease Revenue Bonds (Sunset Center Theater Project) in the aggregate principal amount of \$_____ (the "2020 Bonds") under an Indenture of Trust dated as of October 1, 2020 (the "2020 Bond Indenture"), between the City and MUFG Union Bank, N.A., as trustee (the "2020 Bond Trustee").

4. The Authority and the City wish to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered as set forth herein for the purpose of providing for payment and redemption of the 2010 Bonds in full on the Redemption Date.

AGREEMENT:

In consideration of the premises and the material covenants contained herein, the City and the Escrow Agent hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent; Establishment of Escrow Fund.* The Authority and the City hereby appoint the Escrow Agent to act as escrow agent for purpose of administering the funds required for the refunding of the 2010 Bonds as provided herein. The Escrow Agent is hereby directed to establish an escrow fund (the "Escrow Fund") to be held by the Escrow Agent as an irrevocable escrow. If at any time the Escrow Agent receives actual knowledge that the cash in the Escrow Fund will not be sufficient to make any payment required by Section 4, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 2. *Deposit of Amounts in Escrow Fund.* On October __, 2020 (the "Closing Date"), the Authority and the City shall cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds. Such amount shall be derived from the following sources:

- (a) from the proceeds of the 2020 Bonds in the amount of \$_____;
- (b) from amounts held by the 2010 Bond Trustee in the Reserve Account which has been established under Section 5.02 of the 2010 Bond Indenture; and
- (b) from amounts held by the 2010 Bond Trustee in the Bond Fund which has been established under Section 5.01 of the 2010 Bond Indenture, in the amount of \$_____.

SECTION 3. *Non-Investment of Amounts in Escrow Fund.* Amounts on deposit in the Escrow Fund shall be held in cash, uninvested.

SECTION 4. *Application of Amounts in Escrow Fund.* The Escrow Agent shall transfer amounts in the Escrow Fund to the 2010 Bond Trustee to pay and redeem all of the outstanding 2010 Bonds in accordance with the following schedule:

<u>Date</u>	<u>Interest Payment</u>	<u>Maturing Principal</u>	<u>Redeemed Principal</u>	<u>Total Payment</u>
November 1, 2020				

Following the payment and redemption of the 2010 Bonds in full on the Redemption Date, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to the 2020 Bond Trustee to be deposited into the Interest Account established under Section 5.02(a) of the 2020 Bond Indenture and applied to pay interest next coming due and payable on the 2020 Bonds.

SECTION 5. *Irrevocable Election.* The Authority has previously given notice to the 2010 Bond Trustee of its irrevocable election to redeem the 2010 Bonds in full on the Redemption Date in accordance with Section 4.01 of the 2010 Bond Indenture. Pursuant to such notice, the 2010 Bond Trustee has previously given notice of redemption of the 2010 Bonds in accordance with Section 4.03 of the 2010 Bond Indenture, at the expense of the Authority and the City. The Authority and the City hereby ratify and confirm all actions previously taken to implement the redemption of the 2010 Bonds in full on the Redemption Date.

SECTION 6. *Transfer of 2010 Bond Funds.* Any amounts held in the funds and accounts established under the 2010 Bond Indenture by the Escrow Agent, in its capacity as 2010 Bond Trustee, which are not required to be deposited into the Escrow Fund under Section 2, shall be withdrawn therefrom on or after the Closing Date and transferred to the 2020 Bond Trustee to be deposited into the Interest Account established under Section 5.02(a) of the 2020 Bond Indenture and applied to pay interest next coming due and payable on the 2020 Bonds.

SECTION 7. *Resignation of Escrow Agent.* The Escrow Agent may at any time resign by giving written notice of such resignation to the Authority and the City, and the Authority and the City shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the Authority and the City do not appoint a successor, the Escrow Agent may at the expense of the Authority and the City petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Escrow Agent. After receiving a notice of resignation of Escrow Agent, the Authority and the City may appoint a temporary Escrow Agent to replace the resigning Escrow Agent until the Authority and the City appoint a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the Authority and the City, shall immediately and without further act be superseded by the successor Escrow Agent so appointed.

SECTION 8. *Compensation to Escrow Agent.* The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to (a) the purchase, substitution or withdrawal of any securities after the date hereof, and (b) the redemption of the 2010 Bonds. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the amounts at any time on deposit in the Escrow Fund.

The Authority and the City shall indemnify, defend and hold harmless the Escrow Agent and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Agent for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent directly or indirectly relating to, or arising from, claims against the Escrow Agent by reason of its participation in the transactions contemplated hereby, except to the extent caused by the Escrow Agent's gross negligence or willful misconduct. The provisions of this Section shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

SECTION 9. *Immunities and Liability of Escrow Agent.* The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not have any liability hereunder except to the extent of its gross negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special, indirect or consequential damages. The Escrow Agent shall not

be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Agent may consult with legal counsel of its own choice and the Escrow Agent shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Agent shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the amounts therein to pay the principal of and interest on the 2010 Bonds.

Whenever in the administration of this Agreement the Escrow Agent deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the Authority and the City and shall be full protection for any action taken or not taken by the Escrow Agent in good faith reliance thereon.

The Escrow Agent may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Agent in connection with this Agreement and believed by the Escrow Agent to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. The Escrow Agent shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Escrow Agent and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

The Escrow Agent may at any time resign by giving 30 days written notice of resignation to the Authority and the City. Upon receiving such notice of resignation, the Authority and the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Agent from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to each of the Authority and the City, the resigning Escrow Agent and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Agent shall be the successor of the Escrow Agent hereunder without the execution or filing of any paper with any party hereto or any

further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Agent shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Authority and the City elect's to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority and the City agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

The Authority and the City acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority and the City the right to receive brokerage confirmations of security transactions as they occur, the Authority and the City specifically waive receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the Authority and the City periodic transaction statements which include detail for all investment transactions made by the Escrow Agent hereunder; provided that the Escrow Agent is not obligated to provide an accounting for any fund or account that (a) has a balance of \$0.00 and (b) has not had any activity since the last reporting date.

SECTION 10. *Amendment.* This Agreement may be amended by the parties hereto, but only if there shall have been filed with the Authority and the City and the Escrow Agent a written opinion of Bond Counsel stating that such amendment will not materially adversely affect the interests of the owners of the 2010 Bonds.

SECTION 11. *Termination of Agreement.* Upon payment in full of the principal of and interest on the 2010 Bonds, and upon payment of all fees, expenses and charges of the Escrow Agent as described above, this Agreement shall terminate and the Escrow Agent shall be discharged from any further obligation or responsibility hereunder.

SECTION 12. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 13. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**CITY OF CARMEL-BY-THE-SEA PUBLIC
IMPROVEMENT AUTHORITY**

By _____
Executive Director

CITY OF CARMEL-BY-THE-SEA

By _____
City Manager

MUFG UNION BANK, N.A.,
as Escrow Agent

By _____
Authorized Officer

§ _____
CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY
2020 Refunding Lease Revenue Bonds
(Sunset Center Project)

_____, 2020

CONTRACT OF PURCHASE

City of Carmel-by-the-Sea Public Improvement Authority
Post Office Box CC
Carmel-by-the-Sea, CA 93921
Attention: Executive Director

City of Carmel-by-the-Sea
Post Office Box CC
Carmel-by-the-Sea, CA 93921
Attention: City Administrator

Ladies and Gentlemen:

Raymond James & Associates, Inc. (the “**Underwriter**”) offers to enter into this Contract of Purchase (this “**Purchase Contract**”) with the City of Carmel-by-the-Sea (the “**City**”) and the City of Carmel-by-the-Sea Public Improvement Authority (the “**Authority**”) with regard to the Bonds described below, which Purchase Contract, upon the acceptance hereof by the City and the Authority, will be binding upon the Authority, the City, and the Underwriter. This offer is made subject to the written acceptance of this Purchase Contract by the Authority and the City and the delivery of such acceptance to the Underwriter at or prior to 11:59 p.m., Pacific time, on the date hereof, and, if it is not so accepted, such offer may be withdrawn by the Underwriter upon written notice to the City and the Authority by the Underwriter at any time before its acceptance.

Each of the Authority and the City acknowledges and agrees that (i) the purchase and sale of the Bonds (as defined below) pursuant to this Purchase Contract is an arm’s-length commercial transaction between the Authority and the City, collectively, and the Underwriter, (ii) in connection therewith and with the discussions, undertakings, and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent or fiduciary of the Authority or the City, (iii) the Underwriter has not assumed an advisory or a fiduciary responsibility in favor of the Authority or the City with respect to the offering contemplated hereby or the discussions, undertakings, and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the Authority or the City on other matters) and the Underwriter has no obligation to the Authority or the City with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Contract, and (iv) the Authority and the City have consulted their own legal, financial, and other advisors to the extent they have deemed appropriate.

1. Upon the terms and conditions and upon the basis of the representations, warranties, and agreements hereinafter set forth, the Underwriter hereby agrees to purchase from the Authority for reoffering to the public, and the Authority hereby agrees to sell to the Underwriter for such purpose, all (but not less than all) of the \$_____ aggregate principal amount of the City of Carmel-by-the-Sea Public Improvement Authority 2020 Refunding Lease Revenue Bonds (Sunset Center Project) (the “**Bonds**”). The purchase price of the Bonds shall be \$_____ (representing the par amount of the Bonds, less an Underwriter’s discount of \$_____ and [plus/less] a [net] original issue [premium/discount]). The Preliminary Official Statement with respect to the Bonds, dated _____, 2020 (the “**Preliminary Official Statement**”), as amended to conform to the terms of this Purchase Contract, and dated the date hereof, and with such changes and amendments as are mutually agreed to by the Authority, the City, and the Underwriter, including the cover page, the appendices, and all information incorporated therein by reference, is herein collectively referred to as the “**Official Statement**.” The Authority and City represent that they have deemed the Preliminary Official Statement to be final as of its date, except for revision or addition of the offering price(s), yield(s) to maturity, selling compensation, aggregate denominational amount and maturity value, denominational amount and maturity value per maturity, delivery date, rating(s), and other terms of the Bonds that depend upon the foregoing as provided in and pursuant to Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “**Rule**”), by delivering a certificate to the Underwriter substantially in the form of Exhibit B attached hereto.

2. The Bonds shall mature on the dates and in the amounts, and will bear interest at the rates, set forth in Exhibit A hereto and as further described in the Official Statement. The Bonds shall be issued under and pursuant to the Indenture of Trust, dated as of October 1, 2020 (the “**Indenture**”), by and between the Authority and MUFG Union Bank, N.A. (the “**Trustee**”). Capitalized terms used herein without definition shall have the meanings given to such terms in the Indenture. The net proceeds of the Bonds will be used (i) to refund, in full, the Authority’s 2010 Refunding Lease Revenue Bonds (the “**2010 Bonds**”) and (ii) pay the costs of issuing the Bonds.

3. (a) The Underwriter shall make a bona fide public offering of all the Bonds at not in excess of the respective initial public offering prices to be set forth on the inside cover page of the Official Statement. The Underwriter reserves the right to change such initial offering prices as the Underwriter deems necessary in connection with the marketing of the Bonds and to offer and sell the Bonds to certain dealers (including dealers depositing such bonds into investment trusts) and others at prices lower than the initial offering prices set forth on the cover page of the Official Statement. The Underwriter also reserves the right to (i) over allot or effect transactions that stabilize or maintain the market prices of the Bonds at levels above those which might otherwise prevail in the open market and (ii) discontinue such stabilizing, if commenced, at any time. “**Public offering**” shall include an offering to a representative number of institutional investors or registered investment companies, regardless of the number of such investors to which the Bonds are sold.

(b) The Underwriter agrees to assist the City and the Authority in establishing the issue price of the Bonds and shall execute and deliver to the City and the Authority at Closing (defined below) an “issue price” or similar certificate, together with copies of supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit C, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City, the Authority and Bond Counsel (as such term is hereinafter defined) to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the City under this section to establish the issue price of the Bonds may be

taken on behalf of the City by the City's municipal advisor, NHA Advisors, LLC (the "**Municipal Advisor**") and any notice or report to be provided to the City may be provided to the City's Municipal Advisor.

(c) [Except as otherwise set forth in Exhibit A attached hereto,] the City and the Authority will treat the first price at which 10% of each maturity of the Bonds (the "**10% test**"), identified under the column "10% Test Used" in Exhibit A, is sold to the public as the issue price of that maturity. At or promptly after the execution of this Purchase Contract, the Underwriter shall report to the City and the Authority the price or prices at which it has sold to the public each maturity of Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the City and the Authority the prices at which it sells the unsold Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until either (i) the Underwriter has sold all Bonds of that maturity or (ii) the 10% test has been satisfied as to the Bonds of that maturity, provided that, the Underwriter's reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the City, the Authority or Bond Counsel. For purposes of this section, if Bonds mature on the same date but have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Bonds.

(d) [The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Purchase Contract at the offering price or prices (the "**initial offering price**"), or at the corresponding yield or yields, set forth in Exhibit A attached hereto, except as otherwise set forth therein. Exhibit A also sets forth, identified under the column "Hold the Offering Price Rule Used," as of the date of this Purchase Contract, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the City, the Authority and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the City and the Authority to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the "**hold-the-offering-price rule**"). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following.

(A) the close of the fifth (5th) business day after the sale date; or

(B) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter will advise the City and the Authority promptly after the close of the fifth (5th) business day after the sale date whether it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.]

(e) The Underwriter confirms that:

(A) any selling group agreement and any third-party distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(1) (i) to report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter, and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter,

(2) to promptly notify the Underwriter of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below), and

(3) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public.

(B) any selling group agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter or the dealer that the 10% test has been satisfied as to the Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter or the dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.

(f) The City and the Authority acknowledge that, in making the representations set forth in this section, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The City and the Authority further acknowledge that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds.

(g) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(A) “**public**” means any person other than an underwriter or a related party;

(B) “**underwriter**” means (i) any person that agrees pursuant to a written contract with the City and the Authority (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the public);

(C) a purchaser of any of the Bonds is a “**related party**” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other); and

(D) “**sale date**” means the date of execution of this Purchase Contract by the City, the Authority and the Underwriter.

4. The Authority hereby authorizes the use by the Underwriter of (i) the Indenture, (ii) the Second Amended and Restated Site Lease, dated as of October 1, 2020 (the “**Site Lease**”), by and between the City, as lessor, and the Authority, as lessee, (iii) the Second Amended and Restated Lease Agreement, dated as of October 1, 2020 (the “**Lease Agreement**”), by and between the Authority, as lessor, and the City, as lessee, (iv) the Continuing Disclosure Certificate, dated as of the Closing Date (the “**Continuing Disclosure Certificate**”), executed by the City and acknowledged and agreed to by NHA Advisors, LLC, as dissemination agent, (v) the Assignment Agreement, dated as of October 1, 2020 (the “**Assignment Agreement**”), by and between the Authority and the Trustee, (vi) the Escrow Agreement, dated as of October 1, 2020, (the “**Escrow Agreement**”) by and among the Authority, the City, and MUFG Union Bank, N.A. (the “**Escrow Agent**”), relating to the 2010 Bonds, and (vii) the Official Statement, and any supplements or amendments thereto, and the information contained in each of such documents, in connection with the public offering and sale of the Bonds. The Authority and the City hereby consent to the use by the Underwriter prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Bonds.

The Authority will deliver to the Underwriter, within seven (7) business days after the date of this Purchase Contract and in sufficient time to accompany any confirmation requesting payment from any customers of the Underwriter, copies of the Official Statement in final form (including all documents incorporated by reference therein) and any amendment or supplement thereto in such quantities as the Underwriter may reasonably request in order to comply with the obligations of the Underwriter pursuant to the Rule and the rules of the Municipal Securities Rulemaking Board. As soon as practicable following receipt thereof from the Authority, the Underwriter shall deliver the Official Statement to the Municipal Securities Rulemaking Board.

5. At 8:00 a.m., California time, on _____, 2020, or at such other time or on such other business day as shall have been mutually agreed upon by the Authority and the Underwriter

(the “**Closing Date**”), the Authority will cause the Trustee to authenticate and deliver to the Underwriter at the office of The Depository Trust Company (“**DTC**”) in New York, New York, or at such other place as the Authority and the Underwriter may mutually agree upon, the Bonds in fully-registered book-entry form, duly executed and registered in the name of Cede & Co., as nominee of DTC, and, subject to the terms and conditions hereof, the Underwriter will accept such delivery and pay the purchase price of the Bonds by wire transfer payable in immediately available funds to or upon the order of the Authority at such place in Los Angeles, California, or New York, New York, as shall have been mutually agreed upon by the Authority and the Underwriter. Such delivery of and payment for the Bonds is referred to herein as the “**Closing**.” The Bonds shall be made available for inspection by the Underwriter at least one business day before the Closing.

6. The Authority represents, warrants, and covenants to the Underwriter that:

(a) The Authority is a joint powers authority under Article 1 of Chapter 5 of Division 7 of Title 1 of the California Government Code duly organized and validly existing under and by virtue of the Constitution and the laws of the State of California (the “**State**”).

(b) The Authority has the legal right and power to issue and deliver the Bonds and to execute and deliver, and to perform its obligations under, the Indenture, the Site Lease, the Lease Agreement, the Assignment Agreement, the Escrow Agreement, and this Purchase Contract (collectively, the “**Authority Documents**”). The Authority has duly authorized the issuance and delivery of the Bonds and the execution and delivery of, and performance of its obligations under, the Authority Documents and, as of the date hereof, such authorizations are in full force and effect and have not been amended, modified, or rescinded. When executed and delivered by the respective parties thereto, the Authority Documents will constitute legal, valid, and binding obligations of the Authority in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws, the application of equitable principles relating to or affecting creditors’ rights generally, the exercise of judicial discretion in appropriate cases, and the limitations on legal remedies against joint powers authorities in the State. The Authority has complied, and will at the Closing be in compliance in all respects, with its obligations under the Authority Documents.

(c) The Bonds will be paid from Revenues consisting primarily of Lease Payments, as defined in and pursuant to the Indenture, which payments have been duly and validly authorized pursuant to applicable law.

(d) The Bonds will be issued in accordance with the Indenture and will conform in all material respects to the descriptions thereof contained in the Official Statement. The Indenture creates a valid pledge of, first lien upon, and security interest in, the pledged Revenues.

(e) The information in the Official Statement (excluding any information with respect to DTC and the book-entry only system) is true and correct in all material respects, and the information in the Official Statement does not contain any misstatement of any material fact and does not omit any statement necessary to make the statements, in the light of the circumstances in which such statements were made, not misleading.

(f) The Authority covenants with the Underwriter that for twenty-five days after the Closing Date (the “**Delivery Period**”), if any event occurs that might or would cause the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to

omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Authority shall notify the Underwriter thereof, and if in the opinion of the Underwriter such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Authority will cooperate with the Underwriter and the City in the preparation of an amendment or supplement to the Official Statement, at the expense of the Authority and the City, in a form and in a manner approved by the Underwriter.

(g) The Authority will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement and will not effect or consent to any such amendment or supplement without the consent of the Underwriter. The Authority will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise affecting the use of the Official Statement in connection with the offering, sale, or distribution of the Bonds.

(h) If the Official Statement is supplemented or amended, the Official Statement, as so supplemented or amended, as of the date of such supplement or amendment, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) The Authority is not in breach of or in default under any applicable constitutional provision, law, or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, consent, or other agreement to which the Authority is a party, and no event has occurred and is continuing that, with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any of the foregoing.

(j) The authorization, execution, and delivery by the Authority of the Authority Documents, and compliance by the Authority with the provisions thereof, do not and will not conflict with or constitute a breach of or default by the Authority under any applicable constitutional provision, law, or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, consent, or other agreement to which it is bound or by which its properties may be affected.

(k) No authorization, consent, or approval of, or filing or registration with, any Governmental Authority (as defined below) or court is, or under existing requirements of law will be, necessary for the valid execution and delivery of, or performance by the Authority of its obligations under, the Authority Documents, other than any authorization, consent, approval, filing, or registration as may be required under the Blue Sky or securities laws of any state in connection with the offering, sale, or issuance of the Bonds. All authorizations, consents, or approvals of, or filings or registrations with, any Governmental Authority or court necessary for the valid issuance of, and performance by the Authority of its obligations under, the Bonds will have been duly obtained or made prior to the issuance of the Bonds (and disclosed to the Underwriter). As used herein, the term **“Governmental Authority”** refers to any legislative body or governmental official, department, commission, board, bureau, agency, instrumentality, body, or public benefit corporation.

(l) The Authority shall furnish such information, execute such instruments, and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may

designate and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and shall use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the Authority shall not be required to execute a general consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(m) There is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, regulatory agency, or public board or body, pending or, to the best knowledge of the Authority, threatened (i) in any way questioning the existence of the Authority or the titles of the officers of the Authority to their respective offices; (ii) affecting, contesting, or seeking to prohibit, restrain, or enjoin the issuance of the Bonds or the execution or delivery of any of the Authority Documents, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contesting or affecting the validity of the Bonds or the Authority Documents or the consummation of the transactions contemplated thereby or any proceeding of the Authority taken with respect to any of the foregoing, or contesting the exclusion of the interest on the Bonds from taxation or contesting the powers of the Authority and its authority to pledge the Revenues; (iii) that may result in any material adverse change relating to the Authority that will materially adversely affect the Authority's ability to apply Revenues to pay the Bonds when due; or (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(n) Other than in the ordinary course of its business or as contemplated by the Official Statement, between the date of this Purchase Contract and the Closing Date the Authority will not, without the prior written consent of the Underwriter, offer or issue any certificates, bonds, notes, or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by the City's General Fund.

(o) The Authority will refrain from taking any action, or permitting any action to be taken, with regard to which the Authority may exercise control, that results in the loss of the tax exempt status of the interest on the Bonds.

(p) Any certificate signed by any official or other representative of the Authority and delivered to the Underwriter pursuant to this Purchase Contract shall be deemed a representation and warranty by the Authority to the Underwriter as to the truth of the statements therein made.

7. The City represents, warrants, and covenants to the Underwriter that:

(a) The City is a municipal corporation of the State duly organized and validly existing under and by virtue of the Constitution and laws of the State and has the legal right and power to execute, deliver, and perform its obligations under the Indenture, the Site Lease, the Lease Agreement, the Continuing Disclosure Certificate, the Escrow Agreement, and this Purchase Contract (collectively, the "**City Documents**").

(b) The City has the legal right and power to execute and deliver, and to perform its obligations under, the City Documents. The City has duly authorized the execution and delivery of, and the performance of its obligations under, the City Documents and as of the date hereof such

authorizations are in full force and effect and have not been amended, modified, or rescinded. When executed and delivered by the respective parties thereto, the City Documents will constitute legal, valid, and binding obligations of the City in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws, the application of equitable principles relating to or affecting creditors' rights generally, the exercise of judicial discretion in appropriate cases, and the limitations on legal remedies against cities in the State. The City has complied, and will at the Closing be in compliance in all respects, with its obligations under the City Documents.

(c) The information in the Official Statement (excluding any information with respect to DTC and the book-entry only system) is true and correct in all material respects, and the information in the Official Statement does not contain any misstatement of any material fact and does not omit any statement necessary to make the statements, in the light of the circumstances in which such statements were made, not misleading.

(d) To assist the Underwriter in complying with the Rule, the City will undertake, pursuant to the Continuing Disclosure Certificate, to provide annual reports and notices of certain events. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the Official Statement. The Official Statement describes the incidences during the last five years in which the City and its related entities have failed to comply with previous undertakings to provide annual continuing disclosure reports and notices of material events.

(e) The City covenants with the Underwriter that, during the Delivery Period, if any event occurs that might or would cause the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Underwriter thereof, and if in the opinion of the Underwriter such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will cooperate with the Underwriter and the Authority in the preparation of an amendment or supplement to the Official Statement, at the expense of the Authority and the City, in a form and in a manner approved by the Underwriter.

(f) The City will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement and will not effect or consent to any such amendment or supplement without the consent of the Underwriter. The City will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise affecting the use of the Official Statement in connection with the offering, sale, or distribution of the Bonds.

(g) If the Official Statement is supplemented or amended, the Official Statement as so supplemented or amended, as of the date of such supplement or amendment, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) The City is not in breach of or in default under any applicable constitutional provision, law, or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, consent, or other agreement to which the City is a party, and no event has occurred and is continuing that, with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any of the foregoing.

(i) The authorization, execution, and delivery by the City of the City Documents, and compliance by the City with the provisions thereof, do not and will not conflict with or constitute a breach of or default by the City under any applicable constitutional provision, law, or administrative rule or regulation of the State or the United States, or any applicable judgment, decree, consent, or other agreement to which it is bound or by which its properties may be affected.

(j) No authorization, consent, or approval of, or filing or registration with, any Governmental Authority or court is, or under existing requirements of law will be, necessary for the valid execution and delivery of, or performance by the City of its obligations under, the City Documents, other than any authorization, consent, approval, filing, or registration as may be required under the Blue Sky or securities laws of any state in connection with the offering, sale, or issuance of the Bonds.

(k) The City will furnish such information, execute such instruments, and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the City shall not be required to execute a general consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.

(l) There is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, regulatory agency, or public board or body, pending or, to the best knowledge of the City, threatened (i) in any way questioning the existence of the City or the titles of the officers of the City to their respective offices; (ii) affecting, contesting, or seeking to prohibit, restrain, or enjoin the issuance of the Bonds or the execution or delivery of any of the City Documents, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contesting or affecting the validity of the Bonds or the City Documents or the consummation of the transactions contemplated thereby or any proceeding of the City taken with respect to any of the foregoing, or contesting the exclusion of the interest on the Bonds from taxation or contesting the powers of the Authority and its authority to pledge the Lease Payments; (iii) that may result in any material adverse change relating to the City that will materially adversely affect the City's ability to pay Lease Payments when due; or (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(m) Other than in the ordinary course of its business or as contemplated by the Official Statement, between the date of this Purchase Contract and the Closing Date the City will not, without the prior written consent of the Underwriter, offer or issue any certificates, bonds, notes, or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by a pledge of the Lease Payments.

(n) The financial statements of, and other financial information regarding, the City contained in the Official Statement fairly present the financial position and results of the

operations of the City as of the dates and for the periods therein set forth, and, to the best of the City's knowledge, (i) the audited financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, (ii) the unaudited financial statements have been prepared on a basis substantially consistent with the audited financial statements included in the Official Statement and reflect all adjustments necessary to that effect, and (iii) the other financial information has been determined on a basis substantially consistent with that of the City's audited financial statements included in the Official Statement.

(o) The Official Statement describes the incidences during the last five years in which the City has failed to comply with previous undertakings to provide annual continuing disclosure reports and notices of material events.

(p) The City will refrain from taking any action, or permitting any action to be taken, with regard to which the City may exercise control, that results in the loss of the tax exempt status of the interest on the Bonds.

(q) Any certificate signed by any official or other representative of the City and delivered to the Underwriter pursuant to this Purchase Contract shall be deemed a representation and warranty by the City to the Underwriter as to the truth of the statements therein made.

8. The Underwriter has entered into this Purchase Contract in reliance upon the representations, warranties, and covenants of the Authority and the City contained herein and in the Authority Documents and City Documents to which either or both of the Authority or the City, as applicable, is a party, and the performance by the Authority and the City of their respective obligations hereunder, both as of the date hereof and as of the Closing Date. The Underwriter's obligations under this Purchase Contract are and shall be subject to the following further conditions:

(a) The representations and warranties of the Authority and the City contained herein shall be true, complete, and correct in all material respects on the date hereof and at and as of the Closing, as if made at and as of the Closing, and the statements made in all certificates and other documents delivered to the Underwriter at the Closing pursuant hereto shall be true, complete, and correct in all material respects at the Closing; the Authority and the City shall be in compliance with each of the agreements made by it in this Purchase Contract (unless such agreements are waived by the Underwriter); there shall not have occurred an adverse change in the financial position, results of operations, or financial condition of the City that materially adversely affects the ability of the City to pay Lease Payments when due or otherwise perform any of its obligations under the City Documents; and there shall not have occurred an adverse change in the financial position of the Authority that materially adversely affects the ability of the Authority to make payments of principal of and interest on the Bonds when due or otherwise perform any of its obligations under the Authority Documents.

(b) At the time of the Closing, the Authority Documents and the City Documents shall be in full force and effect, and shall not have been amended, modified, or supplemented (except as may be agreed to in writing by the Underwriter); all actions that, in the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel ("**Bond Counsel**"), shall be necessary in connection with the transactions contemplated hereby shall have been duly taken and shall be in full force and effect; and the City shall perform or shall have performed its obligations required under or specified in the City Documents to be performed at or prior to the Closing and the Authority shall perform or shall have performed its obligations required under or specified in the Authority Documents to be performed at or prior to the Closing.

(c) At the time of the Closing, the Official Statement (as amended and supplemented) shall be true and correct in all material respects, and shall not omit any statement or information necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) Except as disclosed in the Official Statement or in a schedule delivered to the Underwriter at the Closing, no decision, ruling, or finding shall have been entered by any court or Governmental Authority since the date of this Purchase Contract (and not reversed on appeal or otherwise set aside) that has any of the effects described in Section 8(f) hereof.

(e) (i) No default by the City or the Authority shall have occurred and be continuing in the payment of the principal of or premium, if any, or interest on any bond, note, or other evidence of indebtedness issued by the City or the Authority, respectively, and (ii) no bankruptcy, insolvency, or other similar proceeding in respect of the City or the Authority shall be pending or, to the knowledge of the City or the Authority, contemplated.

(f) The Underwriter may terminate this Purchase Contract by written notification to the Authority and the City if at any time after the date hereof and prior to the Closing:

(i) legislation shall have been enacted by the United States or the State or shall have been reported out of committee or be pending in committee, or a decision shall have been rendered by a court of the United States or the Tax Court of the United States, or a ruling shall have been made or a regulation, proposed regulation, or a temporary regulation shall have been published in the Federal Register or any other release or announcement shall have been made by the Treasury Department of the United States or the Internal Revenue Service, with respect to Federal or State taxation upon revenues or other income or payments of the general character to be derived by the City or upon interest received on obligations of the general character of the Bonds, which, in the reasonable opinion of the Underwriter (after consultation with, and receipt of advice from, the City), materially adversely affects the market for the Bonds; or

(ii) in the reasonable opinion of the Underwriter (after consultation with, and receipt of advice from, the City or its municipal advisor), any of the following events materially adversely affects the market for the Bonds: (a) the United States shall have become engaged in hostilities that have resulted in a declaration of war or a national emergency or the President of the United States of America shall have committed the armed forces of the United States of America to combat so as to adversely affect the financial markets in the United States of America, (b) any other calamity or crisis in the financial markets of the United States or elsewhere, (c) the sovereign debt rating of the United States is downgraded by any major credit rating agency or a payment default occurs on United States Treasury obligations, or (d) a default with respect to the debt obligations of, or the institution of proceedings under any federal bankruptcy laws by or against, any state of the United States or any city, county, or other political subdivision located in the United States having a population of over 500,000; or

(iii) there shall have occurred a general suspension of trading on the New York Stock Exchange or other major exchange, or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on any such exchange, whether by virtue of determination by that exchange or by order of the Securities and Exchange Commission or any other Governmental Authority having

jurisdiction, or a general banking moratorium shall have been declared by Federal, California, or New York authorities having jurisdiction and being in force; or

(iv) there shall have occurred an adverse change in the financial position, results of operations, or financial condition of the City that, in the reasonable opinion of the Underwriter (after consultation with, and receipt of advice from, the City), materially adversely affects the market for the Bonds; or

(v) any legislation, ordinance, rule, or regulation shall be introduced in, or be enacted by, any governmental body, department, or agency of the State, or a decision by any court of competent jurisdiction within the State or any court of the United States shall be rendered that, in the reasonable opinion of the Underwriter, materially adversely affects the market price of the Bonds; or

(vi) legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation, or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering, or sale of obligations of the general character of the Bonds, or the issuance, offering, or sale of the Bonds, including all underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of, or that obligations of the general character of the Bonds, or the Bonds, are not exempt from registration under, any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect, or that the Indenture needs to be qualified under the Trust Indenture Act of 1939, as amended and as then in effect; or

(vii) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, which restrictions materially adversely affect the ability of underwriters to trade obligations of the general character of the Bonds; or

(viii) there shall have occurred or any notice shall have been given of any intended review, downgrading, suspension, withdrawal, or negative change in credit watch status by any national rating service to any of the Authority's or the City's obligations secured in a like manner, which, in the Underwriter's reasonable opinion, materially adversely affects the marketability or market price of the Bonds; or

(ix) the commencement of any action, suit, or proceeding described in Section 6(n) or 7(m) that, in the judgment of the Underwriter, materially adversely affects the market price of the Bonds; or

(x) any event occurring, or information becoming known that, in the reasonable judgment of the Underwriter, makes any statement or information contained in the Official Statement, as of its date, untrue in any material adverse respect, or has the effect that the Official Statement, as of its date, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) At or prior to the Closing, the Underwriter shall receive the following documents:

(1) the opinion of Bond Counsel, dated the Closing Date, in substantially the form included in the Official Statement as Appendix E, addressed to the Authority (and accompanied by reliance letters to the Underwriter, the City, and the Trustee);

(2) a supplemental opinion of Bond Counsel, in form and substance satisfactory to the Underwriter, dated the Closing Date, addressed to the Underwriter, to the effect that:

(i) the Purchase Contract has been duly executed and delivered by the Authority and the City and (assuming due authorization, execution and delivery by and enforceability against the Underwriter) is valid and binding upon the Authority and the City, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally and to the application of equitable principles;

(ii) the Bonds are not subject to registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended;

(iii) the statements contained in the Official Statement under the captions "INTRODUCTION," "FINANCING PLAN," "THE BONDS," "SECURITY FOR THE BONDS," "TAX MATTERS," "APPENDIX C—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS," "APPENDIX D—FORM OF CONTINUING DISCLOSURE CERTIFICATE," and "APPENDIX E—FORM OF OPINION OF BOND COUNSEL," insofar as such statements expressly summarize certain provisions of the Indenture, the Site Lease, the Lease Agreement, the Continuing Disclosure Certificate, the Bonds, and the opinion of Bond Counsel concerning certain federal tax matters relating to the Bonds, are accurate in all material respects; and

(iv) The 2010 Bonds have been defeased according to the indenture pursuant to which they were issued.

(3) an opinion of the City Attorney of the City, in form and substance satisfactory to the Underwriter, dated the Closing Date, addressed to the Authority and the Underwriter, to the effect that:

(i) the City is a municipal corporation and general law city duly organized and validly existing under and by virtue of the laws of the State;

(ii) the City has full legal power and lawful authority to enter into the City Documents and to perform its obligations thereunder;

(iii) the resolution of the City approving and authorizing the execution and delivery of the City Documents and approving the Official Statement (the "**City Resolution**") was duly adopted at a meeting of the City Council of the City that was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, following a public hearing of the City Council, and the City Resolution is in full force and effect and has not been modified, amended, or rescinded as of the Closing Date;

(iv) the City Documents have been duly authorized, executed, and delivered by the City and, assuming due authorization, execution, and delivery by the other parties thereto, such documents constitute the legal, valid, and binding agreements of the City enforceable in accordance with their terms, subject to laws relating to bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally, the application of equitable principles if equitable remedies are sought, the exercise of judicial discretion in appropriate cases, and the limitations on legal remedies against cities in the State;

(v) to the best knowledge of such counsel, the execution and delivery by the City of the City Documents, and compliance by the City with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute a breach of or default under any law, administrative regulation, court decree, resolution, or agreement to which the City is subject to or by which it is bound;

(vi) to the best knowledge of such counsel, the Official Statement (excluding therefrom financial statements and other statistical data included in the Official Statement, and any information with respect to DTC and the book-entry only system, as to which no view need be expressed) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(vii) except as otherwise disclosed in the Official Statement, to the best knowledge of such counsel after reasonable investigation, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, regulatory agency, or public board or body, pending or, to the best knowledge of such counsel, threatened (a) in any way questioning the existence of the City or the titles of the officers of the City to their respective offices; (b) affecting, contesting, or seeking to prohibit, restrain, or enjoin the issuance of the Bonds or the execution or delivery of any of the City Documents, or the payment or collection of any amounts pledged or to be pledged to pay the Lease Payments or the principal of and interest on the Bonds, or in any way contesting or affecting the validity of the Bonds or the City Documents or the consummation of the transactions contemplated thereby or any proceeding of the City taken with respect to any of the foregoing, or contesting the exclusion of the interest on the Bonds from taxation or contesting the powers of the City and its authority to pledge the Lease Payments; (c) that may result in any material adverse change relating to the City that will materially adversely affect the City's ability to perform its obligations under the City Documents; or (d) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and

(viii) no authorization, approval, consent, or other order of the State or any other governmental authority or agency within the State having jurisdiction over the City is required for the valid authorization, execution, and delivery by the City of the City Documents;

(4) an opinion of the City Attorney of the City, serving as General Counsel to the Authority, in form and substance satisfactory to the Underwriter, dated the Closing Date, addressed to the City and the Underwriter, to the effect that:

(i) the Authority is a joint powers authority under Article 1 of Chapter 5 of Division 7 of Title 1 of the California Government Code duly organized and validly existing under and by virtue of the Constitution and the laws of the State;

(ii) the Authority has full legal power and lawful authority to enter into the Authority Documents and to perform its obligations thereunder;

(iii) the resolution of the Authority approving and authorizing the execution and delivery of the Authority Documents, authorizing the issuance of the Bonds, and approving the Official Statement (the “**Authority Resolution**”) was duly adopted at a meeting of the governing board of the Authority that was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, following a public hearing of the City Council and adoption of the City Resolution making findings of significant public benefit, and the Authority Resolution is in full force and effect and has not been modified, amended, or rescinded as of the Closing Date;

(iv) the Authority Documents have been duly authorized, executed, and delivered by the Authority and, assuming due authorization, execution, and delivery by the other parties thereto, such documents constitute the legal, valid, and binding agreements of the Authority enforceable in accordance with their terms, subject to laws relating to bankruptcy, insolvency, or other laws affecting the enforcement of creditors’ rights generally, the application of equitable principles if equitable remedies are sought, the exercise of judicial discretion in appropriate cases, and the limitations on legal remedies against joint powers authorities in the State;

(v) to the best knowledge of such counsel, the execution and delivery by the Authority of the Authority Documents, and compliance by the Authority with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute a breach of or default under any law, administrative regulation, court decree, resolution, or agreement to which the Authority is subject to or by which it is bound;

(vi) except as otherwise disclosed in the Official Statement, to the best knowledge of such counsel after reasonable investigation, there is no action, suit, proceeding, inquiry, or investigation at law or in equity, before or by any court, regulatory agency, or public board or body, pending or, to the best knowledge of such counsel, threatened (a) in any way questioning the existence of the Authority or the titles of the officers of the Authority to their respective offices, (b) affecting, contesting, or seeking to prohibit, restrain, or enjoin the issuance of the Bonds or the execution or delivery of any of the Authority Documents, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contesting or affecting the validity of the Bonds or the Authority Documents or the consummation of the transactions contemplated thereby or any proceeding of the Authority taken with respect to any of the foregoing, or contesting the exclusion of the interest on the Bonds from taxation or contesting the powers of the Authority and its authority to make the pledges set forth in the Indenture, (c) that may result in any material adverse change relating to the Authority that will materially adversely affect the Authority’s ability to perform its obligations under the Authority Documents, or (d) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and

(vii) no authorization, approval, consent, or other order of the State or any other governmental authority or agency within the State having jurisdiction over the Authority is required for the valid authorization, execution, and delivery by the Authority of the Authority Documents;

(5) a letter from Jones Hall, A Professional Law Corporation, San Francisco, California, disclosure counsel to the Authority (“**Disclosure Counsel**”), dated the Closing Date, addressed to the Underwriter, to the effect that, based upon its participation in the preparation of the Official Statement as counsel to the Authority and without having undertaken to determine independently the fairness, accuracy, or completeness of the statements contained in the Preliminary Official Statement or the Official Statement, such counsel has no reason to believe that the Preliminary Official Statement as of its date or the Official Statement as of its date and as of the Closing Date (excluding therefrom the reports, financial and statistical data and forecasts therein, the information with respect to DTC and the book-entry system, and the information included in the Appendices thereto, as to which no view need be expressed) contained or contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(6) a certificate of the City, in form and substance satisfactory to the Underwriter, dated the Closing Date, to the effect that;

(i) the representations and warranties of the City contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; and

(ii) there has been no material adverse change in the financial condition or results of operations of the City from the date of the Official Statement to the Closing Date;

(7) a certificate of the Authority, in form and substance satisfactory to the Underwriter, dated the Closing Date, to the effect that;

(i) the representations and warranties of the Authority contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; and

(ii) there has been no material adverse change in the financial condition or results of operations of the Authority from the date of the Official Statement to the Closing Date;

(8) a certificate, dated the date of the Preliminary Official Statement, signed by the Authority and the City, in the form attached hereto as Exhibit B;

(9) an opinion or opinions of counsel to the Trustee and Escrow Bank, dated the Closing Date, addressed to the Underwriter, the Authority, and the City, to the effect that:

(i) the Trustee is a national banking association and is validly existing, duly qualified to do business and in good standing under the laws of each jurisdiction in which the performance of its duties under the Indenture, the Assignment Agreement, and the Escrow

Agreement (collectively, the “**Trustee Documents**”) would require such qualification and has the requisite power and authority to execute, deliver and perform its obligations under the Trustee Documents;

(ii) the Trustee is duly eligible and qualified to act as Trustee under the Indenture and as Escrow Bank under the Escrow Agreement;

(iii) the Trustee has all requisite power, authority and legal right to execute and deliver the Trustee Documents and to perform its obligations under the Trustee Documents, and has taken all necessary corporate action to authorize the execution and delivery of and the performance of its obligations under the Trustee Documents;

(iv) the Trustee has duly executed and delivered the Trustee Documents. Assuming the due authorization, execution and delivery thereof by the other parties thereto, the Trustee Documents are the legal, valid, and binding agreements of the Trustee enforceable against the Trustee in accordance with their terms, except to the extent enforceability thereof may be subject to (A) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors’ rights and remedies heretofore or hereafter enacted, and (B) the application of equitable principles and the exercise of judicial discretion in appropriate cases;

(v) the Bonds have been duly authenticated by the Trustee;

(vi) the execution, delivery and performance of the Trustee Documents by the Trustee and the consummation of the transactions contemplated thereby do not and will not (a) to the knowledge of such counsel, conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, or other agreement or instrument to which the Trustee is a party or by which the Trustee is bound or to which any of the property or assets of the Trustee or any of its subsidiaries is subject, (b) result in any violation of the provisions of the charter, articles of association, by-laws, or applicable resolutions of the Trustee, or (c) to the knowledge of such counsel, result in any violation of any statute or any order, rule, or regulation of any court or government agency or body having jurisdiction over the Trustee or any of its properties or assets; and

(vii) to the knowledge of such counsel, there are no actions, proceedings or investigations pending or threatened against the Trustee before any court, administrative agency or tribunal (a) asserting the invalidity of the Trustee Documents, (b) seeking to prevent the consummation of any of the transactions contemplated thereby, or (c) that might materially and adversely affect the performance by the Trustee of its obligations under, or the validity or enforceability of the Trustee Documents;

(10) a certificate or certificates, dated the Closing Date, signed by a duly authorized officer of the Trustee and Escrow Bank, to the effect that;

(i) the Trustee is a national banking association organized and existing under and by virtue of the laws of the United States of America, having the necessary power to enter into, accept, and administer the trusts created under the Indenture and to authenticate the Bonds;

(ii) the Trustee Documents have been duly authorized, executed, and delivered by a duly authorized officer of the Trustee, and the execution, delivery, and performance of the Trustee Documents has been duly authorized by all necessary action of the Trustee;

(iii) the Trustee Documents constitute the legal, valid, and binding obligations of the Trustee enforceable in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought;

(iv) the Bonds have been duly authenticated by a duly authorized officer of the Trustee;

(v) no consent, approval, authorization, or other action by any governmental or regulatory authority having jurisdiction over the Trustee that has not been obtained is or will be required for the execution and delivery of the Trustee Documents or the performance by the Trustee of its duties and obligations under the Trustee Documents;

(vi) the execution and delivery by the Trustee of the Trustee Documents and compliance with the terms thereof will not conflict with, or result in a violation or breach of, or constitute a default under, any loan agreement, indenture, bond, note, resolution, or any other agreement or instrument to which the Trustee is a party or by which it is bound, or any law or any rule, regulation, order, or decree of any court or governmental agency or body having jurisdiction over the Trustee or any of its activities or properties (except that no representation, warranty, or agreement need be made with respect to any federal or State securities or blue sky laws or regulations);

(vii) the Trustee's action in executing and delivering the Trustee Documents will not contravene the articles or bylaws of the Trustee and is in full compliance with, and does not conflict with, any applicable law or governmental regulation currently in effect, and such action does not conflict with or violate any contract to which the Trustee is a party or any administrative or judicial decision by which the Trustee is bound; and

(viii) there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental agency, public board, or body that has been served on the Trustee, or to the best knowledge of the Trustee, threatened against the Trustee which in the reasonable judgment of the Trustee would affect the existence of the Trustee or in any way contesting or affecting the validity or enforceability of the Trustee Documents or contesting the powers of the Trustee or its authority to enter into and perform its obligations thereunder;

(11) a letter from Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, counsel to the Underwriter ("**Underwriter's Counsel**"), dated the Closing Date, addressed to the Underwriter, in form and substance acceptable to the Underwriter;

(12) certified copies of the City Resolution, the Authority Resolution, and an incumbency resolution of the Trustee;

(13) copies each of the Authority Documents, the City Documents, and the Official Statement, duly executed and delivered by the respective parties thereto;

(14) an executed verification report confirming the sufficiency of the amounts to be deposited into the escrow fund established pursuant to the Escrow Agreement.

(15) evidence that the rating assigned to the Bonds as of the date of the Closing are as set forth in the Preliminary Official Statement.

(16) copies of the statements with respect to the sale of the Bonds required to be delivered to the California Debt and Investment Advisory Commission;

(17) evidence that a debt management policy which complies Sections 8855 of the California Government Code has been adopted by both the City and the Authority;

(18) a copy of the Blanket Letter of Representations to DTC relating to the Bonds signed by the Authority;

(19) a copy of an ALTA title insurance policy in an amount equal to the principal amount of the Bonds, insuring the City's leasehold interest in the Property, subject only to permitted encumbrances or such other encumbrances approved in writing by the Underwriter;

(20) A Tax Certificate with respect to the maintenance of the tax-exempt status of the Bonds, duly executed by the City, together with Form 8038-G, duly executed by the City.

(21) Specimen Bonds, duly executed by the Trustee.

(22) such additional legal opinions, certificates, proceedings, instruments, and other documents as the Underwriter, Underwriter's Counsel, or Bond Counsel may reasonably request to evidence compliance by the City and the Authority with legal requirements, the accuracy, as of the time of Closing, of the Authority and the City's representations herein contained, and the due performance or satisfaction by the City and the Authority at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the City and the Authority.

If the City or the Authority shall be unable to satisfy the conditions to the Underwriter's obligations contained in this Purchase Contract or if the Underwriter's obligations shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and none of the City, the Authority, or the Underwriter shall have any further obligation hereunder.

9. The performance by each of the Authority and the City of its obligations is conditioned upon (i) the performance by the Underwriter of its obligations hereunder and (ii) receipt by the Authority, the City, and the Underwriter of opinions and certificates being delivered at the Closing by persons and entities other than Authority and the City.

10. No expenses and costs of the City or the Authority incident to the performance of the Authority's or the City's obligations in connection with the authorization, issuance, and sale of the Bonds to the Underwriter, such as the costs of preparation (including word processing, printing, and reproduction), distribution and delivery of the Preliminary Official Statement, the Official Statement,

and this Purchase Contract, in reasonable quantities, fees of rating agencies, fees and expenses of any municipal advisor to the City, fees and expenses of Bond Counsel or Disclosure Counsel for the City and fees and expenses of Underwriter's Counsel, shall be paid by the Underwriter. Except as indicated above, all out-of-pocket expenses of the Underwriter, including the California Debt and Investment Advisory Commission fee, traveling, and other expenses and the fees and expenses of the Underwriter, shall be paid by the Underwriter.

11. Any notice or other communication to be given to the City under this Purchase Contract may be given by delivering the same in writing to the City of Carmel-by-the-Sea, Post Office Box CC, Carmel-by-the-Sea, CA 93921, Attention: City Administrator, or to such other person as the City Administrator may designate in writing. Any notice or other communication to be given to the Authority under this Purchase Contract may be given by delivering the same in writing to the City of Carmel-by-the-Sea Public Improvement Authority, Post Office Box CC, Carmel-by-the-Sea, CA 93921, Attention: Executive Director, or to such other person as the Executive Director may designate in writing. Any notice or other communication to be given to the Underwriter under this Purchase Contract may be given by delivering the same in writing to Raymond James & Associates, Inc., 440 Stevens Avenue, Suite 200, Solana Beach, California 92075, Attention: Leslie Bloom, Director. The approval of the Underwriter when required hereunder or the determination of its satisfaction as to any document referred to herein shall be in writing signed by the Underwriter and delivered to the Authority.

12. For all purposes of this Purchase Contract, a default shall not be deemed to be continuing if it has been cured, waived, or otherwise remedied. This Purchase Contract shall be governed by and construed in accordance with the laws of the State applicable to contracts made and performed within the State.

13. This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

14. This Purchase Contract when accepted by the Authority and the City in writing shall constitute the entire agreement among the City, the Authority, and the Underwriter and is made solely for the benefit of the City, the Authority, and the Underwriter (including the successors or assigns of the Underwriter approved by the City and the Authority). No other person shall acquire or have any right hereunder or by virtue hereof. All of the representations, warranties, and agreements of the City and the Authority contained in this Purchase Contract shall remain operative and in full force and effect regardless of (a) any investigation made by or on behalf of the Underwriter (but, if the Underwriter does discover by its investigation that the Official Statement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Underwriter shall so notify the City and the Authority); (b) the delivery of and payment for the Bonds; and (c) any termination of this Purchase Contract.

15. This Purchase Contract shall not be modified or amended without the prior written consent of the Underwriter, the City, and the Authority.

Very truly yours,

RAYMOND JAMES & ASSOCIATES, INC.

Director

Accepted at _____ [AM/PM] as of the date hereof:

CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT
AUTHORITY

By: _____
Executive Director

CITY OF CARMEL-BY-THE-SEA

By: _____
City Administrator

EXHIBIT A

\$ _____
CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY
2020 Refunding Lease Revenue Bonds
(Sunset Center Project)

<i>Maturity Date (November 1)</i>	<i>Principal Amount</i>	<i>Interest Rate</i>	<i>Yield</i>	<i>Price</i>	<i>10% Test Used</i>	<i>Hold the Offering Price Used</i>
	\$	%	%			

[^C Priced to the first optional redemption date of November 1, 20__ at par.]
 [^T Term Bond.]

Redemption

Optional Redemption. The Bonds maturing on or before November 1, 20__ are not subject to optional redemption. The Bonds maturing on or after November 1, 20__ are subject to redemption prior to their respective maturity dates, as a whole or in part, from prepayments of Lease Payments made at the option of the City pursuant to the Lease Agreement on any date with respect to which such prepayments have been made (which will be on or after November 1, 20__), at a redemption price equal to 100 percent of the principal amount of the Bonds to be redeemed, without premium, plus accrued interest thereon to the date of redemption.

Mandatory Sinking Fund Redemption. The Bonds maturing on November 1, 20__ are subject to redemption in part by lot from sinking account payments made by the Authority, at a redemption price equal to the principal amount thereof to be redeemed with accrued interest thereon to the redemption date, without premium, in the aggregate respective principal amounts and on the respective dates as set forth in the following table:

Term Bonds Maturing on November 1, 20__

Redemption Date (November 1)	Principal Amount to be Redeemed \$
---------------------------------	--

(Maturity)

EXHIBIT B

§ _____ *

CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY
2020 Refunding Lease Revenue Bonds
(Sunset Center Project)

RULE 15c2-12 CERTIFICATE

The undersigned hereby certifies and represents that the undersigned is the duly appointed and acting representative of the City of Carmel-by-the-Sea Public Improvement Authority (the “**Authority**”), and the City of Carmel-by-the-Sea (the “**City**”) and as such is duly authorized to execute and deliver this Certificate on behalf of the Authority and the City, and further hereby certifies and reconfirms on behalf of the Authority and the City as follows:

(1) This Certificate is delivered in connection with the offering and sale of the above captioned bonds (the “**Bonds**”) in order to enable the underwriter of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the “**Rule**”).

(2) In connection with the offering and sale of the Bonds, there has been prepared a Preliminary Official Statement, setting forth information concerning the Bonds, the Authority and the City (the “**Preliminary Official Statement**”).

(3) As used herein, “**Permitted Omissions**” means the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters, all with respect to the Bonds.

(4) The Preliminary Official Statement is, except for the Permitted Omissions, deemed final within the meaning of the Rule, and the information therein is accurate and complete except for the Permitted Omissions.

Dated: _____, 2020

CITY OF CARMEL-BY-THE-SEA PUBLIC
IMPROVEMENT AUTHORITY

By: _____
 Authorized Officer

CITY OF CARMEL-BY-THE-SEA

By: _____
 Authorized Officer

 * Preliminary; subject to change.

EXHIBIT C

\$ _____
CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY
2020 Refunding Lease Revenue Bonds
(Sunset Center Project)

ISSUE PRICE CERTIFICATE OF THE UNDERWRITER

_____, 2020

Raymond James & Associates, Inc., has served as underwriter (the “**Underwriter**”) with respect to the \$ _____ City of Carmel-by-the-Sea Public Improvement Authority 2020 Refunding Lease Revenue Bonds (Sunset Center Project) (the “**Bonds**”).

The undersigned hereby certifies and represents the following:

Issue Price

1. **[10% OF EACH MATURITY SOLD BY CLOSING]** As of the date hereof, the first price or yield at which at least 10% of each Maturity of the Bonds was sold by the Underwriter to the Public, as set forth on Schedule 1 hereto, was the Initial Offering Price.

OR [USING HOLD THE PRICE FOR A PORTION OF THE ISSUE]

1. As of _____, 2020 (the “**Sale Date**”), all of the Bonds were the subject of a bona fide offering to the Public at the Initial Offering Price.

2. As of the date hereof, other than the Bonds listed on Schedule 1 hereto as hold-the-price maturities (the “**Undersold Maturities**”), the first price or yield at which at least 10% of each Maturity of the Bonds was sold by the Underwriter to the Public was the respective Initial Offering Price. Attached hereto as Schedule 2 is a copy of the final pricing wire for each Undersold Maturity or an equivalent communication. With respect to the Undersold Maturities, as agreed to in writing by the Underwriter in the Contract of Purchase among the Underwriter, the City of Carmel-by-the-Sea and the City of Carmel-by-the-Sea Public Improvement Authority dated the Sale Date, the Underwriter has not offered or sold any of the Undersold Maturities to any person at a price higher than or a yield lower than the respective Initial Offering Price for a period of time starting on the Sale Date and ending on the earlier of (a) the date on which 10% of the respective Undersold Maturity was sold at one or more prices no higher than or yields no lower than the Initial Offering Price by the Underwriter or (b) the close of the fifth business day following the Sale Date.

Defined Terms

(a) Initial Offering Price means the prices or yields set forth on Schedule 1 hereto.

(b) Maturity means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates or CUSIPs, are treated as separate Maturities.

(c) Issuer means the City of Carmel-by-the-Sea Public Improvement Authority.

(d) Public means any person (including an individual, trust, estate, partnership, association, company, or Authority) other than an Underwriter or a related party to an Underwriter.

(e) Related Party means any entity if an Underwriter and such entity are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profit interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(f) Underwriter means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third party distribution agreement participating in the initial sale of the Bonds to the Public).

The Underwriter understands that the foregoing information will be relied upon by the Issuer with respect to certain of its representations set forth in the Tax Certificate with respect to compliance with the federal income tax rules affecting the Bonds, and by Jones Hall, A Professional Law Corporation, in connection with its opinion as to the exclusion of interest on the Bonds from federal gross income, the preparation of the Internal Revenue Service Form 8038G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds. The Underwriter is certifying only as to facts in existence on the date hereof. Nothing herein represents the Underwriter's interpretation of any laws; in particular the Treasury Regulations under the Internal Revenue Code of 1986, or the application of any laws to these facts. The certifications contained herein are not necessarily based on personal knowledge, but may instead be based on either inquiry deemed adequate by the undersigned or institutional knowledge (or both) regarding the matters set forth herein. Except as expressly set forth above, the certifications set forth herein may not be relied upon or used by any third party or for any other purpose.

Raymond James & Associates, Inc.,
as Underwriter

By: _____
Authorized Officer

Dated: _____, 2020

SCHEDULE 1

MATURITY SCHEDULE, PRICES AND YIELDS

SCHEDULE 2
PRICING WIRE

PRELIMINARY OFFICIAL STATEMENT DATED _____, 2020

NEW ISSUE - FULL BOOK-ENTRY

RATING: S&P: "____"
See "RATING"

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "TAX MATTERS."

\$ _____ *

CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY
2020 Refunding Lease Revenue Bonds
(Sunset Center Project)

Dated: Date of Delivery

Due: November 1, as shown on inside cover

Authority for Issuance. The bonds captioned above (the "Bonds") are being issued by the City of Carmel-by-the-Sea Public Improvement Authority (the "Authority") under a resolution adopted by the Board of Directors of the Authority on September 1, 2020, the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the "Bond Law"), and an Indenture of Trust dated as of October 1, 2020 (the "Indenture") between the Authority and MUFG Union Bank, N.A., as trustee (the "Trustee"). See "THE BONDS – Authority for Issuance."

Use of Proceeds. The Bonds are being issued to (i) refund, in full, the Authority's 2010 Refunding Lease Revenue Bonds (the "2010 Bonds"), which are currently outstanding in the principal amount of \$4,890,000, and (ii) pay the costs of issuing the Bonds. See "FINANCING PLAN."

Security for the Bonds. Under the Indenture, the Bonds are payable from and secured by a first pledge of and lien on "Revenues" (as defined in this Official Statement) received by the Authority under the Second Amended and Restated Lease Agreement dated as of October 1, 2020 (the "Lease"), between the Authority, as lessor, and the City of Carmel-by-the-Sea (the "City"), as lessee, consisting primarily of semi-annual lease payments (the "Lease Payments") made by the City under the Lease with respect to the lease of certain real property, as further described in this Official Statement. The Bonds are also secured by certain funds on deposit under the Indenture. See "SECURITY FOR THE BONDS."

No Reserve Fund. Neither the Authority nor the City will fund a reserve fund for the Bonds.

Bond Terms; Book-Entry Only. The Bonds will bear interest at the rates shown on the inside cover page, payable semiannually on November 1 and May 1 of each year, commencing on May 1, 2021, and will be issued in fully registered form without coupons in the denomination of \$5,000 or any integral multiple of \$5,000. The Bonds will be issued in book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"). Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. Payments of the principal of, premium, if any, and interest on the Bonds will be made to DTC, which is obligated in turn to remit such principal, premium, if any, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the Bonds. See "THE BONDS – General Provisions."

Redemption. The Bonds are subject to extraordinary mandatory redemption from net proceeds of insurance in certain circumstances, but not optional redemption, prior to maturity. See "THE BONDS – Redemption."

NEITHER THE BONDS, NOR THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST THEREON, NOR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS, CONSTITUTE A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY.

MATURITY SCHEDULE
(see inside cover)

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR GENERAL REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE OF BONDS. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE PURCHASE OF THE BONDS.

The Bonds are offered when, as and if issued and received by the Underwriter and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the Authority and the City by Jones Hall, A Professional Law Corporation, as Disclosure Counsel. Certain legal matters will be passed upon for the City by the City Attorney. Certain legal matters will be passed upon for the Underwriter by its counsel, Stradling, Yocca, Carlson & Rauth, a Professional Corporation. It is anticipated that the Bonds will be delivered in book-entry form through the facilities of DTC on or about October __, 2020.

[Raymond James logo]

The date of this Official Statement is: _____, 2020.

* Preliminary; subject to change.

MATURITY SCHEDULE*

\$ _____ Serial Bonds
(Base CUSIP†: _____)

<u>Maturity</u> <u>(November 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>CUSIP†</u>
2022					
2023					
2024					
2025					
2026					
2027					
2028					
2029					
2030					
2031					

\$ _____ % Term Bonds due November 1, 20____; Price: _____%; Yield: _____;
CUSIP†: _____

* Preliminary; subject to change.

† Copyright 2020, American Bankers Association. CUSIP data herein are provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc., and are provided for convenience of reference only. Neither the City, the Authority nor the Underwriter assumes any responsibility for the accuracy of these CUSIP data.

**CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY
CITY OF CARMEL-BY-THE-SEA
(MONTEREY COUNTY, CALIFORNIA)**

**BOARD OF DIRECTORS OF THE AUTHORITY
AND MEMBERS OF THE CITY COUNCIL**

Dave Potter, *Mayor*
Bobby Richards, *Mayor Pro Tem*
Jeff Baron, *Councilmember*
Jan Reimers, *Councilmember*
Carrie Theis, *Councilmember*

AUTHORITY/CITY OFFICIALS

Chip Rerig, *City Administrator*
Maxine Gullo, *Assistant City Administrator*
Britt Avrit, MMC, *City Clerk*
Brian Pierik of Burke, Williams & Sorensen LLP, *City Attorney*

SPECIAL SERVICES

BOND COUNSEL AND DISCLOSURE COUNSEL

Jones Hall, A Professional Law Corporation
San Francisco, California

MUNICIPAL ADVISOR

NHA Advisors, LLC
San Rafael, California

TRUSTEE AND ESCROW AGENT

MUFG Union Bank, N.A.
San Francisco, California

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

Use of Official Statement. This Official Statement is submitted in connection with the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not to be construed as a contract with the purchasers of the Bonds.

Estimates and Forecasts. When used in this Official Statement and in any continuing disclosure by the City, in any press release and in any oral statement made with the approval of an authorized officer of the City, the words or phrases “will likely result,” “are expected to,” “will continue,” “is anticipated,” “estimate,” “project,” “forecast,” “expect,” “intend” and similar expressions identify “forward looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, give rise to any implication that there has been no change in the affairs of the City since the date hereof.

Limit of Offering. No dealer, broker, salesperson or other person has been authorized by the City or the Underwriter to give any information or to make any representations other than those contained herein and, if given or made, such other information or representation must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Limited Scope of Information. The City has obtained certain information set forth herein from sources which are believed to be reliable, but such information is neither guaranteed as to accuracy or completeness, nor to be construed as a representation of such by the City. The information and expressions of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date hereof. All summaries of or references to the documents referred to in this Official Statement are made subject to the provisions of such documents and do not purport to be complete statements of any or all of such provisions. All capitalized terms used herein, unless noted otherwise, have the meanings given in the Indenture.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

Stabilization of Prices. In connection with this offering, the Underwriter may overallocate or effect transactions which stabilize or maintain the market price of the Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time. The Underwriter may offer and sell the Bonds to certain dealers and others at prices lower than the public offering prices set forth on the cover page hereof and said public offering prices may be changed from time to time by the Underwriter.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXCEPTION FROM THE REGISTRATION REQUIREMENTS CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

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[Insert Regional Location Map]

OFFICIAL STATEMENT

\$ _____ *

CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY 2020 Refunding Lease Revenue Bonds (Sunset Center Project)

INTRODUCTION

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Bonds to potential investors is made only by means of the entire Official Statement.

Capitalized terms used but not defined in this Official Statement have the meanings set forth in the Indenture (as defined below). See "APPENDIX C – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS."

Authority for Issuance. The bonds captioned above (the "**Bonds**") are being issued by the City of Carmel-by-the-Sea Public Improvement Authority (the "**Authority**") under a resolution adopted by the Board of Directors of the Authority on September 1, 2020, the provisions of Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code (the "**Bond Law**"), and an Indenture of Trust dated as of October 1, 2020 (the "**Indenture**") between the Authority and MUFG Union Bank, N.A., as trustee (the "**Trustee**").

The Authority and the City. The Authority is a joint exercise of powers authority created in 1988 by the City of Carmel-by-the-Sea (the "**City**") and the City's parking authority. The Authority was created to provide financial assistance to the City. The Authority is governed by a board of directors which consists of the members of the City Council. The City was incorporated in 1916 as a general law city in the County of Monterey (the "**County**"), and had an estimated population according to the State Department of Finance as of January 1, 2020 of 3,949.

Located 120 miles south of San Francisco on the Monterey Peninsula, the City is a one-square-mile, built-out coastal community. In addition to various recreational opportunities afforded by its location on the coast, the City is also known for its architecture and dining and shopping opportunities, which may be found in the walkable downtown area. In addition to many City sponsored events like the City Parade, Sandcastle Contest and Pumpkin Roll, other special

* Preliminary; subject to change.

events also occur throughout the year, including at such venues as the Sunset Center performing arts center and the Forest Theater, an outdoor amphitheater.

For additional background on the City, and certain demographic and economic information regarding the City and the County, see APPENDIX B.

Bond Terms; Book-Entry Only. The Bonds will bear interest at the rates shown on the inside cover page, payable semiannually on November 1 and May 1 of each year, commencing May 1, 2021. The Bonds will be issued in fully registered form, registered in the name of The Depository Trust Company (“**DTC**”), or its nominee, which will act as securities depository for the Bonds. Purchasers of the Bonds will not receive certificates representing the Bonds that are purchased. See “THE BONDS – Book-Entry Only System” and “APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

Purpose of the Bonds. The Bonds are being issued to (i) refund, in full, the Authority’s 2010 Refunding Lease Revenue Bonds (the “**2010 Bonds**”), which are currently outstanding in the principal amount of \$4,890,000, and (ii) pay the costs of issuing the Bonds. See “FINANCING PLAN.”

Security for the Bonds and Pledge of Revenues. Under the Indenture, the Bonds are payable from and secured by a first pledge of and lien on “**Revenues**” (as defined in this Official Statement) received by the Authority under the Second Amended and Restated Lease Agreement dated as of October 1, 2020 (the “**Lease**”), between the Authority, as lessor, and the City, as lessee, consisting primarily of semi-annual lease payments (the “**Lease Payments**”) made by the City under the Lease. The Bonds are also secured by certain funds on deposit under the Indenture. See “SECURITY FOR THE BONDS.”

The City and the Authority will enter into a Second Amended and Restated Site Lease dated as of October 1, 2020 (the “**Site Lease**”), under which the City will lease certain real property to the Authority, consisting generally of the land and improvements which constitute the Sunset Center located in the City (the “**Leased Property**”), as further described herein under the caption “THE LEASED PROPERTY,” in return for a single upfront payment. Concurrently, the City and the Authority will enter into the Lease, under which the Authority will lease the Leased Property back to the City in return for semi-annual Lease Payments. See “SECURITY FOR THE BONDS” and “THE LEASED PROPERTY” below.

No Reserve Fund. Neither the Authority nor the City will fund a reserve fund for the Bonds.

Redemption. The Bonds are subject to extraordinary mandatory redemption from Net Proceeds of insurance in certain circumstances, but not optional redemption, prior to their stated maturity dates. See “THE BONDS – Redemption.”

Abatement. The Lease Payments are subject to complete or partial abatement in the event and to the extent that there is substantial interference with the City’s use and possession of the Leased Property or any portion thereof. If the Lease Payments are abated under the Lease, the Bond Owners would receive less than the full amount of principal of and interest on the Bonds. To the extent proceeds of rental interruption insurance are available, Lease Payments (or a portion thereof) may be made from those proceeds during periods of abatement. See “SECURITY FOR THE BONDS – Abatement” and “BOND OWNERS’ RISKS.”

Risks of Investment. Debt service on the Bonds is payable only from Lease Payments and other amounts payable by the City to the Authority under the Lease. The Lease Payments are payable from revenues available in the City's general fund, which revenues may be materially adversely affected by numerous factors outside the City's control, including the ongoing COVID-19 pandemic and the governmental responses to the pandemic. For a discussion of some of the risks associated with the purchase of the Bonds, see "BOND OWNERS' RISKS."

NEITHER THE BONDS, THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST THEREON, NOR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS, CONSTITUTE A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY.

FINANCING PLAN

General

The Bonds are being issued to (i) refund, in full, the 2010 Bonds, which are currently outstanding in the principal amount of \$4,890,000, and (ii) pay the costs of issuing the Bonds.

The net proceeds of the Bonds will be deposited with MUFG Union Bank, N.A., as trustee for the 2010 Bonds and escrow agent (the "**Escrow Agent**"). Such amount, together with amounts held by the Escrow Agent related to the 2010 Bonds, will be sufficient to defease the 2010 Bonds as of the closing date for the Bonds and pay and redeem the 2010 Bonds on November 1, 2020.

Estimated Sources and Uses

The estimated sources and uses of funds relating to the Bonds are as follows:

Sources:

Principal Amount of Bonds	\$
Plus/Less: [Net] Original Issue Premium/Discount	
Plus: Amounts Related to 2010 Bonds	
TOTAL SOURCES	\$

Uses:

Refunding 2010 Bonds	\$
Costs of Issuance Fund ⁽¹⁾	
TOTAL USES	\$

(1) Represents funds to be used to pay costs of issuance, which includes Underwriter's discount, legal fees, municipal advisor fees, printing costs, rating agency fees and other costs of issuing the Bonds.

THE LEASED PROPERTY

General

The Leased Property consists of the land and improvements constituting the “Sunset Center,” which is located in the City, and has an estimated value of \$26,445,382. The Sunset Center is part of the larger Sunset Community & Cultural Center complex, which includes (1) the outdoor Forest Theater, (2) an activity building (Boy Scout House), and (3) the Sunset Center. *The only portion of the Sunset Community & Cultural Center complex that is part of the Leased Property is the Sunset Center.*

The Sunset Center is the largest single building in the City. The City acquired the property in 1964 from the Carmel Unified School District. It is home to musical, dance, and theatrical performances, a film festival, and other cultural events. Local artists teach at the center and seven rooms are available for rental to groups ranging from 40 to 150 people. The Sunset Theater, which is part of the Sunset Center, seats 718 and is used for performances varying from chamber music to dance productions and drama. The theater is cathedral-domed with a proscenium stage and lighting and sound facilities.

In addition to the Sunset Theater, the Sunset Center includes offices, meeting rooms, main and promenade lobbies, an outdoor plaza and terraces. This includes offices maintained by the staff of the Sunset Cultural Center, Inc, meeting rooms and permanent offices rented to arts organizations, meeting rooms available for City functions, community groups, events and conferences and the performing arts theatre.

The Sunset Center was renovated in September 2001 through July 2003. Since the renovation, Sunset Center has typically hosted more than 150 main stage events, which includes 50 classical music performances each year. Due to the COVID-19 pandemic, however, the Sunset Center has been closed to large group gatherings. For additional information on the impact of the COVID-19 pandemic on the City, see “BOND OWNERS’ RISKS – Dependence on Tourism; COVID-19 Pandemic.”

Substitution and Release

Substitution of Leased Property. Under the Lease, the City has the option at any time and from time to time, to substitute other real property (the “**Substitute Property**”) for the Leased Property or any portion thereof (the “**Former Property**”), upon satisfaction of all of the conditions set forth in the Lease, which include (among others) the following:

- No Event of Default has occurred and is continuing.
- The City has filed with the Authority and the Trustee, and cause to be recorded in the office of the Monterey County Recorder sufficient memorialization of, an amendment of the Site Lease and the Lease which removes the Former Property from the Lease and the Site Lease and which adds the Substitute Property to the Lease and the Site Lease.
- The City has obtained a CLTA policy of title insurance insuring the City’s leasehold estate in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.

- The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to serve a governmental function of the City.
- The City and the Authority have filed with the Trustee a written certificate stating that (a) based on the estimated value of the Substitute Property, the remaining Lease Payments constitute fair rental value for the use and occupancy of the Substitute Property, taking into consideration certain factors set forth in the Lease and (b) the useful life of the Substitute Property at least extends to November 1, 2041.

Upon the satisfaction of all the conditions precedent contained in the Lease, the term of the Lease will end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under the Lease.

Release of Leased Property. Under the Lease, the City has the option at any time and from time to time to release any portion of the Leased Property from the Lease and the Site Lease (the “**Released Property**”) provided that the City has satisfied all of the requirements under the Lease that are conditions precedent to such removal, which include (among others) the following:

- No Event of Default has occurred and is continuing.
- The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Monterey County Recorder sufficient memorialization of, an amendment of the Lease and the Site Lease that removes the Released Property from the Site Lease and the Lease.
- The City and the Authority have filed with the Trustee a written certificate stating that based on the estimated value of the property which remains subject to the Lease following such release, the remaining Lease Payments constitute fair rental value for the use and occupancy of such property, taking into consideration certain factors set forth in the Lease.

Upon the satisfaction of all the conditions precedent set forth in the Lease, the term of the Lease will end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release.

In addition to the substitution and release provisions described above, the City may amend the Lease to obligate the City to pay additional amounts of rental for the use and occupancy of the Leased Property and pledge such amounts to other bonds or obligations under certain circumstances. See “SECURITY FOR THE BONDS – No Additional Bonds; Other Financings Using Leased Property.”

DEBT SERVICE SCHEDULE

The table below shows annual debt service payments on the Bonds.

Year Ending Nov. 1	Principal	Interest	Total Debt Service
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
Total:			

THE BONDS

This section provides summaries of the Bonds and certain provisions of the Indenture. See APPENDIX C for a more complete summary of the Indenture. Capitalized terms used but not defined in this section have the meanings given in APPENDIX C.

Authority for Issuance

The Bonds are being issued under the Bond Law, the Indenture, and a Resolution adopted by the Board of Directors of the Authority on September 1, 2020.

General Provisions

Bond Terms. The Bonds will be dated their date of delivery and issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple of \$5,000. The Bonds will mature in the amounts and on the dates, and bear interest at the annual rates, set forth on the inside cover page of this Official Statement.

Payments of Principal and Interest. Interest on the Bonds will be payable on May 1 and November 1 in each year, commencing May 1, 2021 (each an “**Interest Payment Date**”). Interest on the Bonds is payable from the Interest Payment Date next preceding the date of its authentication unless: a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date, a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

While the Bonds are subject to the book-entry system, the principal, interest and any redemption premium with respect to the Bonds will be paid by the Trustee to DTC for

subsequent disbursement to beneficial owners of the Bonds. See “– Book-Entry Only System” below.

Record Date. Under the Indenture, “Record Date” means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

Transfer, Registration and Exchange

The following provisions regarding the exchange and transfer of the Bonds apply only during any period in which the Bonds are not subject to DTC’s book-entry system. While the Bonds are subject to DTC’s book-entry system, their exchange and transfer will be effected through DTC and the Participants and will be subject to the procedures, rules and requirements established by DTC. See “APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

Bond Register. The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

Transfer and Exchange. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall collect any tax or other governmental charge on the transfer of any Bonds under the Indenture. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority shall pay the cost of any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds. Prior to any transfer of the Bonds outside the book-entry system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis report obligations under Section 6045 of the Tax Code. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall collect any tax or other governmental charge on the exchange of any Bonds. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

The Trustee may refuse to transfer or exchange any Bonds selected by the Trustee for redemption under the Indenture, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

Redemption*

No Optional Redemption. The Bonds are not subject to redemption at the option of the City prior to maturity.

Mandatory Sinking Fund Redemption. The Bonds maturing November 1, _____ (the “Term Bonds”) are subject to mandatory redemption in whole, or in part by lot, from sinking fund payments made under the Indenture, at a redemption price equal to the principal amount thereof to be redeemed, without premium, plus accrued interest to the date of redemption, in the aggregate respective principal amounts and on November 1 in the years as set forth in the following table:

Payment Date (November 1)	Payment Amount
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If some but not all of the Term Bonds have been redeemed pursuant to the optional redemption or extraordinary mandatory redemption provisions of the Indenture, the total amount of all future sinking fund payments will be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis as determined by the Authority, which shall notify the Trustee in writing of such determination.

Extraordinary Mandatory Redemption. The Bonds are subject to redemption as a whole, or in part by lot on a pro rata basis among maturities, on any date, from any Net Proceeds required to be used for such purpose as provided in the Indenture, at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

Selection of Bonds for Redemption. Whenever provision is made in the Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee shall select the Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

Notice of Redemption. The Trustee will mail notice of redemption of the Bonds by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Information Services.

Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Bonds within a

* Preliminary; subject to change.

maturity are called for redemption) Bond numbers of the Bonds to be redeemed and the maturity or maturities of the Bonds to be redeemed, and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered.

Neither the failure to receive any notice nor any defect therein shall affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

However, while the Bonds are subject to DTC's book-entry system, the Trustee will be required to give notice of redemption only to DTC as provided in the letter of representations executed by the Authority and received and accepted by DTC. DTC and the Participants will have sole responsibility for providing any such notice of redemption to the beneficial owners of the Bonds to be redeemed. Any failure of DTC to notify any Participant, or any failure of Participants to notify the Beneficial Owner of any Bonds to be redeemed, of a notice of redemption or its content or effect will not affect the validity of the notice of redemption, or alter the effect of redemption set forth in the Indenture.

Right to Rescind Notice of Optional Redemption. The Authority has the right to rescind any notice of the optional redemption of Bonds under the Indenture by written notice to the Trustee on or prior to the dated fixed for redemption. Any notice of redemption will be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation will not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall cause notice of such rescission to be given to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books, and to the Municipal Securities Rulemaking Board and the Securities Depositories.

Effect of Redemption. Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

Book-Entry Only System

The Bonds will be issued as fully registered bonds in book-entry only form, registered in the name of Cede & Co. as nominee of DTC, and will be available to ultimate purchasers in the denomination of \$5,000 or any integral multiple of \$5,000, under the book-entry system maintained by DTC. While the Bonds are subject to the book-entry system, the principal, interest and any redemption premium with respect to a Bond will be paid by the Trustee to DTC, which in turn is obligated to remit such payment to its DTC Participants for subsequent

disbursement to Beneficial Owners of the Bonds. Purchasers of the Bonds will not receive certificates representing their interests therein, which will be held at DTC.

See “APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM” for further information regarding DTC and the book-entry system.

SECURITY FOR THE BONDS

The principal of and interest on the Bonds are not a debt of the Authority or the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of their respective property, or upon any of their income, receipts, or revenues except the Revenues and other amounts pledged under the Indenture.

This section provides summaries of the security for the Bonds and certain provisions of the Indenture, the Lease and the Site Lease. See “APPENDIX C – Summary of Principal Legal Documents” for a more complete summary of the Indenture, the Lease and the Site Lease. Capitalized terms used but not defined in this section have the meanings given in APPENDIX C.

Revenues; Pledge of Revenues

Pledge of Revenues and Other Amounts. Under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, all of the Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under the Indenture are pledged to secure the payment of the principal of and interest on the Bonds in accordance with their terms and the provisions of the Indenture. This pledge constitutes a lien on and security interest in the Revenues and such amounts and will attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

Definition of Revenues. “Revenues” are defined in the Indenture as follows:

- (a) all amounts received by the Authority or the Trustee under or with respect to the Lease, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source); and
- (b) all interest, profits or other income derived from the investment of amounts in any fund or account established under the Indenture.

Assignment to Trustee

Under the Assignment Agreement, the Authority transfers to the Trustee all of the rights of the Authority in the Lease (other than the rights of the Authority under the provisions of the Lease regarding Additional Rental Payments, repayment of advances, indemnification, and the payment of attorneys’ fees). The Trustee is entitled to collect and receive all of the Revenues, and any Revenues collected or received by the Authority will be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and will immediately be paid by the Authority to the Trustee. The Trustee is also entitled to and will, subject to the provisions of the Indenture regarding duties of the Trustee, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to

enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease.

Allocation of Funds by Trustee

Deposit of Revenues into Bond Fund. All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the “Bond Fund” which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required under the Indenture or under the Lease to be deposited in the Redemption Fund or the Insurance and Condemnation Fund shall be promptly deposited in such funds. All Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in the Indenture. Any surplus remaining in the Bond Fund, after payment in full of (i) the principal of and interest on the Bonds or provision therefore under the Indenture, and (ii) any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

Transfers from the Bond Fund. On or before each Interest Payment Date, the Trustee will transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee will establish and maintain within the Bond Fund), the following amounts in the following order of priority:

Deposit to Interest Account. The Trustee will deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding.

Deposit to Principal Account. The Trustee will deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date, including the principal amount of any Term Bonds which are subject to mandatory sinking fund redemption on such Interest Payment Date.

Application of Accounts within Bond Fund.

Application of Interest Account. All amounts in the Interest Account will be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it comes due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

Application of Principal Account. All amounts in the Principal Account will be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds (including the principal amount of Term Bonds which are subject to mandatory sinking fund redemption under the Indenture).

Application of Redemption Fund. The Trustee shall establish and maintain the Redemption Fund, into which the Trustee shall deposit a portion of the Revenues received, in accordance with a Written Request of the Authority, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of any Bonds to be redeemed pursuant to the optional redemption or extraordinary mandatory redemption provisions of the Indenture.

Lease Payments

Requirement to Make Lease Payments. Under the Lease, subject to the provisions of the Lease concerning rental abatement (see – “Abatement,” below) and prepayment of Lease Payments, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments in the respective amounts specified in the Lease, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in the Lease, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in the Lease (defined as the 5th Business Day immediately preceding each Interest Payment Date).

Any amount held in the Bond Fund, the Interest Account and the Principal Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole under the Lease, and amounts required for payment of past due principal or interest on any Bonds not presented for payment) will be credited towards the Lease Payment then required to be paid hereunder.

The City is not required to deposit any Lease Payment with the Trustee on any Lease Payment Date if the amounts then held in the Bond Fund, the Interest Account and the Principal Account are at least equal to the Lease Payment then required to be deposited with the Trustee.

Rate on Overdue Lease Payments. If the City fails to make any of the payments of Lease Payments required in the Lease, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest on any Outstanding Bond.

Fair Rental Value. The aggregate amount of the Lease Payments and Additional Rental Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and are payable by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The Authority and the City have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property, other obligations of the City and the Authority under the Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

Additional Rental Payments. In addition to the Lease Payments, the City shall pay when due the following amounts of Additional Rental Payments in consideration of the lease of the Leased Property by the City from the Authority:

- (a) all fees and expenses incurred by the Authority in connection with or by reason of its leasehold estate in the Leased Property, when due;
- (b) compensation to the Trustee for its services rendered under the Indenture and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Indenture;

- (c) all fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under the Lease or the Indenture;
- (d) all amounts coming due and payable as Excess Investment Earnings in accordance with the Lease; and
- (e) all out-of-pocket expenses of the Authority in connection with the execution and delivery of the Lease or the Indenture, or in connection with the issuance of the Bonds, including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Bonds, or incurred by the Authority in connection with any litigation which may at any time be instituted involving the Lease, the Bonds, the Indenture or any of the other documents contemplated thereby, or otherwise incurred in connection with the administration of the Lease.

Limited Obligation

THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS DOES NOT CONSTITUTE A DEBT OF THE CITY, THE AUTHORITY OR THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION, AND DOES NOT CONSTITUTE AN OBLIGATION FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

No Additional Bonds; Other Financings Using Leased Property

The Authority covenants in the Indenture that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part. However, the City may amend the Lease to obligate the City to pay additional amounts of rental for the use and occupancy of the Leased Property, but only if:

- such additional rent payments are pledged or assigned for the payment of any bonds, notes or other obligations the proceeds of which are applied to finance or refinance the acquisition or construction of any real or personal property for which the City is authorized to expend funds subject to its control,
- the City has filed with the Trustee a Written Certificate of the City stating that the estimated value of the Leased Property is, or following the completion of the acquisition and construction of any improvements to be financed from the proceeds of such bonds, notes or other obligations will be, at least equal to the aggregate original principal amount of the Bonds and all such other bonds, notes or other obligations, and
- the City has filed with the Trustee written evidence that such amendments to the Lease will not of themselves cause a reduction or withdrawal of any rating then assigned to the Bonds.

Source of Lease Payments; Covenant to Budget and Appropriate

The Lease Payments are payable from any source of available funds of the City, subject to the provisions of the Lease regarding abatement. See “– Abatement” herein.

Under the Lease, the City covenants to take all actions required to include the Lease Payments in each of its budgets during the Term of the Lease and to make the necessary appropriations for all Lease Payments and Additional Rental Payments. This covenant of the City constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in the Lease agreed to be carried out and performed by the City.

Abatement

Termination or Abatement Due to Eminent Domain. Under the Lease, if the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of the Lease thereupon ceases as of the day possession is taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, then:

(a) the Lease will continue in full force and effect with respect thereto and does not terminate by virtue of such taking, and the parties waive the benefit of any law to the contrary; and

(b) the Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

Abatement Due to Damage or Destruction. The Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain as described above) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof.

The Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction.

Notwithstanding the foregoing, the Lease Payments may be paid with proceeds of rental interruption insurance during any period in which the Lease Payments would otherwise be subject to abatement, it being declared that such proceeds constitute a special fund for the payment of the Lease Payments. In the event of any such damage or destruction, the Lease continues in full force and effect and the City waives any right to terminate the Lease by virtue of any such damage and destruction.

Property Insurance

Liability and Property Damage Insurance. Under the Lease, the City is required to maintain or cause to be maintained throughout the Term of the Lease, but only if and to the

extent available from reputable insurers at reasonable cost in the reasonable opinion of the City, a standard commercial general liability insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, employees and assigns.

Such policy or policies must provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies must provide coverage in such liability limits and be subject to such deductibles as the City deems adequate and prudent.

Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of the Lease regarding self-insurance, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance must be applied toward extinguishment or satisfaction of the liability with respect to which paid.

Casualty Insurance. Under the Lease, the City is required to procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease, casualty insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Outstanding Bonds.

Such insurance must, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, fire and such other hazards as are normally covered by such insurance, and must include earthquake insurance if available at reasonable cost from reputable insurers in the judgment of the City. Such insurance may be subject to such deductibles as the City deems adequate and prudent.

Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance must be applied as provided in the Lease.

Rental Interruption Insurance. Under the Lease, the City is required to procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of any of the hazards covered in the casualty insurance requirements described above, in an amount at least equal to the maximum such Lease Payments coming due and payable during any consecutive two Fiscal Years.

Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance, if any, must be paid to the Trustee and deposited in the Bond Fund, to be applied as a credit towards the payment of the Lease Payments allocable to the insured improvements as they become due and payable.

Insurance Net Proceeds; Form of Policies. Each policy of casualty insurance, rental interruption insurance and title insurance maintained under the Lease must name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The City shall pay or cause to be paid when due the premiums for all insurance policies required by the Lease. All such policies shall provide that the Trustee is given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby.

The City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a certificate of the City stating that all policies of insurance required under the Lease are then in full force and effect. The Trustee has no responsibility for the sufficiency, adequacy or amount of any insurance or self-insurance herein required and is fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

If any liability and property damage insurance maintained under the Lease is provided in the form of self-insurance, the City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a statement of the risk manager of the City or an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. If any such insurance is provided in the form of self-insurance by the City, the City has no obligation to make any payment with respect to any insured event except from those reserves.

THE AUTHORITY

The Authority is a joint exercise of powers authority created in 1988 by the City and the City's parking authority. The Authority was created to provide financial assistance to the City. The Authority is governed by the Board of Directors to provide financial assistance to the City. The Joint Exercise of Powers Agreement was entered into under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California. The Authority is a separate entity constituting a public instrumentality of the State of California.

THE CITY

General

The City is located in the County, and had estimated population according to the State Department of Finance as of January 1, 2020 of 3,949. The City is a general law city and operates under a council-administrator form of government, with a five-member city council elected at large for overlapping four-year terms.

Located 120 miles south of San Francisco on the Monterey Peninsula, the City is a one-square-mile, built-out coastal community known for its natural beauty, including a white sand beach, urban forest of over 9,000 public trees comprised of Monterey pines, live oaks, and Monterey cypress and natural parklands. In addition to recreational opportunities afforded by such scenery, the City is also known for its architecture and dining and shopping opportunities, which may be found in the walkable downtown area. In addition to many City sponsored events like the City Parade, Sandcastle Contest and Pumpkin Roll, other special events also occur

throughout the year and cultural activities abound, including at such venues as the Sunset Center performing arts center and the Forest Theater, an outdoor amphitheater.

For additional background on the City, and certain demographic and economic information regarding the City and the County, see APPENDIX B.

City Government

All legislative power is held by the publicly elected, five-member City Council which consists of the Mayor and four Councilmembers. The Mayor serves a two-year term while Council members serve a four-year term, with overlapping terms with municipal elections occurring in November of each even numbered year. The City Council appoints the City Administrator and the City Attorney.

The current members of the City Council are as follows:

<u>Name and Office</u>	<u>Current Term Expires</u>
Dave Potter, <i>Mayor</i>	November 2020
Bobby Richards, <i>Mayor Pro Tem</i>	November 2020
Jeff Baron, <i>Council Member</i>	November 2022
Jan Reimers, <i>Council Member</i>	November 2020
Carrie Theis, <i>Council Member</i>	November 2022

The City Administrator is responsible for the day-to-day administration of City business and the coordination of all City departments. Chip Rerig is the current City Administrator, and a brief biography of Mr. Rerig follows.

Chip Rerig, City Administrator. Mr. Rerig has been the City Administrator since 2016. Immediately prior to that, he was chief of planning, engineering and environmental compliance for the City of Monterey. He was with the City of Monterey for approximately 14 years. Before his time at the City of Monterey, Mr. Rerig was formerly the planning director for the City, having begun his career in the City's planning department right out of graduate school. He is a graduate of California Polytechnic State University–San Luis Obispo.

CITY FINANCIAL INFORMATION

Budgetary Process and Administration

Fund-Based Accounting. The accounts of the City are organized on the basis of funds. A fund is an independent fiscal and accounting entity with a self-balanced set of accounts. The minimum number of funds is maintained consistent with legal and managerial requirements. Annually appropriated budgets are legally adopted on a budgetary basis for the governmental fund types (General Fund, Special Revenue Fund, Debt Service Fund, and Capital Project Fund) and are controlled on a fund and departmental level. These funds are used to account for most of the City's general government activities. Governmental fund types use the flow of current financial resources measurement focus and the modified-accrual basis of accounting and budgeting. Expenditures are recognized as encumbrances when a commitment is made. Unencumbered appropriations lapse at year-end.

Annual Budget Adoption. The goal of the City Administrator is to present a balanced budget to the City Council for review and adoption. A balanced budget is a budget in which sources meet or exceed uses. Available funding sources shall be at least equal to recommended appropriations. As a general rule, the year-end undesignated General Fund balance should not be used to fund ongoing operations.

As set in the Carmel Municipal Code prior to the beginning of each Fiscal Year, the City Council shall adopt a budget for expenditures and anticipated revenues. On or before February 15th of each year, the City Administrator will present to the City Council a proposed budget schedule. The City Administrator prepares and submits to the City Council a proposed operating and capital budget for the forthcoming Fiscal Year. The City Council shall adopt the budget by July 1st.

Budget Transfers. The City Administrator has the right to approve the transfer of appropriations within a departmental budget; however, no additional positions may be created without the authorization of the City Council. All transfers of appropriations between departments or in regards to capital items or projects must be approved by the City Council. The City Administrator is charged with the responsibility of controlling the expenditures for all departments in accordance with the approved budget. A report on current year revenues, expenditures and fund balances must be maintained.

Financial Policies

General. The City has financial policies that provide City Council direction to allow staff to provide sound fiscal planning and continued management of fiscal integrity. The financial policies are divided into five categories:

- Capital Budget Policies,
- Operating Management Policies,
- Fund Balance Policy,
- Debt Policies, and
- Investment Policies.

The financial policies that are adopted by the City Council with review every two years during the budget development process. The financial policies help ensure that the City maintains a healthy financial foundation into the future. A description of each of these types of policies follows.

Capital Budget Policies. The City develops an annual five-year plan for capital improvements; it includes project design, development, implementation, and operating and maintenance costs. Each project in the Capital Improvement Plan (“CIP”) shows the estimated capital and on-going maintenance costs, known and potential funding sources and a design/development schedule. As used in the CIP, projects include land acquisition, buildings and facilities construction; these projects do not have a cost threshold. A capital outlay (fixed asset) purchase is any single item or piece of equipment that costs more than \$10,000 and has an expected useful life exceeding one year. The development of the Capital Improvement Plan is coordinated with the development of the operating budget. The CIP is a planning document;

the City Council appropriates funding for capital projects in the annual operating budget. Costs for professional services needed to implement the CIP are to be included in the appropriate year's operating budget.

Pursuant to City policy, capital expenditures shall be effectively planned and controlled. Guidelines for capital expenditures include, for example:

- The level of capital improvement expenditures, excluding road maintenance program expenditures and lease payments, is established at 3.5% of total revenues.
- At least 10% of the unrestricted funds designated for capital project expenditures shall be set aside for unanticipated expenditures.
- Capital projects that are not encumbered or completed during the Fiscal Year are required to be re-budgeted to the next Fiscal Year and subsequently approved by the City Council. All re-budgeted capital projects should be so noted in the proposed budget.

Operating Management Policies. The City's operating management policies provide the operating revenues shall exceed operating expenditures. Guidelines for operating expenditures include, for example:

- The annual operating budget shall contain a current surplus (or "revenue buffer") of at least 5% of projected expenditures.
- An appropriated City Discretionary Account of at least 0.5% of total projected General Fund expenditures shall be maintained.
- The City's fees and charges for services shall be adjusted annually, based upon the San Francisco-Oakland Consumer Price Index

Fund Balance Policy. The Fund Balance Policy is designed to develop standards for setting reserve levels for various, significant City funds. Adequate fund balance and reserve levels are a necessary component of the City's overall financial management strategy and a key factor in external agencies' measurement of the City's financial strength. The City shall maintain reserves at a prudent level, and shall use reserves appropriately with a focus on contributing to the reserves in good times and drawing on the reserves in times of difficult budget periods to maintain a consistent level of service and quality operations. Use of reserves are to supplement the annual budget. Guidelines for the Fund Balance Policy include, for example:

- General Fund and Hostelry Fund reserves shall be maintained at no less than 10% of their annual projected revenues. (The Hostelry Fund is used to account for the TOT and is intended to fund the portion of the municipal budget covering community and cultural and recreation activities including but not limited to Sunset Center and the Forest Theater, parks, public facilities and municipal structures, and parking lots.)
- The City shall maintain prudent reserve for identified liability, such as a Vehicle Replacement reserve and a Technology Equipment reserve.

- A general capital reserve fund will be maintained with a targeted balance of 20% of the estimated total 5-year capital improvement plan project expenditure. Net proceeds from the sale of City owned property will be dedicated to the general capital reserve. Funds in the general capital reserve will be allocated through the budget process for capital projects.

Debt Policies. The City considers the use of debt financing for one-time capital improvements that benefit the residents of the City when the term of the financing is no longer than the project life, and when specific resources are found to be sufficient to provide for the debt. Use of long-term debt is limited to capital projects or special projects or obligations that cannot be financed from current revenues. The City has traditionally kept annual debt service payments to less than 5% of the budget.

Investment Policy. In accordance with the Municipal Code of the City and under authority granted by the City Council, the City Treasurer is responsible for investing the unexpended cash in the City Treasury. The investment of the City's funds is directed to the goals of safety, liquidity and yield, in that order. The authority governing investments for municipal government is set forth in the California Government Code, Sections 53601 through 53659.

For additional information regarding the City's investment portfolio, see "– Investment Policy and Portfolio."

City Budgets for Fiscal Years 2019-20 and 2020-21

Budget Categories. With respect to General Fund revenues, the major categories of revenues reflect the nature of the City as a primarily built-out residential community reliant on tourism to generate sales and Transient Occupancy Taxes ("TOT"). The City's three major sources of General Fund revenue include Property Tax, Sales and Use Tax and TOT, which typically make up about 80% of the City's revenues. Property taxes, in particular, have been a strong component to the City's financial health. Sales taxes have become increasingly important to the City, especially after the passage of a local sales tax measure by City voters in 2012, known as "Measure D" which was extended (for 20 years) and increased in 2020 pursuant to "Measure C." In recent years, TOT had also significantly contributed to the City's revenues and started to outpace property taxes as the leading source of revenue beginning in Fiscal Year 2013-14. However, due to the COVID-19 pandemic, TOT was the most significantly negatively impacted. See "BOND OWNERS' RISKS – Dependence on Tourism; COVID-19 Pandemic."

With respect to General Fund expenditures, the categories of expenses generally line-up with the City services provided. The City provides a variety of services to its residents, businesses and visitors. Administration provides oversight of daily City functions and financial activity. Community Planning and Building provides building safety services, code compliance and planning functions, while Community Activities and Library manage new and ongoing special events and provide library services at two branch locations. Public safety services related to ambulance, law enforcement, crime prevention and fire protection are provided by the Ambulance and Police Department, respectively, while fire services are provided through a contract with the City of Monterey. Public Works is responsible for facility and vehicle maintenance, development and management of capital projects; construction, improvement and repair of streets, sidewalks, pathways and storm drain systems and maintaining the village forest, parks and shoreline areas.

Adopted Budget for Fiscal Year 2019-20. The City's budget for Fiscal Year 2019-20 was adopted by the City Council in June 2019. The total budget amount was \$24.2 million, of which the General Fund portion was \$13.8 million. As is typical, following adoption of the budget, staff monitored and tracked revenues and expenditures for all funds, with an emphasis on the General Fund and the City's capital improvement program. Property taxes, sales and use taxes and transient occupancy taxes accounted for approximately 79% of projected revenues. Additional details regarding the Fiscal Year 2019-20 budget are shown in Table 1.

Adopted Budget for Fiscal Year 2020-21. The City's budget for Fiscal Year 2020-21 was adopted by the City Council on June 16, 2020. The City's planned expenditures totaled \$19.7 million, of which \$18.5 million represented General Fund expenditures and \$1.2 million represented debt service payments. These expenses will be funded through a combination of anticipated revenue of \$18.7 million and \$1.0 million of fund balance. While the Fiscal Year 2020-21 budget is balanced from a fiscal perspective, the equilibrium is projected to be achieved by significantly curtailing expenditures and using prior years' savings to mitigate a structural deficit induced by the economic downturn caused by the COVID-19 pandemic. This approach results in a workforce reduction, changes in service delivery, and the postponement of capital projects and vehicle and equipment replacement.

As the extent of the economic impact of COVID-19 is unknown in terms of its magnitude and duration, the Fiscal Year 2020-21 budget is based upon conservative revenue projects, largely modified on revenue performance for the last quarter of Fiscal Year 2019-20. These assumptions reflect significant declines in the City's sales and use of transient occupancy taxes due to limited travel; decreased consumer spending, particularly in leisure-related spending; and the implementation of social distancing protocols for restaurants that impact seating capacity. The Fiscal Year 2020-21 revenues total \$18.7 million, which reflects a \$5.5 million, or 23% decrease compared to the Fiscal Year 2019-20 adopted budget of \$24.2 million.

Even with the workforce reductions and other cuts within the operational budget, the Fiscal Year 2020-21 budget is balanced only by using approximately \$1.0 million of prior years' savings, or fund balance. This represents 14% of the General Fund Estimated Fund Balance as of June 30, 2020. The use of fund balance underscores the precarious nature of the Fiscal Year 2020-21 budget, despite being based upon conservative revenue projections, the status of the budget is contingent upon the performance of the economy. In order to safeguard against further economic turmoil, to the extent possible, the City Administrator promulgated a three-fold strategy for the upcoming Fiscal Year: (1) limited use of fund balance in Fiscal Year 2020-21; (2) examination of service delivery and options to reduce costs with minimal community impacts, particularly as it relates to public safety and bond refinancing, and (3) exploration of options to diversify City revenues, including a review of possible new revenues such as paid parking in selected areas.

The 2020-21 budget notes that with respect to the 2019-20 Fiscal Year-end, various technical adjustments would be made. In particular, fund balance within the Hostelry Fund would be transferred to the General Fund to mitigate the expected decrease in transient occupancy tax revenue projected for Fiscal Year 2019-20. TOT is housed in a separate fund known as the Hostelry Fund and transferred to the General Fund to support Citywide operations. The Hostelry Fund includes savings from prior years when TOT performed better than expected and/or when the General Fund required less TOT revenue to meet expenditure requirements. It is anticipated that approximately \$2.0 million of the \$2.4 million in fund balance will be used in Fiscal Year 2019-20. As a result, very little fund balance remains in the Hostelry Fund to address any projected budget shortfall in Fiscal Year 2020-21 or thereafter.

Complete copies of the City's adopted Fiscal Year 2019-20 and 2020-21 budgets can be obtained from the City's Finance Department or the City's website at <https://ci.carmel.ca.us/>. The information on this website is not incorporated by reference into this Official Statement.

Adopted Budget Comparison. The following table shows the City's adopted budget for the General Fund for Fiscal Years 2019-20 and 2020-21, as well as estimated actuals for Fiscal Year 2019-20.

TABLE 1
City of Carmel-by-the-Sea
General Fund Budget Summary
Fiscal Years 2019-20 and 2020-21 and
Estimated Actuals Fiscal Year 2019-20 (Estimated Actuals)⁽¹⁾

	2019-20 Adopted Budget	2019-20 Estimated Actuals	2020-21 Adopted Budget
Revenues			
Transient Occupancy Tax	\$6,842,900	\$6,477,220	\$2,488,198
Property Taxes	6,047,488	6,647,728	6,302,218
Measure D/Measure C ⁽²⁾	3,023,000	2,512,086	3,050,000
Statewide Sales Tax	2,618,240	2,083,496	1,886,796
Business Tax & Franchise Fees	1,260,144	1,123,441	1,159,838
Charges for Services	2,487,435	2,131,694	2,080,159
Other	1,772,252	1,351,454	1,703,574
Total Revenues	\$24,051,459	\$22,327,119	\$18,670,783
Expenditures			
General Government	\$5,517,696	\$4,971,241	\$5,070,716
Community Planning and Building	1,144,353	1,083,984	1,224,098
Public Safety	8,535,170	7,774,913	8,082,474
Public Works	3,566,328	2,824,680	2,482,660
Library	1,185,675	1,075,386	676,524
Community Activities	246,449	206,883	90,490
Economic Revitalization	1,106,097	1,076,542	824,500
Capital Outlay/Debt Service	2,651,012	2,176,596	1,244,515
Total Expenditures	\$23,952,780	\$21,190,225	\$19,695,977
Net Operating Results	\$98,679	\$1,136,894	(\$1,025,194)

(1) Fiscal Year 2019-20 Estimated Actuals TOT includes Revenue (\$4,891,025.62) and excess Fund Balance transferred-in (\$1,586,194.38).

(2) Measure D is 1.0% sales and use tax approved by the voters in 2012. Measure D was replaced by the voters on March 3, 2020 with a 1.5% sales and use tax known as Measure C that became effective on July 1, 2020 for 20 years. Measure D and Measure C were, and will be, accounted for in a separate revenue fund and not in the General Fund. However, revenues from Measure D/Measure C are available to pay debt service on the Bonds.

Source: City of Carmel-by-the-Sea Adopted Budgets.

Financial Statements

Overview. Set forth in the following tables are the City's General Fund balance sheets and statements of revenues, expenditures and changes in General Fund Balance for Fiscal Years 2014-15 through 2018-19, which are based on the City's audited financial statements. The balance sheets and statements presented in this Official Statement are subject to the various notes attached to the City's financial statements for the respective years. The City's

Comprehensive Annual Financial Report (“CAFR”) for Fiscal Year ended June 30, 2019, which includes the City’s 2018-19 audited financial statements, is set forth in Appendix A.

Changes in General Fund Balance Sheets. As shown in the following table, the Total Assets of the General Fund increased from Fiscal Year 2014-15 to Fiscal Year 2018-19, before declining in Fiscal Year 2019-20. The majority of these assets are held in cash and cash investments. With only a modest increase in Total Liabilities, the balances in the various reserves held within the General Fund grew substantially.

TABLE 2
City of Carmel-by-the-Sea
General Fund Balance Sheets
Fiscal Years 2014-15 through 2018-19 (Audited)
and Fiscal Year 2019-20 (Estimated Actuals)

	2015-16	2016-17	2017-18	2018-19	Estimated 2019-20
Assets					
Cash and investments	\$6,213,049	\$7,965,693	\$6,976,284	\$8,456,322	\$8,614,711
Accounts receivable	2,844,683	1,587,809	1,872,135	2,367,659	682,005
Interest receivable	6,228	--	--	--	--
Intergovernmental	479,377	--	--	--	--
Due from other funds	1,199,785	1,553,677	254,146	434,711	--
Other assets	--	--	--	404	--
Total Assets	10,743,122	11,107,179	9,102,565	11,259,096	9,296,716
Liabilities					
Accounts payable	1,017,774	861,768	485,646	895,637	578,892
Accrued liabilities	593,733	568,988	607,052	1,111,830	313,795
Deposits payable	301,747	360,927	1,300	1,500	1,500
Unearned revenues	--	--	2,173	--	-
Total Liabilities	1,913,254	1,791,683	1,096,171	2,008,967	894,187
Fund Balances					
Restricted	--	--	--	--	--
Committed	2,166,165	2,173,138	2,806,045	2,808,138	2,421,938
Assigned	3,308,636	2,448,461	1,922,008	1,926,008	1,025,194
Unassigned	1,738,067	2,693,897	3,278,341	4,515,983	4,955,397
Total Fund Balance	7,212,868	9,315,496	8,006,394	9,250,129	8,402,529
Total Liabilities & Fund Balance	\$10,743,122	\$11,107,179	\$9,102,565	\$11,259,096	\$9,296,716

Source: City of Carmel-by-the-Sea audited financial statements for Fiscal Years 2014-15 through 2018-19.

Changes in General Fund Revenues, Expenditures and Fund Balance. The following table shows changes in Statements of Revenues, Expenditures and Changes in Fund Balance for the City’s General Fund for the past five Fiscal Years for which audited financial statements are available.

TABLE 3
City of Carmel-by-the-Sea
Statements of Revenues, Expenditures and Changes in General Fund Balance
Fiscal Years 2014-15 through 2018-19 (Audited)
and Fiscal Year 2019-20 (Estimated)

	2015-16	2016-17	2017-18 ⁽⁷⁾	2018-19	Estimated 2019-20
<u>Revenues</u>					
Taxes ⁽¹⁾	\$15,124,699	\$16,296,757	--	--	--
Property taxes	--	--	\$6,192,126	\$6,524,331	\$6,647,727
Sales and use taxes ⁽¹⁾	--	--	2,588,004	2,652,971	2,083,496
Transient occupancy taxes	--	--	6,329,074	6,882,015	4,891,026
Franchise fees	--	--	637,136	636,397	530,975
Motor vehicle in-lieu	--	--	462,989	486,445	515,591
Business license tax	--	--	544,392	594,941	592,466
Intergovernmental	74,014	136,367	42,846	97,128	104,902
Licenses and permits	553,602	762,257	1,087,953	1,192,242	871,066
Contributions	--	--	--	--	--
Fines and forfeitures	7,245	8,422	91,813	121,470	12,153
Charges for services	57,818	66,957	1,056,205	1,251,072	1,260,628
Use of money and property	159,632	170,631	--	--	--
Interest	--	--	22,483	124,262	152,721
Rentals and Concessions	--	--	100,899	185,156	91,527
Other revenue	389,136	1,979,561	211,153	132,776	231,799
Total Revenues	16,366,146	19,420,952	19,367,073	20,881,206	17,986,077
<u>Expenditures</u>					
Current:					
General Government	5,033,811	5,681,103	4,693,813	5,517,516	4,971,241
Community Planning and Building ⁽²⁾	1,525,038	1,138,983	1,128,977	1,116,689	1,083,984
Public Safety	5,129,664	5,781,793	7,024,092	7,617,310	7,774,913
Public Works ⁽³⁾	1,283,023	2,549,397	2,769,129	2,902,461	2,824,680
Library	--	--	--	--	--
Community Activities	--	--	--	--	--
Forest, Parks, and Beaches	547,211	108,764	--	--	--
Culture and Recreation ⁽⁴⁾	883,145	1,185,946	1,035,575	1,145,151	1,282,269
Economic Revitalization ⁽⁵⁾	306,505	351,425	1,095,636	1,103,993	1,076,542
Capital Outlay	4,439,279	1,877,053	--	--	--
Debt Service: principal	--	--	--	--	--
Debt Service: interest and fiscal charges	--	--	--	--	--
Total expenditures	19,147,676	18,674,464	17,747,222	19,403,120	19,013,629
Excess (deficiency) of revenues over (under) exp.	(2,781,530)	746,488	1,619,851	1,478,086	(1,027,552)
<u>Other financing sources(uses)</u>					
Transfers in	3,859,428	1,892,067	7,507,522	855,660	906,286
Transfers out	(1,981,255)	(535,927)	(10,436,475)	(1,111,477)	(726,334)
Total other fin. sources (uses)	1,878,173	1,356,140	(2,928,953)	(255,817)	179,952
Net change in fund balance	(903,357)	2,102,628	(1,309,102)	1,222,269	(847,600)
Fund balances (deficits), July 1	7,849,809	7,212,868	9,315,496	8,006,394	9,250,129
Prior period adjustments ⁽⁶⁾	266,416	--	--	21,466	--
Fund balance, beginning as restated	8,116,225	--	--	8,027,860	9,250,129
Fund balance, ending	\$7,212,868	\$9,315,496	\$8,006,394	\$9,250,129	\$8,402,529

Footnotes are on following page.

- (1) Sales and use taxes do not include amounts generated by Measure D, which was a 1% sales and use tax approved by the voters in 2012, and accounted for in a separate fund. Measure D revenues for Fiscal Years 2014-15 through Fiscal Year 2018-19 were: \$2,718,256, \$2,889,380, \$2,898,44, and \$3,079,914, respectively. Measure D was replaced by the voters on March 3, 2020 with a 1.5% sales and use tax known as Measure C that became effective on July 1, 2020 for 20 years and, similarly, will be accounted for in a separate fund.
- (2) Community Planning and Building previously referred to as "Building Maintenance."
- (3) Public Work includes categories previously referred to as "Forest, Parks, and Beaches."
- (4) Economic Revitalization previously referred to as "Economic Development."
- (5) Culture and Recreation includes categories previously preferred to as "Library" and "Community Activities."
- (6) Prior period adjustment for Fiscal Year 2015-16 due to general revenue being posted to the deposit fund and not the general fund. Prior period adjustment for Fiscal Year 2018-19 due to items posted to deposit fund in prior years found to be revenue of the general fund.
- (7) In Fiscal Year 2017-18, the City updated its accounting software, including fund and account structure. Approximately 12 funds were closed, combining the balance sheets of the various funds. For financial reporting purposes, equity transfers between funds were treated as operating transfers. Page 51 of the City's 2018 financial report includes the details of these transfers.

Source: City Finance Department and City of Carmel-by-the-Sea audited financial statements for Fiscal Years 2014-15 through 2018-19.

Revenues Available for Lease Payments

The City will make Lease Payments on each Lease Payment Date from moneys held in the General Fund and Measure D amounts that are available for that purpose. For additional information on Measure D, see "– Sales and Use Taxes," below. The following table shows such revenues received by the City for the last three Fiscal Years for which audited financial statements are available.

TABLE 4
City of Carmel-by-the-Sea
Revenues by Revenue Source – General Fund and Measure D
Fiscal Years 2017-18 and 2018-19 (Audited)
and Fiscal Year 2019-20 (Estimated Actuals)

Category	2017-18		2018-19		2019-20	
	Revenues	% of Total	Revenues	% of Total	Revenues	% of Total
General Fund						
Property taxes	\$6,192,126	27.8%	\$6,524,331	27.2%	\$6,647,727	29.8%
Sales and use taxes	2,588,004	11.6	2,652,971	11.1	2,083,496	9.3
Transient occupancy taxes	6,329,074	28.4	6,882,015	28.7	6,477,220	29.0
Franchise fees	637,136	2.9	636,397	2.7	530,975	2.4
Motor vehicle-in-lieu	462,989	2.1	486,445	2.0	515,591	2.3
Business license tax	544,392	2.4	594,941	2.5	592,466	2.7
Other revenues ⁽¹⁾	<u>2,613,352</u>	<u>11.7</u>	<u>3,104,106</u>	<u>13.0</u>	<u>2,967,558</u>	<u>13.3</u>
Subtotal – General Fund	19,367,073	87.0%	20,881,206	87.1%	\$19,815,033	88.7%
Measure D	2,898,445	13.0%	3,079,914	12.9%	\$2,512,086	11.3%
Total	\$22,265,518	100.0%	\$23,961,120	100.0%	\$22,327,119	100.0%

(1) Other revenues include Intergovernmental, licenses and permits, charges for services and others. See Table 3 for detail.

Source: City of Carmel-by-the-Sea Finance Department.

Property Taxes

For Fiscal Year 2020-21, Property Taxes are projected to represent the largest source of revenues to the City's General Fund. Property taxes represent a very stable source of revenue to the City, and are based in large part on assessed valuations of property located in the City. For Fiscal Year 2018-19, property tax revenue totaled \$6.5 million, an increase of \$332,205

over the prior Fiscal Year due to new construction activity and price escalation in transfers of ownership.

General Method of Property Tax Calculations. Proposition 13, passed in 1978, established the current property tax regime for local agencies, including the City, throughout the State. Under Proposition 13, subject to voter-approved debt and certain other exceptions, the base property tax rate on a parcel is limited to 1% of its assessed value and the property tax collected by this 1% County-wide rate is shared by the local agencies eligible to receive property taxes within the applicable County pursuant to applicable State law. Under Proposition 13, the 1975-76 Fiscal Year serves as the original base year used in determining the assessment for real property. Thereafter, annual increases to the base year value are limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less. A new base year value, however, is also established whenever a property, or portion thereof, has had a change in ownership or has been newly constructed. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Article XIII A of the State Constitution” for additional information.

Proposition 8, enacted in 1978, allows for a temporary reduction in assessed value when a property suffers a “decline-in-value.” As of the January 1st (lien date) each year, the Assessor must enroll either a property’s Proposition 13 value (adjusted annually for inflation by no more than 2%) or its current market value, whichever is less. When the current market value replaces the higher Proposition 13 value, the lower value is commonly referred to as a “Proposition 8 Value.” “Proposition 8 values” are temporary and, once enrolled, must be reviewed annually by the assessor until the Proposition 13 adjusted base year value is enrolled.

The California Tax on Commercial and Industrial Properties for Education and Local Government Funding Initiative has qualified to appear on the ballot in California as an initiated Constitutional amendment on November 3, 2020. The ballot initiative would amend the State Constitution to require commercial and industrial properties, except those zoned as commercial agriculture, to be taxed based on their market value. The proposal to assess taxes on commercial and industrial properties at market value, while continuing to assess taxes on residential properties based on purchase price as described above, is known as “split roll.” See “BOND OWNERS’ RISKS – Possible Future Initiatives.” At this time, the City is unable to determine the likelihood of passage of the measure or the impact on the City’s property tax receipts from passage.

Levy and Collection of Property Taxes. Property taxes are levied for each Fiscal Year on taxable real and personal property as of the preceding January 1. For assessment and collection purposes, property is classified either as “secured” or “unsecured” and is listed accordingly on separate parts of the assessment roll. The “secured roll” is that part of the assessment roll containing State-assessed public utilities property and real property the taxes on which have a viable tax lien, in the opinion of the County Assessor, to secure payment of the taxes. Other property is assessed on the “unsecured roll.”

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of each Fiscal Year, and become delinquent on December 10 and April 10, respectively. A penalty of 10% attaches immediately to all delinquent payments. Property on the secured roll with respect to which taxes are delinquent become tax defaulted on or about June 30 of the Fiscal Year. Such property may thereafter be redeemed by payment of a penalty of 1% per month to the time of redemption, plus costs and a redemption fee. If taxes are unpaid for

a period of five years or more, the property is deeded to the State and may be sold at public auction.

Property taxes on the unsecured roll are due as of the January 1 lien dates and become delinquent on August 31. A 10% penalty attaches to delinquent unsecured taxes. If unsecured taxes are unpaid at 5:00 p.m. on October 31, an additional penalty of 1% attaches to them on the first day of each month until paid. The County has four ways of collecting delinquent unsecured personal property taxes: (1) a civil action against the taxpayer; (2) filing a judgment in the office of the County Clerk specifying certain facts in order to obtain a lien on certain property of the taxpayer; (3) filing a certificate of delinquency for record in the County Recorder's office in order to obtain a lien on certain property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee.

Beginning in Fiscal Year 1978-79, Proposition 13 and its implementing legislation shifted the function of property tax allocation to the counties, except for levies to support prior voted debt, and prescribed how levies on county-wide property values are to be shared with local taxing entities within each county.

Property Tax Delinquencies; Teeter Plan. Certain counties in the State of California, including Monterey, offer a statutory program entitled Alternate Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the "**Teeter Plan**"). Under the Teeter Plan local taxing entities receive 100% of their tax levies net of delinquencies, but do not receive interest or penalties on delinquent taxes collected by the county. The County includes the City's property tax collections in its Teeter Plan. Consequently, the City's receipt of property taxes is equal to 100% of the amount levied. There is no assurance that the County will continue the Teeter Plan or that the City will continue to participate in the Teeter Plan. Delinquencies in the payment of property taxes could have an adverse effect on the ability of the City to make Lease Payments should the County discontinue the Teeter Plan or the City withdraw from or not be able to continue in the Teeter Plan.

Historical Assessed Valuations. The table below presents the assessed valuation of taxable property in the City from Fiscal Year 2010-11 through Fiscal Year 2019-20.

TABLE 5
City of Carmel-by-the-Sea
Assessed Value of Taxable Property
Fiscal Years 2010-11 through 2019-20

<u>Fiscal Year</u>	<u>Local Secured</u>	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>
2010-11	\$2,885,547,810	\$0	\$34,821,846	\$2,920,369,656
2011-12	2,908,891,597	0	30,254,516	2,939,146,113
2012-13	3,001,630,584	0	28,759,821	3,030,390,405
2013-14	3,153,416,179	0	27,307,767	3,180,723,946
2014-15	3,309,856,089	0	26,813,656	3,336,669,745
2015-16	3,569,065,524	0	26,719,717	3,595,785,241
2016-17	3,766,258,441	0	26,280,598	3,792,539,039
2017-18	3,999,182,757	0	25,708,168	4,024,890,925
2018-19	4,220,683,852	0	26,668,954	4,247,352,806
2019-20	4,446,041,301	0	28,251,679	4,474,292,980

Source: California Municipal Statistics, Inc.

Assessed Valuations and Parcels by Land Use. The following table shows assessed valuations and parcels by land use for Fiscal Year 2019-20. As shown in the table, more than 90% of the parcels in the City, representing approximately 86% of the assessed valuation in the City, has residential uses.

Table 6
City of Carmel-by-the-Sea
Assessed Valuation and Parcels by Land Use
Fiscal Year 2019-20

	2019-20 Assessed Valuation⁽¹⁾	% of Total	No. of Parcels	% of Total
<u>Non-Residential:</u>				
Commercial/Hotel	\$603,240,029	13.57%	248	7.58%
Vacant Commercial	2,881,411	0.06	3	0.09
Government/Social/Institutional	8,777,824	0.20	71	2.17
Subtotal Non-Residential	\$614,899,264	13.83%	322	9.84%
<u>Residential:</u>				
Single Family Residence	\$3,685,011,695	82.88%	2,723	83.20%
Condominium/Townhouse	85,318,248	1.92	112	3.42
2-4 Residential Units	30,328,832	0.68	26	0.79
5+ Residential Units	9,426,370	0.21	11	0.34
Vacant Residential	21,056,892	0.47	79	2.41
Subtotal Residential	\$3,831,142,037	86.17%	2,951	90.16%
Total	\$4,446,041,301	100.00%	3,273	100.00%

(1) Local Secured Assessed Valuation; excluding tax-exempt property.

Source: California Municipal Statistics, Inc.

Per-Parcel 2019-20 Assessed Valuation of Single-Family Homes. The following table shows assessed valuations of single-family homes in the City for Fiscal Year 2019-20.

Table 7
City of Carmel-by-the-Sea
Per Parcel 2019-20 Assessed Valuation of Single-Family Homes

	No. of <u>Parcels</u>	2019-20 <u>Assessed Valuation</u>	Average <u>Assessed Valuation</u>	Median <u>Assessed Valuation</u>		
Single Family Residential	2,723	\$3,685,011,695	\$1,353,291	\$993,510		
2019-20	No. of	% of	Total	% of	Cumulative	
<u>Assessed Valuation</u>	<u>Parcels⁽¹⁾</u>	<u>Total</u>	<u>% of Total</u>	<u>Valuation</u>	<u>% of Total</u>	
\$0 - \$199,999	382	14.029%	14.029%	\$ 39,790,562	1.080%	1.080%
\$200,000 - \$399,999	247	9.071	23.100	74,261,268	2.015	3.095
\$400,000 - \$599,999	258	9.475	32.574	128,973,302	3.500	6.595
\$600,000 - \$799,999	239	8.777	41.351	167,217,015	4.538	11.133
\$800,000 - \$999,999	245	8.997	50.349	219,634,945	5.960	17.093
\$1,000,000 - \$1,199,999	221	8.116	58.465	242,532,555	6.582	23.675
\$1,200,000 - \$1,399,999	169	6.206	64.671	219,502,334	5.957	29.631
\$1,400,000 - \$1,599,999	150	5.509	70.180	223,520,516	6.066	35.697
\$1,600,000 - \$1,799,999	120	4.407	74.587	203,976,639	5.535	41.232
\$1,800,000 - \$1,999,999	103	3.783	78.369	195,368,014	5.302	46.534
\$2,000,000 - \$2,199,999	117	4.297	82.666	244,356,390	6.631	53.165
\$2,200,000 - \$2,399,999	88	3.232	85.898	202,712,794	5.501	58.666
\$2,400,000 - \$2,599,999	62	2.277	88.175	154,567,684	4.194	62.860
\$2,600,000 - \$2,799,999	42	1.542	89.717	113,184,570	3.071	65.932
\$2,800,000 - \$2,999,999	36	1.322	91.039	104,219,411	2.828	68.760
\$3,000,000 - \$3,199,999	29	1.065	92.104	89,661,098	2.433	71.193
\$3,200,000 - \$3,399,999	25	0.918	93.022	82,477,536	2.238	73.431
\$3,400,000 - \$3,599,999	20	0.734	93.757	69,995,682	1.899	75.331
\$3,600,000 - \$3,799,999	24	0.881	94.638	88,570,326	2.404	77.734
\$3,800,000 - \$3,999,999	23	0.845	95.483	89,532,371	2.430	80.164
\$4,000,000 and greater	123	4.517	100.000	730,956,683	19.836	100.000
	2,723	100.000%		\$3,685,011,695	100.000%	

(1) Improved single family residential parcels. Excludes condominiums and parcels with multiple family units.
Source: California Municipal Statistics, Inc.

Principal Property Taxpayers. The top twenty largest local secured property taxpayers in the City, as shown on the 2019-20 secured tax roll, are listed in the table below. For Fiscal Year 2019-20, the total assessed valuation of the twenty largest local secured taxpayers is 7.77% of the total City Fiscal Year 2019-20 local secured assessed valuation of \$4,446,041,301.

TABLE 8
City of Carmel-by-the-Sea
Principal Property Taxpayers
Fiscal Year 2019-20

Property Owner	Primary Land Use	2019-20 Assessed Valuation	% of Total⁽¹⁾
1. OWRF Carmel LLC	Shopping Center	\$58,438,612	1.31%
2. Jeffrey C. Hines	Residential	28,968,990	0.65
3. Andrew M. Paul	Residential	27,429,105	0.62
4. Esperanza Carmel LLC	Residential	21,946,845	0.49
5. Richard V. and Margaret S. Gunner, Trustees	Hotel/Motel	21,291,914	0.48
6. La Playa Carmel Hotel LLC	Hotel/Motel	17,821,718	0.40
7. Alan R. Porter	Commercial	14,091,525	0.32
8. Paul DeBruce, Trust	Residential	13,736,738	0.31
9. Goold Properties II LLC	Commercial	13,582,737	0.31
10. CVI Investors LLC	Hotel/Motel	13,076,279	0.29
11. Levett Family Properties LLC	Commercial	12,887,044	0.29
12. Carla Morrison	Residential	12,704,320	0.29
13. Moore Family Trust	Residential	12,583,122	0.28
14. Sentimental Journey LLC	Hotel/Motel	12,394,594	0.28
15. Dennis A. Levett, Trust	Hotel/Motel	11,409,857	0.26
16. Cats Meow LLC	Residential	11,354,925	0.26
17. Guy Leslie Tribble and Susan Kelly Barnes	Residential	10,951,119	0.25
18. Susan R. Prest, Trust	Residential	10,572,899	0.24
19. Larry T. and Deirdre C. Solari, Trustees	Residential	10,277,707	0.23
20. 128 S Canon LLC	Commercial	10,044,960	0.23
		<u>\$345,565,010</u>	<u>7.77%</u>

(1) Fiscal year 2019-20 local secured assessed valuation: \$4,446,041,301.

Source: California Municipal Statistics, Inc.

Sales and Use Taxes; Measure D/Measure C

General. For Fiscal Year 2020-21, Sales and use taxes are projected to represent the second largest source of revenues to the City's General Fund. Sales and uses taxes are a less stable sources of revenues to the City, given that they are based on consumer spending within the City which is impacted by a variety of factors including the overall economy and other factors. For example, the COVID-19 pandemic has, and is expected to continue to, materially adversely impact sales and use taxes collected by the City.

Sales tax revenues totaled \$5.7 million in Fiscal Year 2018-19, an increase of approximately \$246,436 over the prior Fiscal Year due to an increase in consumer spending. Sales tax revenues are projected to be \$4.6 million in Fiscal Year 2019-20, a decrease of 54.3% (or \$3.1 million) compared to Fiscal Year 2018-19 due to downward business level adjustment from recent actuals trends as a result of COVID-19. See "BOND OWNERS' RISKS – Dependence on Tourism; COVID-19 Pandemic."

Sales Tax Rate in the City. Taxable transactions in the City for Fiscal Year 2019-20 are subject to the following sales and use tax, consisting of certain State-wide sales tax rates and locally-approved sales tax rates. For additional information on Measure D (approved by the voters of the City in 2012) and Measure C (approved by the voters of the City in 2020), see “–Measure D/Measure C,” below.

TABLE 9
City of Carmel-by-the-Sea
Sales Tax Rate
Effective July 1, 2020

Statewide Rate	7.250%
Monterey-Salinas MST Special Transit District (MSTD)	0.125
Monterey Transportation Safety Transactions and Use Tax (MTSF)	0.375
City of Carmel-by-the-Sea 2020 Transactions and Use Tax (CARC) ⁽¹⁾	<u>1.500</u>
Total	9.250%

(1) Locally known as “Measure C,” which became effective July 1, 2020 for 20 years, and replaced “Measure D.” For additional details, see “–Measure D/Measure C,” below.

Source: City of Carmel-by-the-Sea Finance Department.

Bradley-Burns Uniform Local Sales and Use Tax. The City collects a percentage of taxable sales in the City (minus certain administrative costs) pursuant to the Bradley-Burns Uniform Local Sales and Use Tax (the “**Sales Tax Law**”). The State collects and administers the sales tax under the Sales Tax Law, and makes distributions on taxes collected within the City, a portion of which goes to the City.

Sales and use taxes are complementary taxes; when one applies, the other does not. In general, the statewide sales tax applies to gross receipts of retailers from the sale of tangible personal property in the State. The use tax is imposed on the purchase, for storage, use or other consumption in the State of tangible personal property from any retailer. The use tax generally applies to purchases of personal property from a retailer outside the State where the use will occur within the State. The sales tax is imposed upon the same transactions and items as the statewide sales tax and the statewide use tax.

Certain transactions are exempt from the State sales tax, including sales of the following products:

- food products for home consumption;
- prescription medicine;
- newspapers and periodicals;
- edible livestock and their feed;
- seed and fertilizer used in raising food for human consumption; and
- gas, electricity and water when delivered to consumers through mains, lines and pipes.

This is not an exhaustive list of exempt transactions. A comprehensive list can be found in the State Board of Equalization’s Publication No. 61 (February 2017) entitled “Sales and Use Taxes: Exemptions and Exclusions,” which can be found on the State Board of Equalization’s website at <http://www.boe.ca.gov/>. *The reference to this Internet website is provided for reference and convenience only. The information contained within the website may not be*

current, has not been reviewed by the City and is not incorporated in this Official Statement by reference.

Sales Tax Collection Procedures. Collection of the sales and use tax is administered by the California Department of Tax and Fee Administration (the “**CDTFA**”). This process was formerly administered by the State Board of Equalization. The Taxpayer Transparency and Fairness Act of 2017, which took effect July 1, 2017, restructured the State Board of Equalization and separated its functions among three separate entities: the State Board of Equalization, the CDTFA and the Office of Tax Appeals. The State Board of Equalization will continue to perform the duties assigned to it by the State Constitution, while all other duties will be transferred to the newly established CDTFA and the Office of Tax Appeals. CDTFA will handle most of the taxes and fees previously collected by the State Board of Equalization, including sales and use tax.

Under the Sales and Use Tax Law, all sales and use taxes collected by the CDTFA under a contract with any city, city and county, or county are required to be transmitted by the CDTFA to such city, city and county, or county periodically as promptly as feasible. These transmittals are required to be made at least twice in each calendar quarter.

Under its procedures, the CDTFA projects receipts of the sales and use tax on a quarterly basis and remits an advance of the receipts of the sales and use tax to the City on a monthly basis. The amount of each monthly advance is based upon the CDTFA’s quarterly projection. During the last month of each quarter, the CDTFA adjusts the amount remitted to reflect the actual receipts of the sales and use tax for the previous quarter.

The CDTFA receives an administrative fee based on the cost of services provided by the Board to the City in administering the City’s sales tax, which is deducted from revenue generated by the sales and use tax before it is distributed to the City.

As part of the State government’s response to the COVID-19 pandemic, certain businesses were able to defer the payment of their sales taxes due to the City.

Measure D/Measure C. Measure D was a 1% sales and use tax approved by the voters in 2012, with a sunset date of March 2023. Measure D was replaced by the voters on March 3, 2020 with a 1.5% sales and use tax known as Measure C that became effective on July 1, 2020 for 20 years. The revenues collected by the City under Measure D and Measure C were, and will continue to be, accounted for in a special revenue fund separate from the General Fund. However, amounts collected under Measure D/Measure C are available for debt service, capital projects and general City services, including debt service on the Bonds.

For the past five Fiscal Years for which audited financial statements are available, Measure D revenues were as follows:

TABLE 10
City of Carmel-by-the-Sea
Measure D Revenues
Fiscal Years 2014-15 to 2018-19 (Audited)

	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>
Measure D	\$2,718,256	\$2,889,380	\$2,745,154	\$2,898,445	\$3,079,914

Source: City of Carmel-by-the-Sea audited financial statements for Fiscal Years 2014-15 through 2018-19.

Historic Taxable Transactions. The following table shows historical taxable transactions in the City for the most recent four years available.

TABLE 11
City of Carmel-by-the-Sea
Taxable Transactions
Fiscal Years 2015 through 2018
(In Thousands)

	2015	2016	2017	2018 ⁽¹⁾
Motor Vehicle and Parts Dealers	\$ --	\$ --	\$ --	\$ --
Home Furnishings and Appliances	9,467	7,879	9,306	8,560
Building Materials	--	--	--	--
Food and beverage stores	5,252	5,323	7,213	6,382
Gasoline stations	--	--	--	--
Apparel stores	63,755	64,717	65,469	68,044
General merchandise stores	2,573	2,872	2,760	2,659
Food services and drinking places	78,251	82,356	86,872	89,705
Other retail stores	34,421	31,681	36,861	40,317
All other outlets	15,543	13,241	13,787	12,961
Total All Outlets	\$209,278	\$208,069	\$222,268	\$228,628

(1) Most current information available.

Source: California Department of Tax and Fee Administration.

Transient Occupancy Taxes

Transient Occupancy Taxes (“TOT”) have historically been the largest source of General Fund revenues to the City. However, as a result of the COVID-19 pandemic, TOT receipts were significantly lower than anticipated in Fiscal Year 2019-20 and are anticipated to continue to be lower than historical averages for Fiscal Year 2020-21.

The TOT is often referred to as a “hotel tax”. The City’s TOT is 10% of the rent charged by an operator imposed on persons staying 30 days or less in a hotel or similar lodging. There are currently 46 lodging establishments (hotels/inns/motels) and 20 short-term rentals within the commercial district that collect this tax on behalf of the City.

The Fiscal Year 2019-20 adopted budget assumed an amount of \$6,842,900, which would have been an increase of 3% over the Fiscal Year 2018-19 estimated actual figures for transient occupancy tax revenues; however, estimated actuals for Fiscal Year 2019-20 show a substantial decline compared to Fiscal Year 2018-19 receipts. The timing of COVID-19 coincided with the spring and early summer season for the City’s hotel establishments. As such, the Fiscal Year 2019-20 estimated actual figure of \$4.5 million is based on little to no revenue received from March to June. This represents a loss of \$2.3 million in budgeted revenue, or a decrease of 34% compared to the Fiscal Year 2019-20 adopted budget. The Fiscal Year 2020-21 budget of \$2.5 million reflects a continued decline in revenue, representing a loss of \$2.0 million, or 45% over the Fiscal Year 2019-20 estimated actual. It is \$4.4 million, or 64%, less than the Fiscal Year 2019-20 adopted budget based on conservative assumptions regarding travel and hotel revenues.

Other Sources of Revenues

Other Taxes. Other taxes include real estate transfer taxes and business license taxes. Like the TOT, these taxes have been materially adversely impacted by the slowdown in travel caused by the COVID-19 pandemic and related shelter-in-place orders. As residential units are being developed and occupied, it is anticipated that the City will collect more real estate transfer tax; at the same time, the COVID-19 pandemic may have a material adverse impact on the number of real estate transactions.

Franchise Fees. Franchise fees are a regulatory fee charged to utility companies for the privilege of doing business in the City (i.e., garbage franchise fee, gas and electric franchise fee).

License and Permits. Licenses and permits consist of building permits and fire permits which are primarily construction related. Because they follow the development economic cycle, they are highly volatile in times of economic change. It is projected that these revenues will continue to increase in the next five years due to continued interest in residential developments in the Transit Area; however, as noted elsewhere, the COVID-19 pandemic may have a material adverse impact on the extent and pace of this projected development.

Charges for Services. Charges for services are fees collected from a specific user of a City service, such as administering business licenses; issuing planning, building tree removal and special event permits; and ambulance transports. These are considered personal choice services as the user has a choice on whether to use the service or not. In accordance with State law, the City is legally allowed to charge a fee to the user to recover the City's cost of providing the service.

Operating Transfers In. Operating transfers in are mainly reimbursements from other funds for the staff support and administrative services provided by the general fund. These costs are determined through a methodological allocation process (known as the “**Cost Allocation Plan**”, or “**CAP**”). Net transfers into the general fund increase in conjunction with operating expenditure increases, an average of 3% annually.

Long-Term Obligations

In addition to the 2010 Bonds, which will be refunded in full by the Bonds, the City has certain other long-term obligations payable from the General Fund. These include the obligations of the City payable for the pension plans provided by the City (see “– Pension Plans,” below), as well as certain other obligations. These are summarized in the table on the following page. Additional details are set forth in Note 6 to the City's audited financial statements for the Fiscal Year ending June 30, 2019, included as APPENDIX A.

TABLE 12
City of Carmel-by-the-Sea
Long-Term Obligations of the General Fund
As of June 30, 2020 (Unaudited)

<u>Investment Type</u>	<u>Principal Outstanding</u>	<u>Final Maturity</u>
2010 Lease Revenue Bonds ⁽¹⁾	\$4,890,000	November 1, 2031
2012 Pension Obligation Bonds	1,980,000	June 1, 2023
Countywide Radio Project ⁽²⁾	186,636	June 30, 2037
Compensated Absences	581,521	N/A
Net Pension Liability ⁽²⁾	19,920,568	N/A
Net OPEB Liability ⁽²⁾	3,650,439	N/A
Total	\$31,209,164	

(1) 2010 Lease Revenue Bonds will be refunded, in full, by the Bonds.

(2) Countywide Radio Project principal outstanding as of June 30, 2019. Reconciliation with County for FY2019-20 not yet completed. Net Pension Liability and Net OPEB Liability amounts in progress for Fiscal Year 2019-20 and may change.

Source: City of Carmel-by-the-Sea Finance Department.

Investment Policy and Portfolio

The City's investment portfolio is managed in accordance with applicable law and the City's investment policies. For additional information concerning City investments, see the City's audited financial statements for the Fiscal Year ended June 30, 2019 attached hereto as part of APPENDIX A.

The following table summarizes the City's investment portfolio as of June 30, 2020.

TABLE 13
City of Carmel-by-the-Sea
Summary of Investment Portfolio
as of June 30, 2020 (Unaudited)

<u>Investment Type</u>	<u>% of Investment Portfolio</u>	<u>Market Value</u>
LAIF	64.7%	\$4,136,761
Money Market Funds	17.5	1,119,162
Negotiable CDs	17.8	1,135,182
Total	100.0%	\$6,391,105

Source: City of Carmel-by-the-Sea Finance Department.

Employee Relations

The City's relations with its employees are generally considered good, and the City has not experienced a work stoppage or similar event in the past 5 years. The City's employees are part of four different bargaining groups, as shown in the following table.

TABLE 14
City of Carmel-by-the-Sea
Status of Employee Bargaining Unit Contracts
as of June 30, 2020

<u>Bargaining Unit</u>	<u>MOU Expiration Date</u>
General Employees Unit ⁽¹⁾	June 30, 2022
Management Employees Unit ⁽¹⁾	June 30, 2022
Police Officers Association	June 30, 2022
Carmel Fire Ambulance Association	June 30, 2022

(1) General Employees Unit and Management Employees Unit are affiliated units of the Laborers' International Union of North America, United Public Employees of California, LIUNA/UPEC.

Source: City of Carmel-by-the-Sea.

Pension Plans

This caption contains certain information relating to California Public Employees' Retirement System ("CalPERS"). The information is primarily derived from information produced by CalPERS, its independent accountants and actuaries. The City has not independently verified the information provided by CalPERS and makes no representations and expresses no opinion as to the accuracy of the information provided by CalPERS.

The comprehensive annual financial reports of CalPERS are available on its Internet website at www.calpers.ca.gov. The CalPERS website also contains CalPERS' most recent actuarial valuation reports and other information concerning benefits and other matters. Such information is not incorporated by reference in this Official Statement. None of the Authority, City or Underwriter can guarantee the accuracy of such information. Actuarial assessments are "forward-looking" statements that reflect the judgment of the fiduciaries of the pension plans, and are based upon a variety of assumptions, one or more of which may not materialize or may be changed in the future. Actuarial assessments will change with the future experience of the pension plans.

Overview of City's Pension Plans and Funded Status. The City has two pension plans with CalPERS – the Safety Plan for its sworn employees and the Miscellaneous Plan for all others. Over the past decade, like many public agencies in the State, the City has seen that the cost of the City's pension benefits has risen dramatically. The primary reasons for the cost increases are investment losses caused by the last recession, demographic changes, and CalPERS policy changes. Certain CalPERS policy charges are described below.

Implementation of GASB Nos. 68 and 71. In June 2012 and November 2013, the Governmental Accounting Standards Board issued GASB Statement No. 68, *Accounting and Financial Reporting for Pensions—an amendment of GASB Statement No. 27* ("**GASB Statement No. 68**") and GASB No. 71, *Pension Transition for Contributions Made Subsequent to the Measurement Date – An Amendment of GASB Statement No. 68* ("**GASB Statement No. 71**"), respectively. The primary objective of GASB Statement No. 68, as amended, is to improve accounting and financial reporting by state and local governments for pensions and improve information provided by state and local governmental employers about financial support for pensions that is provided by other entities.

GASB Statement No. 68, as amended, revised the accounting treatment of defined benefit pension plans, changing the way expenses and liabilities are calculated and how state and local government employers report those expenses and liabilities in their financial statements. Major changes include: (i) the inclusion of unfunded pension liabilities on the government's balance sheet (previously, such unfunded liabilities were typically included as notes to the government's financial statements); (ii) pension expense incorporates more rapid recognition of actuarial experience and investment returns and is no longer based on the employer's actual contribution amounts; (iii) lower actuarial discount rates that are required to be used for underfunded plans in certain cases for purposes of the financial statements; (iv) closed amortization periods for unfunded liabilities that are required to be used for certain purposes of the financial statements; and (v) the difference between expected and actual investment returns to will be recognized over a closed five-year smoothing period. The reporting requirements took effect in Fiscal Year 2014-15. Based on the adoption of the new accounting standards, beginning with the Fiscal Year 2014-15 actuarial valuation, the annual required contribution and the annual pension expense will be different. GASB Statement No. 68, as amended, changes the reporting and disclosure requirements for financial statement accounting purposes, but it does not change the City's pension plan funding obligations and, therefore, had no effect on the City's General Fund.

Plan Description. All qualified permanent and probationary employees are eligible to participate in the City's Miscellaneous and Safety Employee Pension Plans (the "**Plans**"), which are cost-sharing multiple employer defined benefit pension plans administered by CalPERS. Benefit provisions under the Plans are established by State statute and City resolution. CalPERS issues publicly available reports that include a full description of the pension plans regarding benefit provisions, assumptions and membership information that can be found on the CalPERS website.

Benefits Provided. CalPERS provides service retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. Benefits are based on years of credited service, equal to one year of full-time employment. The cost of living adjustments for the Plans are applied as specified by the Public Employees' Retirement Law.

The provisions and benefits of each Plan that were in effect at June 30, 2019, are summarized as follows:

	<u>Miscellaneous Plan</u>		
	Classic Tier I	Classic Tier II	PEPRA
Hire Date	<4/15/2012	>=4/15/2012	>=1/1/2013
Benefit Formula	2% @ 55	2% @ 60	2% @ 62
Benefit Vesting Schedule	5 Years	5 Years	5 Years
Benefit Payments	Monthly for Life	Monthly for Life	Monthly for Life
Retirement Age	55	60	62
Monthly Benefits, As a % of Eligible Compensation	2.0% to 2.5%	2.00%	2.00%
Required Employee Contribution Rates	6.902%	6.912%	6.250%
Required Employer Contributions Rates	9.409%	7.634%	6.842%
Contractual employee contribution rates	9.902%	9.912%	9.250%
Contractual employer contribution rates	6.409%	4.634%	3.842%

Safety Plan

	Classic Tier I	Classic Tier II	PEPRA
Hire Date	<4/15/2012	>=4/15/2012	>=1/1/2013
Benefit Formula	2% @ 55	2% @ 60	2% @ 62
Benefit Vesting Schedule	5 Years	5 Years	5 Years
Benefit Payments	Monthly for Life	Monthly for Life	Monthly for Life
Retirement Age	50	50	57
Monthly Benefits, As a % of Eligible Compensation	2.00%	2.00%	2.00%
Required Employee Contribution Rates	8.989%	8.936%	12.000%
Required Employer Contributions Rates	20.556%	15.719%	12.141%
Contractual employee contribution rates	11.989%	11.936%	15.000%
Contractual employer contribution rates	17.556%	12.719%	9.141%

Source: Carmel-by-the-Sea Comprehensive Annual Financial Report for the Fiscal Year ended June 30, 2019.

Beginning in Fiscal Year 2015-16, CalPERS collects employer contributions for the Plan as a percentage of payroll for the normal cost portion as noted in the rates above and as a dollar amount for contributions toward the unfunded liability ("UAL"). The dollar amounts are billed on a monthly basis or the City can elect a lump sum payment option.

Employees Covered. At June 30, 2019, the following employees were covered by the benefit terms for the Plans.

<u>Employees</u>	<u>Miscellaneous</u>	<u>Safety</u>
Active	53	19
Transferred	17	19
Separated	33	11
Retired	<u>104</u>	<u>51</u>
Total	207	100

Source: Carmel-by-the-Sea Comprehensive Annual Financial Report for the Fiscal Year ended June 30, 2019.

Contributions. Section 20814(c) of the California Public Employees' Retirement Law requires that the employer contribution rates for all public employers be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. Funding contributions for both Plans are determined annually on an actuarial basis as of June 30 by CalPERS. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. The City is required to contribute the difference between the actuarially determined rate and the contribution rate of employees.

For Fiscal Year 2018-19, the City made the following contributions to the Plans:

	<u>City Contributions</u>
Miscellaneous	\$741,167
Safety	825,152
Total	1,566,319

Source: Carmel-by-the-Sea Comprehensive Annual Financial Report for the Fiscal Year ended June 30, 2019.

Net Pension Liability. The City's net pension liability for the Plans is measured as the proportionate share of the net pension liability. The net pension liability of the Plans are measured as of June 30, 2018, and the total pension liability for the Plans used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2017 rolled forward to June 30, 2018 using standard update procedures. The City's proportion of the net pension liability was based on a projection of the City's long-term share of contributions to the pension plans relative to the projected contributions of all participating employers, actuarially determined.

As of June 30, 2019, the City reported net pension liabilities for its proportionate shares of the net pension liability as follows:

	Proportionate Share of Net Pension Liability/(Asset)
Miscellaneous	\$10,060,596
Safety	9,859,972
Total	19,920,568

Source: Carmel-by-the-Sea Comprehensive Annual Financial Report for the Fiscal Year ended June 30, 2019.

Changes in Net Pension Liability are subject to various assumption and are sensitive to changes in the discount rate for the Miscellaneous Plan and the Safety Plan, among other things. For additional details on the Miscellaneous Plan and the Safety Plan and related matters, see Note 8 to the City's audited financial statements for the Fiscal Year ending June 30, 2019, attached hereto as Appendix A.

Recent Actions Taken by CalPERS. At its April 17, 2013, meeting, CalPERS' Board of Administration (the "**Board of Administration**") approved a recommendation to change the CalPERS amortization and smoothing policies. Prior to this change, CalPERS employed an amortization and smoothing policy that spread investment returns over a 15-year period with experience gains and losses paid for over a rolling 30-year period. As a result, CalPERS now employs an amortization and smoothing policy that will pay for all gains and losses over a 30-year period with a five-year ramp-up, and five-year ramp-down, period. The new amortization and smoothing policy was used for the first time in the June 30, 2013 actuarial valuations in setting employer contribution rates for Fiscal Year 2015-16. On February 13, 2018, the Board of Administration voted to shorten the period over which CalPERS will amortize actuarial gains and losses from 30 years to 20 years for new pension liabilities, effective for the June 30, 2019 actuarial valuations. Amortization payments for all unfunded accrued liability bases will be computed to remain a level dollar amount throughout the amortization period, and certain 5-year ramp-up and ramp-down periods will be eliminated.

On February 18, 2014, the Board of Administration approved new demographic actuarial assumptions based on a 2013 study of recent experience. The largest impact, applying to all benefit groups, is a new 20-year mortality projection reflecting longer life expectancies and that longevity will continue to increase. Because retirement benefits will be paid out for more years, the cost of those benefits will increase as a result. The Board of Administration also assumed earlier retirements for Police 3%@50, Fire 3%@55, and Miscellaneous 2.7%@55 and 3%@60, which will increase costs for those groups. As a result of these changes, rates increased beginning in Fiscal Year 2016-17 (based on the June 30, 2014 valuation) with full impact in Fiscal Year 2020-21.

On November 18, 2015, the Board of Administration adopted a funding risk mitigation policy intended to incrementally lower its discount rate – its assumed rate of investment return – in years of good investment returns, help pay down the pension fund's unfunded liability, and provide greater predictability and less volatility in contribution rates for employers. The policy establishes a mechanism to reduce the discount rate by a minimum of 0.05 percentage points to a maximum of 0.25 percentage points in years when investment returns outperform the existing discount rate, currently 7.375%, by at least four percentage points. CalPERS staff modeling anticipates the policy will result in a lowering of the discount rate to 6.5% in about 21 years, improve funding levels gradually over time and cut risk in the pension system by lowering the volatility of investment returns. More information about the funding risk mitigation policy can be accessed through CalPERS' web site at the following website address: <https://www.calpers.ca.gov/page/newsroom/calpers-news/2015/adopts-funding-risk-mitigation-policy>. This policy is in suspense until the discount rate is fully reduced to 7.000% as described below. *The reference to this Internet website is provided for reference and convenience only. The information contained within the website may not be current, has not been reviewed by the City and is not incorporated in this Official Statement by reference.*

On December 21, 2016, the Board of Administration voted to lower its discount rate from 7.5% to 7.0% over a three-year period. For public agencies like the City, the discount rate of 7.000% became effective on July 1, 2019. Lowering the discount rate means employers that contract with CalPERS to administer their pension plans will see increases in their normal costs and unfunded actuarial liabilities.

Other Post-Employment Benefits (OPEB). The City Healthcare Plan (the “**Plan**”) is a single-employer defined benefit healthcare plan administered by the City. The Plan provides access to lifetime healthcare benefits to eligible retirees and their dependents. The City provides retiree medical benefits through the California Public Employees' Retirement System healthcare program (PEMHCA). For eligible retirees, the City contributes not less than 5% of the active contribution times years in PEMHCA (max \$100/month increase). For purposes of its contract with PEMHCA, the City uses a statutory schedule to determine its monthly contribution on behalf of each active employee. The statutory amount is \$133.00 for 2018 and will be indexed by the Medical CPI each year thereafter.

The City offers the same medical plans to its retirees and surviving spouses as to its active employees, with the exception that once a retiree become eligible for Medicare, he or she must join a Medicare HMO or a Medicare Supplement plan, with Medicare becoming the primary payer. Employees become eligible to retire and receive City-paid healthcare benefits upon attainment of age 50 and 5 years of service (age 52 for Miscellaneous PEPPRA employees). The City contribution towards retiree health benefits is determined under the “equal contribution method” under PEMHCA, whereby the contribution is 100% of the City's statutory contribution for active employees (\$133/month for 2018 and scheduled to be indexed by medical inflation for years after 2018). No stand-alone financial are issued for this plan as it is not a trusted plan.

The City makes contributions based on a pay-as-you-go basis as approved by the authority of the City's board. Total benefit payments included in the measurement period were \$159,107. The actuarially determined contribution for the measurement period was \$476,574. The City's contributions and benefit payments were 2.49% of payroll during the measurement period June 30, 2019 (reporting period June 30, 2019). Employees are not required to contribute to the plan. There have been no assets accumulated in a trust to provide for the benefits of this plan.

To set aside amounts to address its OPEB liabilities, the City has established an OPEB Liability Reserve Fund. There is no minimum requirement for this fund. There is currently \$1.8 million in the fund and no planned activity in the budget for Fiscal Year 2020-21.

See Note 9 to the City's audited financial statements for the Fiscal Year Ended June 30, 2019, included in Appendix A hereto, for additional details regarding the City's pension and other employee benefits, including as relates to OPEB.

Potential Establishment of Section 115 Trust and Other Options to Address Pension Obligations. In 2019, the City Council authorized City staff to move forward with gathering additional information regarding establishing a Section 115 Retirement Trust to address some of its unfunded future pension obligations. In February 2019, City staff released a request for proposals for ongoing trust administration duties. Due to various factors, the City has not yet established a Section 115 Retirement Trust and continues to evaluate that option, along with various other options, to address its unfunded future pension obligations.

Risk Management

The City is a member of CSAC-EIA (California State Association of Counties Excess Insurance Authority) which is a shared risk pool. CSAC-EIA covers claims for the City for both Workers Compensation and General Liability. The City's Liability SIR is pre-funded through CSAC-EIA for 8 quarters of payments made on behalf of City. Currently, the SIR fund for the City with CSAC-EIA is maintained at \$8,183. If the pre-funded SIR balance drops below this amount, the City is billed by CSAC-EIA to replenish the fund to the \$8,183 level. The City does not make claim payments, they are all issued by the City's third-party administrator from the CSA-EIA account.

The City has two layers of Liability coverage through CSAC-EIA and under the first layer, the Primary General Liability layer, there is an SIR (Self-Insured Retention) of \$10,000 per claim. Thereafter, the next layer of coverage kicks in (General Liability 1 program) which carries an SIR of \$100,000, which is satisfied by exhausting the coverage limit of \$100,000 under the Primary Liability program. The maximum limit of coverage under the primary General Liability 1 program is \$25 million. The City retains the risk of loss above \$25 million.

For Workers Compensation, the City is a member of both the CSAC-EIA Primary Workers Compensation program and then, the CSAC-EIA Excess Workers Compensation program. The Primary Workers compensation program provides dollar 1 coverage to the City for Workers Compensation claims. In other words, City has no deductible or SIR. This layer of Workers Compensation coverage carries a maximum limit of \$125,000 per occurrence. Thereafter, CSAC-EIA's excess coverage steps in and the SIR is \$125,000 which again, is satisfied by exhausting the limits of coverage under the Primary Workers Compensation program. The upper limit of coverage under the Excess Workers Compensation program is "statutory". What this means is that regardless of the total cost of the claim, it is covered under the CSAC-EIA Excess Workers Compensation program. There is absolutely no monetary exposure to the City under these two Workers Compensation programs except for the premium costs to purchase this coverage. The City has had no settlements which exceeded insurance coverage in the last three Fiscal Years and no significant changes or reductions in insurance coverage during the current year.

Direct and Overlapping Debt

Set forth on the following page is a direct and overlapping debt report for the City (the “**Debt Report**”) prepared by California Municipal Statistics, Inc. and dated as of August 1, 2020.

The Debt Report is included for general information purposes only. The City has not reviewed the Debt Report for completeness or accuracy and makes no representations in connection therewith. The Debt Report generally includes long term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of the City in whole or in part. Such long-term obligations generally are not payable from revenues of the City (except as indicated) nor are they necessarily obligations secured by land within the City. In many cases long-term obligations issued by a public agency are payable from the general fund or other revenues of such public agency. The total 2019-20 assessed valuation of \$4,474,292,980 reflected in the Debt Report is provided by California Municipal Statistics, Inc. Neither the City, the Authority nor the Underwriter has verified this information.

TABLE 15
City of Carmel-by-the-Sea
Direct and Overlapping Debt Statement
As of August 1, 2020

2019-20 Assessed Valuation: \$4,474,292,980

<u>OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt</u>
Monterey Peninsula Community College District	11.567%	\$12,708,492
Carmel Unified School District	23.783	4,618,289
Monterey County Water Resources Authority Zone 2C	6.278	<u>1,326,541</u>
TOTAL OVERLAPPING TAX AND ASSESSMENT DEBT		\$18,653,322
<u>DIRECT AND OVERLAPPING GENERAL FUND DEBT:</u>		
Monterey County General Fund Obligations	6.278%	\$9,305,416
Monterey County Judgment Obligations	6.278	83,811
City of Carmel-by-the-Sea General Fund Obligations	100.000	4,890,000⁽¹⁾
City of Carmel-by-the-Sea Pension Obligation Bonds	100.000	<u>1,980,000</u>
TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT		\$16,259,227
Less: Monterey County supported obligations		<u>219,776</u>
TOTAL NET DIRECT AND OVERLAPPING GENERAL FUND DEBT		\$16,039,451
 GROSS COMBINED TOTAL DEBT		 \$34,912,549⁽²⁾
NET COMBINED TOTAL DEBT		\$34,692,773

Ratios to 2019-20 Assessed Valuation:

Combined Direct Debt (\$6,870,000)	0.15%
Total Overlapping Tax and Assessment Debt	0.42%
Gross Combined Total Debt	0.78%
Net Combined Total Debt	0.78%

(1) Excludes issue to be sold.

(2) Excludes tax and revenue anticipation notes, revenue, mortgage revenue and non-bonded capital lease obligations.

Source: California Municipal Statistics, Inc.

CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS

The constitutional and statutory provisions discussed in this section have the potential to affect the ability of the City to levy taxes and spend tax proceeds for operating and other purposes.

Article XIII A of the State Constitution

Section 1(a) of Article XIII A of the State Constitution limits the maximum ad valorem tax on real property to 1% of full cash value (as defined in Section 2 of Article XIII A), to be collected by counties and apportioned according to law. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to ad valorem taxes to pay interest or redemption charges on (1) indebtedness approved by the voters prior to June 1, 1978 or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after June 1, 1978, by two thirds of the votes cast by the voters voting on the Proposition. Section 2 of Article XIII A defines “full cash value” to mean “the county assessor’s valuation of real property as shown on the 1975–76 tax bill under ‘full cash value’ or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment.” The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year, or to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction or reduced in the event of declining property value caused by substantial damage, destruction or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that notwithstanding any other law, local agencies may not levy any ad valorem property tax except to pay debt service on indebtedness approved by the voters as described above.

The voters of the State subsequently approved various measures that further amended Article XIII A. One such amendment generally provides that the purchase or transfer of (i) real property between spouses or (ii) the principal residence and the first \$1,000,000 of the full cash value of other real property between parents and children, does not constitute a “purchase” or “change of ownership” triggering reassessment under Article XIII A. This amendment could serve to reduce the property-tax revenues of the City. Other amendments permitted the State Legislature to allow persons over 55 or “severely disabled homeowners” who sell their residences and buy or build another of equal or lesser value within two years in the same county, to transfer the old residence’s assessed value to the new residence.

In the November 1990 election, the voters approved the amendment of Article XIII A to permit the State Legislature to exclude from the definition of “newly constructed” the construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies constructed or installed in existing buildings after November 6, 1990.

Article XIII A has also been amended to permit reduction of the “full cash value” base in the event of declining property values caused by damage, destruction or other factors, provided that there would be no increase in the “full cash value” base in the event of reconstruction of property damaged or destroyed in a disaster.

Article XIII B of the State Constitution

Article XIII B of the State Constitution limits the annual appropriations of the State and of any city, county, school district, special district, authority or other political subdivision of the State to the appropriations limit for the prior Fiscal Year, as adjusted for changes in the cost of living, population and services for which the fiscal responsibility is shifted to or from the governmental entity. The “base year” for establishing this appropriations limit is the 1978–79 Fiscal Year. The appropriations limit may also be adjusted in emergency circumstances, subject to limitations.

Appropriations of an entity of local government subject to Article XIII B generally include authorizations to expend during a Fiscal Year the “proceeds of taxes” levied by or for the entity, exclusive of certain State subventions, refunds of taxes, and benefit payments from retirement, unemployment insurance and disability insurance funds. “Proceeds of taxes” include but are not limited to, all tax revenues, certain State subventions received by the local governmental entity and the proceeds to the local governmental entity from (1) regulatory licenses, user charges, and user fees (to the extent that such proceeds exceed the cost of providing the service or regulation) and (2) the investment of tax revenues. Article XIII B provides that if a governmental entity’s revenues in any year exceed the amounts permitted to be spent, the excess must be returned by revising tax rates or fee schedules over the subsequent two Fiscal Years.

Article XIII B does not limit the appropriation of moneys to pay debt service on indebtedness existing or authorized as of January 1, 1979, or for bonded indebtedness approved thereafter by a vote of the electors of the issuing entity at an election held for that purpose, or appropriations for certain other limited purposes. Furthermore, Article XIII B was amended in 1990 to exclude from the appropriations limit “all qualified capital outlay projects, as defined by the Legislature” from proceeds of taxes. The Legislature has defined “qualified capital outlay project” to mean a fixed asset (including land and construction) with a useful life of 10 or more years and a value which equals or exceeds \$100,000. As a result of this amendment, the appropriations to pay the lease payments on the City’s long term General Fund lease obligations are generally excluded from the City’s appropriations limit.

The City has never exceeded its appropriations limit.

Articles XIII C and XIII D of the State Constitution

General. On November 5, 1996, the voters of the State approved Proposition 218, known as the “Right to Vote on Taxes Act.” Proposition 218 adds Articles XIII C and XIII D to the California Constitution and contains a number of interrelated provisions affecting the ability of the City to levy and collect both existing and future taxes, assessments, fees and charges.

On November 2, 2010, California voters approved Proposition 26, entitled the “Supermajority Vote to Pass New Taxes and Fees Act.” Section 1 of Proposition 26 declares that Proposition 26 is intended to limit the ability of the State Legislature and local government to circumvent existing restrictions on increasing taxes by defining the new or expanded taxes as “fees.” Proposition 26 amended Articles XIII A and XIII C of the State Constitution. The amendments to Article XIII A limit the ability of the State Legislature to impose higher taxes (as defined in Proposition 26) without a two-thirds vote of the Legislature. The amendments to Article XIII C define “taxes” that are subject to voter approval as “any levy, charge, or exaction of any kind imposed by a local government,” with certain exceptions.

Taxes. Article XIIC requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City (“general taxes”) require a majority vote; taxes for specific purposes (“special taxes”), even if deposited in the City’s General Fund, require a two-thirds vote.

Property-Related Fees and Charges. Article XIID also adds several provisions making it generally more difficult for local agencies to levy and maintain property-related fees, charges, and assessments for municipal services and programs. These provisions include, among other things, (i) a prohibition against assessments which exceed the reasonable cost of the proportional special benefit conferred on a parcel, (ii) a requirement that assessments must confer a “special benefit,” as defined in Article XIID, over and above any general benefits conferred, (iii) a majority protest procedure for assessments which involves the mailing of notice and a ballot to the record owner of each affected parcel, a public hearing and the tabulation of ballots weighted according to the proportional financial obligation of the affected party, and (iv) a prohibition against fees and charges which are used for general governmental services, including police, fire or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reduction or Repeal of Taxes, Assessments, Fees and Charges. Article XIIC also removes limitations on the initiative power in matters of reducing or repealing local taxes, assessments, fees or charges. No assurance can be given that the voters of the City will not, in the future, approve an initiative or initiatives which reduce or repeal local taxes, assessments, fees or charges currently comprising a substantial part of the City’s General Fund. If such repeal or reduction occurs, the City’s ability to pay debt service on the Bonds could be adversely affected.

Burden of Proof. Article XIIC provides that local government “bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.” Similarly, Article XIID provides that in “any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance” with Article XIID.

Judicial Interpretation of Proposition 218. The interpretation and application of Articles XIIC and XIID will ultimately be determined by the courts, and it is not possible at this time to predict with certainty the outcome of such determination.

Impact on City’s General Fund. The City does not believe that any material source of General Fund revenue is subject to challenge under Proposition 218 or Proposition 26.

The approval requirements of Articles XIIC and XIID reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase the taxes, fees, charges or taxes in the future that it may need to meet increased expenditure needs.

Proposition 1A; Proposition 22

Proposition 1A. Proposition 1A, proposed by the Legislature in connection with the State’s Fiscal Year 2004-05 Budget, approved by the voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate,

limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain exceptions. Proposition 1A generally prohibited the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any Fiscal Year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues among local governments within a county had to be approved by two-thirds of both houses of the Legislature.

Proposition 22. Proposition 22, entitled “The Local Taxpayer, Public Safety and Transportation Protection Act,” was approved by the voters of the State in November 2010. Proposition 22 eliminates or reduces the State’s authority to (i) temporarily shift property taxes from cities, counties and special districts to schools, (ii) use vehicle license fee revenues to reimburse local governments for State-mandated costs (the State will have to use other revenues to reimburse local governments), (iii) redirect property tax increment from redevelopment agencies to any other local government, (iv) use State fuel tax revenues to pay debt service on State transportation bonds, or (v) borrow or change the distribution of State fuel tax revenues.

Unitary Property

AB 454 (Chapter 921, Statutes of 1986) provides that revenues derived from most utility property assessed by the State Board of Equalization (“Unitary Property”), commencing with the 1988–89 Fiscal Year, are allocated as follows: (i) each jurisdiction will receive up to 102% of its prior year State–assessed revenue; and (ii) if county–wide revenues generated from Unitary Property are less than the previous year’s revenues or greater than 102% of the previous year’s revenues, each jurisdiction will share the burden of the shortfall or benefit of the excess revenues by a specified formula. This provision applies to all Unitary Property except railroads, whose valuation will continue to be allocated to individual tax rate areas.

The provisions of AB 454 do not constitute an elimination of the assessment of any State–assessed properties nor a revision of the methods of assessing utilities by the State Board of Equalization. Generally, AB 454 allows valuation growth or decline of Unitary Property to be shared by all jurisdictions in a county.

Possible Future Initiatives

Article XIII A, Article XIII B and Propositions 218, 26, 1A and 22 were each adopted as measures that qualified for the ballot pursuant to the State’s initiative process. From time to time, other initiative measures could be adopted, further affecting the City’s revenues or its ability to expend revenues. For example, the so-called “split roll” initiative has qualified for the November 2020 ballot. See “BOND OWNERS’ RISKS – Split Roll Initiative” below.

BOND OWNERS’ RISKS

The following describes certain special considerations and risk factors affecting the payment of and security for the Bonds. The following discussion is not meant to be an exhaustive list of the risks associated with the purchase of any Bonds and does not necessarily reflect the relative importance of the various risks. Potential investors in the Bonds are advised to consider the following special factors along with all other information in this Official Statement in evaluating the Bonds. There can be no assurance that other considerations will not materialize in the future.

Dependence on Tourism; COVID-19 Pandemic

The City's General Fund is highly dependent on tourism-generated tax revenues. The tourism industry accounts for all the TOT collected and a significant portion of the Sales Taxes collected by the City (including pursuant to Measure D/Measure C). Accordingly, downturns in the tourism industry for the City have in the past, and will continue to, result in substantial reductions in General Fund revenues. Depending on the length and severity of any such downturn, the City may not have sufficient resources in its General Fund to pay all of its obligations, including the Lease Payments securing the repayment of the Bonds. As described earlier in this Official Statement, the COVID-19 pandemic has caused a downturn in tourism having a material adverse effect on the City's General Fund revenues, which effect may continue to worsen.

The spread of COVID-19, a strain of coronavirus that has been labeled a pandemic, has impacted governments, businesses and people in a manner that is having negative effects on global and local economies, including the local economy in the City. In addition, stock markets in the U.S. and globally have seen significant declines and volatility attributed to coronavirus concerns. There can be no assurances that the spread of COVID-19 and/or responses intended to slow the spread of COVID-19 such as declining travel and business activity, will not materially adversely impact the financial condition of the City and the City's General Fund even more than has already occurred.

As part of the adoption of the City's Fiscal Year 2020-21 budget in June 2020, the City projected a shortfall in General Fund revenues versus expenses, and plans to use approximately \$1.0 million of fund balance from the General Fund to cover the deficit. Deficit funding is not a solution that can be employed in perpetuity and the City will continue to need to offset anticipated reductions in General Fund revenues with corresponding reductions in expenditures to maintain a balanced budget. With respect to projected revenues, in particular, the actual impact to the City's General Fund will not be fully understood until actual tax proceeds and other revenues are received by the City, which occurs with a lag and which are subject to State and/or County-wide orders regarding "sheltering in place" and deferrals of payments of certain taxes that are outside the control of the City.

No Pledge of Taxes

General. The obligation of the City to pay the Lease Payments and Additional Rental Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Lease Payments and Additional Rental Payments does not constitute a debt or indebtedness of the City, the State of California or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

The City is currently liable on other obligations payable from general revenues, which are described above under "CITY FINANCIAL INFORMATION – Long-Term Obligations Payable Out of General Fund."

Limitations on Taxes and Fees. Certain taxes, assessments, fees and charges presently imposed by the City could be subject to the voter approval requirements of Article XIIC and Article XIID of the State Constitution. Based upon the outcome of an election by the voters, such fees, charges, assessments and taxes might no longer be permitted to be imposed,

or may be reduced or eliminated and new taxes, assessments fees and charges may not be approved. The City has assessed the potential impact on its financial condition of the provisions of Article XIIC and Article XIID of the State Constitution respecting the imposition and increase of taxes, fees, charges and assessments and does not believe that an election by the voters to reduce or eliminate the imposition of certain existing fees, charges, assessments and taxes would substantially affect its financial condition. However, the City believes that if the initiative power was exercised so that all local taxes, assessments, fees and charges that may be subject to Article XIIC and Article XIID of the State Constitution are eliminated or substantially reduced, the financial condition of the City, including its General Fund, could be materially adversely affected.

Although the City does not currently anticipate that the provisions of Article XIIC and Article XIID of the State Constitution would adversely affect its ability to pay Lease Payments and its other obligations payable from the General Fund, no assurance can be given regarding the ultimate interpretation or effect of Article XIIC and Article XIID of the State Constitution on the City's finances. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

Additional Obligations of the City

General. The City has existing obligations payable from its General Fund. See "CITY FINANCIAL INFORMATION – Long-Term Obligations Payable Out of General Fund." In addition, the City is permitted to enter into other obligations which constitute additional charges against its revenues without the consent of Owners of the Bonds, and may in the future be subject to liabilities payable from the general fund (some of which are described below). To the extent that additional obligations are incurred by (or imposed upon) the City, the funds available to pay Lease Payments may be decreased.

The Lease Payments and other payments due under the Lease (including payment of costs of repair and maintenance of the Leased Property, taxes and other governmental charges levied against the Leased Property) are payable from funds lawfully available to the City. If the amounts that the City is obligated to pay in a Fiscal Year exceed the City's revenues for such year, the City may choose to make some payments rather than making other payments, including Lease Payments and Additional Rental Payments, based on the perceived needs of the City. The same result could occur if, because of California Constitutional limits on expenditures, the City is not permitted to appropriate and spend all of its available revenues or is required to expend available revenues to preserve the public health, safety and welfare.

Litigation Unrelated to General Fund. The City is subject to litigation arising in the normal course of business. In the opinion of the City Attorney, there is no pending litigation which is likely to have a material adverse effect on the financial position of the City.

CalPERS Obligations. Many cities and other local agencies in the State have been faced with increased payments due to CalPERS in recent years. The City, like many other cities and local agencies in the State, is responsible for payments to CalPERS for its share of employee pension costs. Amounts owed to CalPERS for pension costs have increased in recent years and are expected to continue to increase, as CalPERS implements changes to its discount rate and other methodologies for calculating pension costs. See "THE CITY – Pension Plans" for additional information on CalPERS.

No Reserve Fund

No reserve fund will be established and maintained with respect to the Bonds. As a result, in the event on non-appropriation or non-payment of the Lease Payments in full when due, no other source of funds will be available to make payments of debt service Bonds while remedial actions are taken with respect to such non-appropriation or non-payment.

Default

Whenever any event of default referred to in the Lease happens and continues, the Trustee (as assignee of the Authority) is authorized under the terms of the Lease to exercise any and all remedies available under law or granted under the Lease. See “APPENDIX C – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS” for a detailed description of available remedies in the case of a default under the Lease.

If a default occurs, there is no remedy of acceleration of the total Lease Payments due over the term of the Lease. The Trustee is not empowered to sell the Leased Property and use the proceeds of such sale to prepay the Bonds or pay debt service on the Bonds.

The City will be liable only for Lease Payments on an annual basis and, in the event of a default, the Trustee would be required to seek a separate judgment each year for that year's defaulted Lease Payments. Any such suit for money damages would be subject to limitations on legal remedies against municipalities in the State, including a limitation on enforcement of judgments against funds of a Fiscal Year other than the Fiscal Year in which the Lease Payments were due and against funds needed to serve the public welfare and interest.

Abatement

Under certain circumstances related to damage, destruction, condemnation or title defects which cause a substantial interference with the use and possession of the Leased Property, the City's obligation to make Lease Payments will be subject to full or partial abatement and could result in the Trustee having inadequate funds to pay the principal and interest on the Bonds as and when due. See “SECURITY FOR THE BONDS – Abatement” and “APPENDIX C – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS.”

Although the City is required under the Lease to maintain property and liability insurance with respect to the Leased Property, the required insurance coverage is subject to certain conditions and restrictions. See “SECURITY FOR THE BONDS – Property Insurance.”

In addition, the City is required to use the proceeds of rental interruption insurance maintained under the Lease to make debt service payments on the Bonds during any period of abatement. See “SECURITY FOR THE BONDS – Property Insurance.” However, there is no assurance that the City will receive proceeds of rental interruption insurance in time to make debt service payments on the Bonds when due.

Property Taxes

Property taxes are typically one of the largest sources of General Fund revenue to the City.

Levy and Collection. The City does not have any independent power to levy and collect property taxes. Any reduction in the tax rate or the implementation of any constitutional or legislative property tax decrease could reduce the City's property tax revenues, and accordingly, could have an adverse impact on the ability of the City to make Lease Payments. Likewise, delinquencies in the payment of property taxes could have an adverse effect on the City's ability to pay principal of and interest on the Bonds when due.

Reduction in Inflationary Rate. Article XIII A of the California Constitution provides that the full cash value base of real property used in determining assessed value may be adjusted from year to year to reflect the inflationary rate, not to exceed a 2% increase for any given year, or may be reduced to reflect a reduction in the consumer price index or comparable local data. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS." Such measure is computed on a calendar year basis. Because Article XIII A limits inflationary assessed value adjustments to the lesser of the actual inflationary rate or 2%, there have been years in which the assessed values were adjusted by actual inflationary rates, which were less than 2%. Since Article XIII A was approved, the annual adjustment for inflation has fallen below the 2% limitation a limited number of times.

The City is unable to predict if any adjustments to the full cash value base of real property within the City, whether an increase or a reduction, will be realized in the future.

Appeals of Assessed Values. There are two types of appeals of assessed values that could adversely impact property tax revenues:

Proposition 8 Appeals. Most of the appeals that might be filed in the City would be based on Section 51 of the Revenue and Taxation Code, which requires that for each lien date the value of real property must be the lesser of its base year value annually adjusted by the inflation factor pursuant to Article XIII A of the State Constitution or its full cash value, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property or other factors causing a decline in value.

Under California law, property owners may apply for a reduction of their property tax assessment by filing a written application with the appropriate county board of equalization or assessment appeals board. In most cases, the appeal is filed because the applicant believes that present market conditions (such as residential home prices) cause the property to be worth less than its current assessed value. These market-driven appeals are known as Proposition 8 appeals.

Any reduction in the assessment ultimately granted as a Proposition 8 appeal applies to the year for which application is made and during which the written application was filed. These reductions are often temporary and are adjusted back to their original values when market conditions improve. Once the property has regained its prior value, adjusted for inflation, it once again is subject to the annual inflationary factor growth rate allowed under Article XIII A.

Base Year Appeals. A second type of assessment appeal is called a base year appeal, where the property owners challenge the original (basis) value of their property. Appeals for reduction in the "base year" value of an assessment, if successful, reduce the assessment for the year in which the appeal is taken and prospectively thereafter. The base year is determined by the completion date of new construction or the date of

change of ownership. Any base year appeal must be made within four years of the change of ownership or new construction date.

No assurance can be given that property tax appeals in the future will not significantly reduce the City's property tax revenues.

Sales Taxes

Sales tax revenues (including from Measure D/Measure C) are typically one of the largest sources of revenue to the City. Sales tax revenues are based upon the gross receipts of retail sales of tangible goods and products by retailers with taxable transactions in the City, which could be impacted by a variety of factors, including the local economic downturn that has been caused by COVID-19.

In times of economic recession, the gross receipts of retailers often decline, and such a decline causes the sales tax revenues received by the City to also decline. The City is already experiencing such a decline due to the COVID-19 pandemic.

In addition, changes or amendments in the laws applicable to the City's receipt of sales tax revenues, whether implemented by State legislative action or voter initiative, could have an adverse effect on sales tax revenues received by the City. For example, many categories of transactions are exempt from the statewide sales tax, and additional categories could be added in the future. Currently, most sales of food products for human consumption are exempt; this exemption, however, does not apply to liquor or to restaurant meals. The rate of sales tax levied on taxable transactions in the City or the fee charged by the CDTFA for administering the City's sales tax could also be changed.

Natural and Man-Made Disasters

The City is subject to various natural and man-made disasters that could have negatively impact private or public properties in the City and/or the City's tourism industry, which could have a material adverse effect on the City's General Fund. In particular, there can be no assurance that the occurrence of any natural calamity would not cause substantial interference to and costs for the City or impact the Leased Property. Risks from natural and man-made disasters include, but are not limited to, seismic risks, droughts, wildfires, and sea level rise. Some of these risks may be intensified by ongoing climate changes.

Among other things, the City has created a Climate Action and Adaptation Plan and a Climate Committee to evaluate the risks and potential mitigation measures for climate change on the City. No funds were allocated to the Climate Committee in the Fiscal Year 2020-21 budget.

Seismic. Like most of California, the City is located in a seismically active area. If there were to be an occurrence of severe seismic activity in the area of the City, such an occurrence may adversely affect economic activity in the City, and could have a negative impact on City finances, including as a result of destruction of public or private property.

Droughts. California is subject to droughts from time-to-time. On April 1, 2015, for the first time in California's history, Governor Edmund G. Brown directed the State Water Resources Control Board to implement mandatory water reductions in cities and towns across California to reduce water usage by 25%. Following a wet winter in 2016-17, most of the

mandatory water reductions were lifted. However, there can be no assurance that drought conditions would not re-appear in the future, leading to interference to and costs for the City or reductions in values of property in the City.

Wildfires. Various communities throughout California have experienced devastating wildfires in recent years. Wildfire risk to property in the City could originate from within the forested areas within the City, from within the Pescadero Canyon, from the Mission Trail Park or from external areas that travel into the City. Hotter temperatures caused by climate change or other factors may lead to increased wildfire activity in the area of the City, and is widely believed to have occurred already in other parts of the State.

Sea Level Rise, Flooding and Other Impacts of Climate Change. City finances may be negatively impacted by future sea level rise or other negative impacts resulting from climate change. These other impacts may include intensity of severe storms, intensity of flooding, and species extinction in the coastal areas of the ocean near the City that are a tourism attraction for visitors to the City. The overall impact of climate change on the City is not definitive, but particular parcels in the City could experience changes to local and regional weather patterns; rising ocean levels; increased risk of flooding; coastal erosion; and water restrictions. Any of these factors may adversely impact property values of homes and businesses in the City and therefore property taxes collected by the City, as well as sales taxes and TOT collected by the City from visitors.

Split Roll Initiative

An initiative measure (the “**Split Roll Initiative**”) to amend Article XIII A has qualified for the State’s November 2020 ballot. If adopted, the Split Roll Initiative would base property taxes for commercial and industrial properties on market values beginning in tax year 2020-21. Such market values would be reassessed by the applicable county assessor’s office at least once every three years. The Split Roll Initiative includes exceptions for businesses with commercial and industrial properties with a total market value of less than \$3 million (adjusted for inflation), which would continue to be subject to property taxes based on purchase price, and exempts from property tax assessments up to \$500,000 of the value of personal property, or all personal property for businesses with fewer than 50 employees. There can be no assurance that the Split Roll Initiative will be adopted. Moreover, if the Split Roll Initiative is adopted, the City is unable to predict how it would affect the level of commercial building activity within the City and the relationship of the assessed value between land use types (i.e. residential versus commercial) in the City, or what other impacts the Split Roll Initiative might have on the local economy or the City’s financial condition.

Cyber Security

The City, like many other public and private entities, relies on computer and other digital networks and systems to conduct its operations. As a recipient and provider of personal, private or other sensitive electronic information, the City is potentially subject to multiple cyber threats, including without limitation hacking, viruses, ransomware, malware and other attacks. The City maintains insurance coverage for loss resulting from cyber security incidents, however no assurance can be given that the City’s efforts to manage cyber threats and attacks will be successful in all cases, or that any such attack will not materially impact the operations or finances of the City, or the administration of the Bonds. The City is also reliant on other entities and service providers in connection with the administration of the Bonds, including without limitation the County tax collector for the levy and collection of various taxes for the City, the

Trustee, and the dissemination agent. No assurance can be given that the City and/or the other entities will not be affected by cyber threats and attacks in a manner that may affect the Bond owners.

Limitations on Remedies Available to Bond Owners

The ability of the City to comply with its covenants under the Lease may be adversely affected by actions and events outside of the control of the City, and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of assessments, fees and charges. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” above. Furthermore, any remedies available to the owners of the Bonds upon the occurrence of an event of default under the Lease or the Indenture are in many respects dependent upon judicial actions, which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on Bond Owner remedies contained in the Lease and the Indenture, the rights and obligations under the Bonds, the Lease and the Indenture may be subject to the following: the United States Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors’ rights generally, now or hereafter in effect; usual equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or state government, if initiated, could subject the Owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights.

The opinion to be delivered by Bond Counsel, concurrently with the issuance of the Bonds, will include a qualification that the rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture, the Lease and the Site Lease may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights heretofore or hereafter enacted and may also be subject to the exercise of judicial discretion in accordance with principles of equity or otherwise in appropriate cases. See “APPENDIX E — FORM OF OPINION OF BOND COUNSEL.”

Loss of Tax-Exemption

As discussed under the caption “TAX MATTERS,” interest on the Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the Bonds were issued, as a result of future acts or omissions of the City or the City in violation of their respective covenants in the Lease and the Indenture. Should such an event of taxability occur, the Bonds are not subject to special redemption and will remain Outstanding until maturity or until redeemed under other provisions set forth in the Indenture.

Secondary Market for Bonds

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that any Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects

connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

TAX MATTERS

Federal Tax Status. In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "**Tax Code**") that must be satisfied subsequent to the issuance of the Bonds in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The City has made certain representations and covenants in order to comply with each such requirement. Inaccuracy of those representations, or failure to comply with certain of those covenants, may cause the inclusion of such interest in gross income for federal income tax purposes, which may be retroactive to the date of issuance of the Bonds.

Tax Treatment of Original Issue Discount and Premium. If the initial offering price to the public at which a Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public at which a Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "bond premium" for purposes of federal income taxes and State of California personal income taxes.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Bonds who purchase the Bonds after the initial offering of a substantial amount of such maturity. Owners of such Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering to the public at the first price at which a substantial amount of such Bonds is sold to the public.

Under the Tax Code, bond premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond's maturity date or its call date). The amount of bond premium amortized each year reduces the adjusted basis of the owner of the Bond for purposes of determining taxable gain or loss upon disposition. The amount of bond premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line

interpolations between compounding dates). Amortized Bond premium is not deductible for federal income tax purposes. Owners of premium Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such Bonds.

California Tax Status. In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes.

Other Tax Considerations. Current and future legislative proposals, if enacted into law, clarification of the Tax Code or court decisions may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Tax Code or court decisions may also affect the market price for, or marketability of, the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, such legislation would apply to bonds issued prior to enactment.

The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of such opinion, and Bond Counsel has expressed no opinion with respect to any proposed legislation or as to the tax treatment of interest on the Bonds, or as to the consequences of owning or receiving interest on the Bonds, as of any future date. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

Owners of the Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may have federal or state tax consequences other than as described above. Other than as expressly described above, Bond Counsel expresses no opinion regarding other federal or state tax consequences arising with respect to the Bonds, the ownership, sale or disposition of the Bonds, or the amount, accrual or receipt of interest on the Bonds.

CERTAIN LEGAL MATTERS

Jones Hall, A Professional Law Corporation, Bond Counsel, will render an opinion with respect to the validity of the Bonds, the form of which is set forth in "APPENDIX E – FORM OF OPINION OF BOND COUNSEL." Certain legal matters will also be passed upon for the City and the Authority by Jones Hall, as Disclosure Counsel. Certain legal matters will be passed upon for the City by the City Attorney, and certain legal matters will be passed upon for the Underwriter by its counsel, Stradling, Yocca, Carlson & Rauth, a Professional Corporation.

NO LITIGATION

Except as may otherwise be set forth in this Official Statement, to the best knowledge of the City, there is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending and notice of which has been served on and received by the City or, to the knowledge of the City, threatened against or affecting the City or the assets, properties or operations of the City which, if determined

adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Lease, the Site Lease or the Indenture, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by the Lease, the Site Lease or the Indenture, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under the Lease.

RATING

S&P Global Ratings (“**S&P**”), a division of Standard & Poor's Financial Services LLC, has assigned its municipal bond rating of “___” to the Bonds.

This rating reflects only the views of S&P, and an explanation of the significance of this rating, and any outlook assigned to or associated with this rating, should be obtained from S&P. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. The City has provided certain additional information and materials to the rating agency (some of which does not appear in this Official Statement). There is no assurance that this rating will continue for any given period of time or that this rating will not be revised downward or withdrawn entirely by the rating agency, if in the judgment of the rating agency, circumstances so warrant. Any such downward revision or withdrawal of any rating on the Bonds may have an adverse effect on the market price or marketability of the Bonds.

CONTINUING DISCLOSURE

The City will covenant for the benefit of owners of the Bonds to provide certain financial information and operating data by not later than nine months after the end of the City's Fiscal Year, or April 1, of each year (based on the City's current Fiscal Year-end of June 30), commencing April 1, 2021, with the report for the 2019-20 Fiscal Year (the “**Annual Report**”) and to provide notices of the occurrence of certain listed events.

These covenants have been made in order to assist the Underwriter in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (the “**Rule**”). The specific nature of the information to be contained in the Annual Report or the notices of listed events by the City is set forth in “APPENDIX D – Form of Continuing Disclosure Certificate.”

The City has previously entered into continuing disclosure undertakings under the Rule in connection with the issuance of long-term obligations. During the past five years, the City has not failed to comply, in all material respects, with its undertakings under the Rule.

MUNICIPAL ADVISOR

The City and the Authority have retained NHA Advisors, LLC, San Rafael, California, as municipal advisor (the “**Municipal Advisor**”) in connection with the offering of the Bonds. All financial and other information presented in this Official Statement has been provided by the City and the Authority from their records, except for information expressly attributed to other sources. The Municipal Advisor takes no responsibility for the accuracy or completeness of the data provided by the City, Authority or others and has not undertaken to make an independent verification or does not assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. The fee of the Municipal Advisor is contingent upon the successful closing of the Bonds.

UNDERWRITING

Raymond James & Associates, Inc., as underwriter (the “**Underwriter**”), has entered into a Bond Purchase Agreement with the Authority under which it will purchase the Bonds at a purchase price of \$_____ (which is equal to the par amount of the Bonds, less an Underwriter’s discount of \$_____, and plus (less) a net original issue premium (discount) of \$_____).

The Underwriter will be obligated to take and pay for all of the Bonds if any are taken. The Underwriter intends to offer the Bonds to the public at the offering prices set forth on the inside cover page of this Official Statement. After the initial public offering, the public offering price may be varied from time to time by the Underwriter.

PROFESSIONAL SERVICES

In connection with the issuance of the Bonds, fees payable to the following professionals involved in the offering are contingent upon the issuance and delivery of the Bonds: Jones Hall, A Professional Law Corporation, as Bond Counsel and Disclosure Counsel; NHA Advisors, LLC, as Municipal Advisor; Stradling, Yocca, Carlson & Rauth, a Professional Corporation, as counsel to the Underwriter; and MUFG Union Bank, N.A., as Trustee.

EXECUTION

The execution of this Official Statement and its delivery have been authorized by the Board of the Authority and the City Council of the City.

**CITY OF CARMEL-BY-THE-SEA PUBLIC
IMPROVEMENT AUTHORITY**

By: _____
Executive Director

CITY OF CARMEL-BY-THE-SEA

By: _____
City Administrator

APPENDIX A

COMPREHENSIVE ANNUAL FINANCIAL REPORT OF THE CITY
FOR FISCAL YEAR ENDING JUNE 30, 2019

APPENDIX B

GENERAL INFORMATION ABOUT THE CITY OF CARMEL-BY-THE-SEA AND THE COUNTY OF MONTEREY

*The following information concerning the County of Monterey (the “**County**”) and the City of Carmel-by-the-Sea (the “**City**”) is included only for the purpose of supplying general information regarding the region in which the City is located. The Bonds are not a debt of the County, the City, the State of California (the “**State**”) or any of its political subdivisions, and neither the County, the City, the State nor any of its political subdivisions is liable therefor.*

General

The City. The City is located about 120 miles south of San Francisco and had a 2020 population of approximately 3,949. The City operates under a council-administrator form of government, with a five-member city council elected at large for overlapping four-year terms. The main sources of general governmental fund type revenues are transient occupancy taxes, property taxes, and sales taxes.

The County. The County borders the Pacific Ocean almost at the midpoint of the California coastline, approximately 130 miles south of San Francisco and 240 miles north of Los Angeles and was incorporated in 1850 as one of the State’s original 27 counties. The County covers an area of approximately 3,300 square miles, with a population in excess of 440,000. Agriculture, tourism and government are major contributors to the County’s economy. The Salinas Valley, located in the eastern portion of the County, is a rich agricultural center and one of the nation’s major vegetable-producing areas. The Monterey Peninsula, famed for its scenic beauty, is a year-round tourist attraction. Pebble Beach, Cypress Point, Spyglass Hill, Poppy Hills and The Links at Spanish Bay are well known Monterey Peninsula golf courses. The Monterey Bay Aquarium and the amenities within the City are other attractions that draw tourists to the Monterey Peninsula.

Population

The following table lists population estimates for the City, the County and the State for the last five years, as of January 1 each year.

CITY OF CARMEL-BY-THE-SEA, COUNTY OF MONTEREY, STATE OF CALIFORNIA Population Estimates As of January 1, 2016 through 2020

Year	City of Carmel-by-the-Sea	Monterey County	State of California
2016	3,896	435,400	39,131,307
2017	3,915	438,723	39,398,702
2018	3,920	439,193	39,586,646
2019	3,939	441,304	39,659,376
2020	3,949	441,143	39,782,870

Source: California Department of Finance, Demographic Research Unit.

Industry and Employment

The City is part of the Salinas Metropolitan Statistical Area (“**MSA**”), which is comprised of Monterey County. The unemployment rate in the County was 16.8 percent in May 2020, down from a revised 20.5 percent in April 2020, and above the year-ago estimate of 4.8 percent. This compares with an unadjusted unemployment rate of 15.9 percent for California and 13.0 for the nation during the same period.

SALINAS MSA Civilian Labor Force, Employment and Unemployment Calendar Years 2015 through 2019 March 2019 benchmark

	2015	2016	2017	2018	2019
Civilian Labor Force ⁽¹⁾	218,800	220,400	219,900	224,100	222,500
Employment	201,100	203,800	204,200	210,000	208,700
Unemployment	17,600	16,700	15,700	14,000	13,800
Unemployment Rate	8.1%	7.6%	7.2%	6.3%	6.2%
<u>Wage and Salary Employment:</u> ⁽²⁾					
Agriculture	53,000	53,700	53,200	55,700	54,700
Mining and Logging	300	200	200	300	300
Construction	5,200	5,900	6,000	6,500	6,500
Manufacturing	5,500	5,400	5,600	5,400	5,300
Wholesale Trade	5,300	5,400	5,600	5,900	5,800
Retail Trade	16,400	16,600	16,400	16,800	16,800
Transportation, Warehousing, Utilities	4,300	4,300	4,100	4,000	4,200
Information	1,300	1,100	1,100	1,000	1,000
Financial Activities	4,100	4,200	4,300	4,500	4,400
Professional and Business Services	12,800	13,400	13,200	13,900	14,800
Educational and Health Services	18,400	18,600	19,700	20,100	20,400
Leisure and Hospitality	23,400	24,300	24,500	25,400	26,200
Other Services	5,000	5,200	5,200	5,100	5,100
Federal Government	5,100	5,100	5,100	5,000	5,200
State Government	5,700	5,800	5,700	5,700	5,600
Local Government	20,300	21,000	22,500	23,800	23,800
Total, All Industries ⁽³⁾	186,100	190,200	192,400	198,800	200,000

(1) Labor force data is by place of residence; includes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(2) Industry employment is by place of work; excludes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(3) Totals may not add due to rounding.

Source: State of California Employment Development Department.

Principal Employers

The following table lists the principal employers within the City for Fiscal Year 2018-19.

CITY OF CARMEL-BY-THE-SEA Principal Employers Fiscal Year 2018-19

Employer Name	No. of Employees
Carmel Realty	100
City of Carmel-by-the-Sea	87
Cypress Inn/Terry's Lounge	80
La Playa Hotel	73
Casanova	60
Dametra	50
Catinetta Luca	41
Auberge	40
Forge in the Forest	36
Bruno's Market	33

Source: City of Carmel-by-the-Sea.

The following table lists, in alphabetical order, the largest manufacturing and non-manufacturing employers within the County as of July 2020.

COUNTY OF MONTEREY
Major Employers
As of July 2020
(In Alphabetical Order)

<u>Employer Name</u>	<u>Location</u>	<u>Industry</u>
Al Pak Labor	Soledad	Fruits & Vegetables-Wholesale
Azcona Harvesting	Greenfield	Harvesting-Contract
Bud of California	Soledad	Fruits & Vegetables-Growers & Shippers
Carol Hatton Breast Care Ctr	Monterey	Clinics
Casa Palmero At Pebble Beach	Pebble Beach	Hotels & Motels
County-Monterey Behavioral	King City	Health Services
Fort Hunter Liggett Military	Jolon	Military Bases
Growers Co	Salinas	Fruits & Vegetables & Produce-Retail
Hilltown Packing Co	Salinas	Harvesting-Contract
Mann Packing Co	Salinas	Fruits & Vegetables-Growers & Shippers
Misionero Vegetables	Gonzales	Fruits & Vegetables-Growers & Shippers
Monterey County Social Svc Dpt	Salinas	Government Offices-County
Natividad Medical Ctr	Salinas	Hospitals
Natividad Medical Ctr	Salinas	Medical Centers
Ord Community Commissary	Seaside	Military Bases
Pebble Beach Co	Pebble Beach	Resorts
Pebble Beach Co	Pebble Beach	Resorts
Premier Raspberry LLC	Royal Oaks	Grocers-Wholesale
Premium Harvesting & Packing	Salinas	Employment Agencies & Opportunities
Presidio of Monterey	Monterey	Military Bases
Quality Farm Labor	Gonzales	Labor Contractors
R C Packing	Gonzales	Packing & Crating Service
Salinas Valley Meml Healthcare	Salinas	Health Care Management
US Defense Manpower Data Ctr	Seaside	Government Offices-Us
Valley Harvesting	Greenfield	Crop Harvesting-Primarily By Machine

Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2020 1st edition.

Effective Buying Income

“Effective Buying Income” is defined as personal income less personal tax and nontax payments, a number often referred to as “disposable” or “after-tax” income. Personal income is the aggregate of wages and salaries, other labor-related income (such as employer contributions to private pension funds), proprietor’s income, rental income (which includes imputed rental income of owner-occupants of non-farm dwellings), dividends paid by corporations, interest income from all sources, and transfer payments (such as pensions and welfare assistance). Deducted from this total are personal taxes (federal, state and local), nontax payments (fines, fees, penalties, etc.) and personal contributions to social insurance. According to U.S. government definitions, the resultant figure is commonly known as “disposable personal income.”

The following table summarizes the total effective buying income for the City, the County, the State, and the United States for the period 2016 through 2020.

**CITY OF CARMEL-BY-THE-SEA, MONTEREY COUNTY,
STATE OF CALIFORNIA AND UNITED STATES
EFFECTIVE BUYING INCOME
As of January 1, 2016 through 2020**

<u>Year</u>	<u>Area</u>	<u>Total Effective Buying Income (000's Omitted)</u>	<u>Median Household Effective Buying Income</u>
2016	City of Carmel-by-the-Sea	\$172,905	\$58,219
	Monterey County	8,776,830	50,389
	California	981,231,666	53,589
	United States	7,757,960,399	46,738
2017	City of Carmel-by-the-Sea	\$169,578	\$58,333
	Monterey County	9,535,558	52,802
	California	1,036,142,723	55,681
	United States	8,132,748,136	48,043
2018	City of Carmel-by-the-Sea	\$209,107	\$72,147
	Monterey County	10,045,200	56,609
	California	1,113,648,181	59,646
	United States	8,640,770,229	50,735
2019	City of Carmel-by-the-Sea	\$236,046	\$75,412
	Monterey County	10,807,771	60,275
	California	1,183,264,399	62,637
	United States	9,017,967,563	52,841
2020	City of Carmel-by-the-Sea	\$241,009	\$79,069
	Monterey County	11,10,302	65,078
	California	1,243,564,816	65,870
	United States	9,487,165,436	55,303

Source: The Nielsen Company (US), Inc for years 2015 through 2018; Claritas, LLC for 2019 and 2020.

Commercial Activity

A summary of historic taxable sales within the City and the County during the past five years in which data is available is shown in the following tables.

Total taxable sales during calendar year 2019 in the City were reported to be \$217,740,000 a 4.76% decrease over the total taxable sales of \$228,627,000 reported during calendar year 2018.

CITY OF CARMEL-BY-THE-SEA
Taxable Retail Sales
Number of Permits and Valuation of Taxable Transactions
Calendar Years 2015 through 2019 (Dollars in Thousands)

	Retail Stores		Total All Outlets	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2015 ⁽¹⁾	450	\$193,736	630	\$209,278
2016	441	194,828	620	208,069
2017	431	208,480	595	222,268
2018	429	215,666	601	228,627
2019	419	204,624	595	217,740

(1) Permit figures for calendar year 2015 are not comparable to that of prior years due to outlet counts in these reports including the number of outlets that were active during the reporting period. Retailers that operate part-time are now tabulated with store retailers.

Source: State Board of Equalization. *Taxable Sales in California (Sales & Use Tax)* for years 2015-2016.
State Department of Tax and Fee Administration for year 2017-2019.

Total taxable sales during calendar year 2019 in the County were reported to be \$7,405,525,000 a 0.90% increase over the total taxable sales of \$7,339,237,000 reported during calendar year 2018.

COUNTY OF MONTEREY
Taxable Retail Sales
Number of Permits and Valuation of Taxable Transactions
Calendar Years 2015 through 2019 (Dollars in Thousands)

	Retail Stores		Total All Outlets	
	Number of Permits	Taxable Transactions	Number of Permits	Taxable Transactions
2015 ⁽¹⁾	7,240	\$4,548,935	11,437	\$6,454,359
2016	7,352	4,714,130	11,657	6,716,141
2017	7,544	4,891,626	11,959	6,939,334
2018	7,666	5,112,856	12,490	7,339,237
2019	7,725	5,123,077	12,816	7,405,525

(1) Permit figures for calendar year 2015 are not comparable to that of prior years due to outlet counts in these reports including the number of outlets that were active during the reporting period. Retailers that operate part-time are now tabulated with store retailers.

Source: State Board of Equalization. *Taxable Sales in California (Sales & Use Tax)* for years 2015-2016.
State Department of Tax and Fee Administration for year 2017-2019.

Construction Activity

Construction activity in the City and the County for the past five years for which data is available is shown in the following tables.

CITY OF CARMEL-BY-THE-SEA Building Permit Valuation For Calendar Years 2015 through 2019 (Dollars in Thousands)⁽¹⁾

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
<u>Permit Valuation</u>					
New Single-family	\$4,602.4	\$2,695.0	\$4,087.0	\$6,315.4	\$4,260.5
New Multi-family	0.0	1,500.0	0.0	3,250.0	0.0
Res. Alterations/Additions	<u>11,458.7</u>	<u>12,429.1</u>	<u>11,688.7</u>	<u>18,712.5</u>	<u>13,074.1</u>
Total Residential	16,061.1	16,624.1	15,775.7	28,277.9	17,334.6
 New Commercial	0.0	0.0	0.0	400.0	5,335.0
New Industrial	0.0	0.0	0.0	0.0	0.0
New Other	806.7	641.4	349.3	1,192.3	823.3
Com Alterations/Additions	<u>3,231.8</u>	<u>3,811.2</u>	<u>1,802.5</u>	<u>1,973.3</u>	<u>2,841.0</u>
Total Nonresidential	4,038.5	4,452.6	2,151.8	3,565.6	8,999.3
 <u>New Dwelling Units</u>					
Single Family	7	6	9	10	8
Multiple Family	<u>0</u>	<u>2</u>	<u>0</u>	<u>8</u>	<u>0</u>
TOTAL	7	8	9	18	8

(1) Totals may not foot due to rounding.

Source: Construction Industry Research Board, Building Permit Summary.

MONTEREY COUNTY Building Permit Valuation For Calendar Years 2015 through 2019 (Dollars in Thousands)⁽¹⁾

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
<u>Permit Valuation</u>					
New Single-family	\$116,703.8	\$152,257.5	\$165,341.2	\$199,194.7	\$142,474.1
New Multi-family	38,947.6	22,331.7	33,318.9	51,460.6	23,670.0
Res. Alterations/Additions	<u>63,610.6</u>	<u>67,799.9</u>	<u>73,317.4</u>	<u>88,972.6</u>	<u>65,196.1</u>
Total Residential	219,262.0	242,389.1	271,977.5	339,627.9	231,340.1
 New Commercial	62,031.5	66,171.2	62,156.5	52,935.5	54,317.0
New Industrial	4,418.3	5,469.5	8,871.2	4,774.8	2,007.1
New Other	23,916.7	8,442.4	8,938.4	19,555.8	8,897.4
Com Alterations/Additions	<u>132,775.1</u>	<u>119,296.0</u>	<u>91,665.4</u>	<u>71,837.1</u>	<u>130,399.8</u>
Total Nonresidential	223,141.6	199,379.1	171,631.5	149,103.2	195,621.3
 <u>New Dwelling Units</u>					
Single Family	374	486	523	611	574
Multiple Family	<u>258</u>	<u>118</u>	<u>178</u>	<u>212</u>	<u>116</u>
TOTAL	632	604	701	823	690

(1) Totals may not foot due to rounding.

Source: Construction Industry Research Board, Building Permit Summary.

APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF PRINCIPAL LEGAL DOCUMENTS

APPENDIX D

FORM OF CONTINUING DISCLOSURE CERTIFICATE

§ _____
CITY OF CARMEL-BY-THE-SEA PUBLIC IMPROVEMENT AUTHORITY
2020 Refunding Lease Revenue Bonds
(Sunset Center Project)

This Continuing Disclosure Certificate (this “Disclosure Certificate”) is executed and delivered by the City of Carmel-by-the-Sea (the “City”) in connection with the issuance by the Authority of the bonds captioned above (the “Bonds”). The Bonds are being issued under an Indenture of Trust dated as of October 1, 2020 (the “Indenture”), between the Authority and MUFG Union Bank, N.A., as trustee (the “Trustee”). The City hereby covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth above and in the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Report*” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Annual Report Date*” means April 1 of each year.

“*Dissemination Agent*” means NHA Advisors, LLC, or any successor dissemination agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

“*Listed Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

“*MSRB*” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule, or any other repository of disclosure information that may be designated by the Securities and Exchange Commission as such for purposes of the Rule in the future.

“*Official Statement*” means the final official statement dated _____, 2020, executed by the City and the Authority in connection with the issuance of the Bonds.

“*Participating Underwriter*” means Raymond James & Associates, Inc., the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Rule” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

Section 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing April 1, 2021, with the report for Fiscal Year 2019-20, provide to the MSRB, in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City's Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(b). The City shall provide a written certificate with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the City hereunder.

(b) If the City does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the City shall provide (or cause the Dissemination Agent to provide) in a timely manner to the MSRB, in an electronic format as prescribed by the MSRB, a notice in substantially the form attached as Exhibit A.

(c) With respect to each Annual Report, the Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and

(ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. Content of Annual Reports. The City's Annual Report shall contain or incorporate by reference the following:

(a) Audited Financial Statements of the City prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) To the extent not contained in the audited financial statements filed pursuant to the preceding clause (a), the Annual Report shall contain information showing:

(i) information concerning the actual revenues, expenditures and beginning and ending fund balances relating to the General Fund of the City for the most recent completed Fiscal Year;

(ii) information showing the aggregate principal amount of long-term bonds, leases and other obligations of the City which are payable out of the General Fund of the City, as of the close of the most recent completed Fiscal Year;

(iii) information concerning the assessed valuation of properties within the City for the most recent completed Fiscal Year; and

(iv) information showing the total secured property tax levy and actual amounts collected for the most recent completed Fiscal Year.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the City shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's Internet web site or filed with the Securities and Exchange Commission. The City shall clearly identify each such other document so included by reference.

Section 5. Reporting of Listed Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events with respect to the Bonds:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults, if material.
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (5) Substitution of credit or liquidity providers, or their failure to perform.
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.
- (7) Modifications to rights of security holders, if material.
- (8) Bond calls, if material, and tender offers.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities, if material.
- (11) Rating changes.

- (12) Bankruptcy, insolvency, receivership or similar event of the City or other obligated person.
- (13) The consummation of a merger, consolidation, or acquisition involving the City or an obligated person, or the sale of all or substantially all of the assets of the City or an obligated person (other than in the ordinary course of business), the entry into a definitive agreement to undertake such an action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.
- (15) Incurrence of a financial obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect security holders, if material (for definition of "financial obligation," see clause (e)).
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the City, any of which reflect financial difficulties (for definition of "financial obligation," see clause (e)).

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event, the City shall, or shall cause the Dissemination Agent (if not the City) to, file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the Listed Event. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected Bonds under the Indenture.

(c) The City acknowledges that the events described in subparagraphs (a)(2), (a)(7), (a)(8) (if the event is a bond call), (a)(10), (a)(13), (a)(14), and (a)(15) of this Section 5 contain the qualifier "if material" and that subparagraph (a)(6) also contains the qualifier "material" with respect to certain notices, determinations or other events affecting the tax status of the Bonds. The City shall cause a notice to be filed as set forth in paragraph (b) above with respect to any such event only to the extent that it determines the event's occurrence is material for purposes of U.S. federal securities law. Whenever the City obtains knowledge of the occurrence of any of these Listed Events, the City will as soon as possible determine if such event would be material under applicable federal securities law. If such event is determined to be material, the City will cause a notice to be filed as set forth in paragraph (b) above.

(d) For purposes of this Disclosure Certificate, any event described in paragraph (a)(12) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

(e) For purposes of Section 5(a)(15) and (16), “financial obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

Section 6. Identifying Information for Filings with the MSRB. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The City’s obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

Section 8. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. Any Dissemination Agent may resign by providing 30 days’ written notice to the City.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the Bonds, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the Bonds in the manner provided in the Indenture for amendments to the Indenture with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the

differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative.

A notice of any amendment made pursuant to this Section 9 shall be filed in the same manner as for a Listed Event under Section 5(b).

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and Liabilities of Dissemination Agent.

(a) The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Bond owners or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) The Dissemination Agent shall be paid compensation by the City for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

Section 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 14. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: _____, 2020

CITY OF CARMEL-BY-THE-SEA

By _____
City Administrator

ACCEPTED AND AGREED:

NHA Advisors, LLC,
as Dissemination Agent

By _____
Authorized Representative

EXHIBIT A

NOTICE OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Carmel-by-the-Sea Public Improvement Authority

Name of Bond Issue: \$_____ 2020 Refunding Lease Revenue Bonds (Sunset Center Project)

Date of Issuance: _____, 2020

NOTICE IS HEREBY GIVEN that the City of Carmel-by-the-Sea (the "City") has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Certificate dated as of _____, 2020, executed by the City. The City anticipates that the Annual Report will be filed by _____.

Dated: _____

CITY OF CARMEL-BY-THE-SEA:

By: _____
Its: _____

cc: Dissemination Agent

APPENDIX E
FORM OF OPINION OF BOND COUNSEL

APPENDIX F

DTC AND THE BOOK-ENTRY ONLY SYSTEM

The following description of the Depository Trust Company (“DTC”), the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Bonds and other related transactions between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.

Neither the issuer of the Bonds (the “Issuer”) nor the trustee appointed with respect to the Bonds (the “Agent”) take any responsibility for the information contained in this Appendix.

No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Bonds, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is

the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com. *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI

Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

**CITY OF CARMEL-BY-THE-SEA
LEGAL SERVICES AGREEMENT**

Attachment 8

**WITH JONES HALL, A PROFESSIONAL LAW CORPORATION, FOR
BOND COUNSEL SERVICES IN CONNECTION WITH THE
REFUNDING OF OUTSTANDING 2010 REFUNDING LEASE
REVENUE BONDS**

THIS AGREEMENT is executed this ____ day of September 2020, by and between the City of Carmel-by-the-Sea, a municipal corporation, (hereinafter "City"), and Jones Hall, a professional law corporation (hereinafter "Attorney"), collectively referred to herein as the "parties".

WHEREAS, the City of Carmel-by-the-Sea (the "City") and the City of Carmel-by-the-Sea Public Improvement Authority (the "Authority") have previously financed improvements to the Sunset Center Theater from the proceeds of the Sunset Center Lease Revenue Certificates of Participation, Series 2001 in the aggregate principal amount of \$9,900,000 (the "2001 Certificates") and, in order to realize debt service savings to the City, the Authority has previously issued its 2010 Refunding Lease Revenue Bonds in the aggregate principal amount of \$7,575,000 (the "2010 Bonds"), to refinance the 2001 Certificates and the related lease payment obligations of the City; and

WHEREAS, under the Joint Exercise of Powers Agreement which governs the Authority, the Authority is authorized to provide financial assistance to any local City through the issuance of its bonds; and

WHEREAS, the 2010 Bonds are subject to redemption at the option of the Authority on November 1, 2020, and the City and the Authority have determined that it is in their best interests to refund the 2010 Bonds for the purpose of realizing additional debt service savings to the City; and

WHEREAS, the Authority is proceeding to issue its 2020 Refunding Lease Revenue Bonds and the Authority and the City require the advice and assistance of a bond counsel in connection with the issuance and sale of the Refunding Bonds.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

1. SERVICES

A. Identification of Client. Attorney shall represent the Authority and the City in connection with the proceedings for the authorization, issuance and sale of the Refunding Bonds. Attorney shall not represent, and shall owe no duties to, any other party than the Authority and the City, including but not limited to financial advisor, trustee and the original purchaser of the Refunding Bonds.

B. Duties of Attorneys. Attorney shall perform all of the following services as bond and disclosure counsel to the Authority and the City in connection with the issuance and sale of the Refunding Bonds as specified within scope of engagement attached hereto as Exhibit "A."

2. COMPENSATION

A. Total Fee. The City agrees to pay and Attorney agree to accept as full and fair consideration a fixed fee of Sixty Thousand Dollars (\$60,000), which includes a fixed fee of Thirty Five Thousand Dollars (\$35,000) for services performed as Bond Counsel pursuant to the terms of this Agreement and a fixed fee of Twenty Five Thousand Dollars (\$25,000) for services performed as Disclosure Counsel pursuant to the terms of this Agreement. Reimbursable expenses such as for travel, reproduction of documents and preparation of closing transcripts shall not exceed two Thousand Dollars (\$2,000). The foregoing compensation is completely

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contingent on the successful issuance and sale of the Refunding Bonds, and shall be paid from the proceeds of the Refunding Bonds.

To the extent the City requires Bond Counsel, Bond Counsel and/or Disclosure Counsel services in connection with other financings not described herein which Attorneys are qualified to provide, this Agreement may be supplemented by addenda setting forth the applicable fee.

B. Audit and Examination of Accounts:

- i. Attorney shall keep and will cause any assignee or subconsultant under this Agreement to keep accurate books of records and accounts, in accordance with sound accounting principles, which pertain to services to be performed under this Agreement.
- ii. Any audit conducted of books of records and accounts shall be in accordance with generally accepted professional standards and guidelines for auditing.
- iii. Attorney hereby agrees to disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City.
- iv. Attorney shall include the requirements of Section 2C in all contracts with assignees or subconsultants under this Agreement.
- v. All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of services hereunder. All records, which pertain to actual disputes, litigation, appeals or claims, shall be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

3. AGREEMENT TERM

A. **Term.** The work under this Agreement shall commence on June 1, 2020 and end on the earlier of June 30, 2021 or upon closing of the transaction, unless the Term of the Agreement is otherwise terminated or extended. Any extension must be mutually agreed to in writing signed by both parties.

4. ATTORNEYS' EMPLOYEES AND SUBCONSULTANTS

A. **Not an Agent of the City.** Nothing in this Agreement shall be interpreted so as to render the City the agent, employer, or partner of Attorney, or the employer of anyone working for or subcontracted by Attorney, and Attorney must not do anything that would result in anyone working for or subcontracted by Attorney being considered an employee of the City. Attorney is not, and must not claim to be, an agent of the City.

B. **Independent Contractor.** Attorney is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City shall not control or direct the details, means, methods or processes by which Attorney performs the Services. Attorney is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for herein. Attorney shall be solely liable for the work quality and conditions of any partners, employees and subconsultants.

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No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Attorney shall not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Attorney shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Attorney's performance of Services under this Agreement. In connection therewith, Attorney shall defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Attorney's failure to pay such taxes.

5. REPRESENTATIVES AND COMMUNICATIONS

A. **City's Project Representative.** The City appoints the individual named below as the City's Project Representative for the purposes of this Agreement ("City's Project Representative"). The City may unilaterally change its project representative upon notice to Attorney.

Name: Sharon Friedrichsen
Title: Director of Budget and Contracts, City of Carmel-by-the Sea
Address: P. O. Box CC, Carmel-by-the-Sea, CA 93921

B. **Attorney's Project Manager.** Attorney appoints the person named below as its Project Manager for the purposes of this Agreement ("Attorney's Project Manager").

Name: Charles F.Adams, Esq.
Title: Jones Hall APLC
Address: 475 Sansome Street, Suite 1700, San Francisco, CA 94111

C. **Meet and Confer.** Attorney agrees to meet and confer with the City's Project Representative, its agents or employees with regard to Services as set forth herein as may be required by the City to insure timely and adequate performance of this Agreement.

D. **Communications and Notices.** All communications between the City and Attorney regarding this Agreement, including performance of Services, shall be between the City's Project Representative and Attorney's Project Manager. Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing and shall be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

6. INDEMNIFICATION

Attorney hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Attorney shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs, reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Attorney, any subconsultant or subcontractor, anyone directly or indirectly

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employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, Attorney agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Attorney or Attorney's employees, subconsultants, representatives, patrons, guests or invitees.

Attorney further agrees to indemnify the City for damage to or loss of City property to the proportionate extent they arise out of Attorney's negligent performance of the work associated with this Agreement or to the proportionate extent they arise out of any negligent act or omission of Attorney or any of Attorney's employees, agents, subconsultants, representatives, patrons, guests or invitees; excepting such damage or loss arising out of the negligence of the City.

In no event shall the obligation of the Attorney exceed the limitations on the duty to defend and indemnify as set forth in Civil Code Sections 2782 and 2782.6.

7. INSURANCE

Attorney shall submit and maintain in full force all insurance as described herein. Without altering or limiting Attorney's duty to indemnify, Attorney shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- B. Professional Liability Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Attorney will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.
- C. Workers' Compensation Insurance. If Attorney employs others in the performance of this Agreement, Attorney shall maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.
- D. Other Insurance Requirements:
 - i. All insurance required under this Agreement must be written by an insurance company either:
 - a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; **or**
 - b. an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

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- ii. Each insurance policy required by this Agreement shall not be canceled, except with prior written notice to the City.
- iii. The general liability policies shall:
 - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Attorney's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
 - b. Provide that such Attorney's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea shall be excess to the Attorney's insurance and shall not contribute with it.
 - c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
 - d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.
- iv. Prior to the start of work under this Agreement, Attorney shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Attorney shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
- v. Neither the insurance requirements hereunder, nor acceptance or approval of Attorney's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change Attorney's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. All coverage available to the Attorney as named insured shall also be available and applicable to the additional insured. Notwithstanding the insurance requirements contained herein, Attorney is financially liable for its indemnity obligations under this Agreement.
- vi. All policies shall be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retention ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured shall reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event shall any SIR or insurance policy contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.
- vii. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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- viii. Attorney shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein.

8. PERFORMANCE STANDARDS

A. Attorney shall furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Attorney shall not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

B. Attorney agrees to perform all work under this Agreement to the satisfaction of the City and as specified herein. The City's Project Representative or his or her designee shall perform evaluation of the work. If the quality of work is not satisfactory, City in its discretion, may meet with Attorney to review the quality of work and resolve the matters of concern, and may require Attorney to repeat the work at no additional fee until it is satisfactory.

9. CITY INFORMATION AND RESOURCES

A. **Responsibilities of the City.** The City will cooperate with Attorneys and furnish Attorneys with certified copies of all proceedings taken by the Authority and the City, or other deemed necessary by Attorneys to render an opinion upon the validity of the proceedings. Attorneys are not responsible for costs and expenses incurred incidental to the actual issuance and delivery of the Refunding Bonds, including the cost of preparing certified copies of proceedings required by Attorneys in connection with the issuance of the Refunding Bonds, rating agency charges, the cost of financial advisory services, printing and publication costs.

B. **Obligations of Attorney.** No reviews, approvals, or inspections carried out or supplied by the City shall derogate from the duties and obligations of Attorney, and all responsibility related to performance of the Services shall be and remain with Attorney..

10. OWNERSHIP AND USE OF MATERIALS

A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on the City's behalf) and other documents or products produced by Attorney under this Agreement (collectively, "the Materials") are and shall remain the property of the City even though Attorney or another party may have physical possession of them or a portion thereof. Attorney hereby waives, in favor of the City, any moral rights Attorney, its employees, subconsultants, vendors, successors or assignees may have in the Materials.

B. **Delivery and Use of the Materials.** All Materials shall be transferred and delivered by Attorney to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Attorney requesting delivery by Attorney to the City of all or any part of the Materials in which event Attorney shall forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.

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C. **Survival of Ownership and Use Provisions.** It is understood and agreed that the provisions contained in Section 10, Ownership and Use of Materials, shall survive the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.

11. CONFIDENTIALITY

A. **No Disclosure.** Attorney shall keep confidential and shall not disclose, publish or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Attorney shall not use for Attorney's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Attorney may acquire as a result of the performance of the Services under this Agreement. Attorney shall promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section shall survive the expiration or earlier termination of this Agreement.

B. **California Public Records Act.** Attorney acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Attorney further acknowledges that it may have access to personal information as defined under the PRA, and Attorney shall not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

All Scopes of Services and related documents received shall be public records, with the exception of those elements, identified by the Attorney as business trade secrets and are plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required under the PRA or otherwise by law, the City shall not be liable or responsible for the disclosure of any such records and the Attorney shall indemnify, defend, and hold the City harmless for any such disclosure.

12. CONFLICT OF INTEREST

Attorneys represent many political subdivisions, investment banking firms and financial advisory firms. It is possible that during the time that Attorneys are representing the City, one or more of Attorneys present or future clients will have transactions with the City. It is also possible that Attorneys may be asked to represent, in an unrelated matter, one or more of the entities involved in the issuance and sale of the Refunding Bonds. Attorneys do not believe such representation, if it occurs, will adversely affect Attorneys' ability to represent City as provided in this Agreement, either because such matters will be sufficiently different from the issuance and sale of the Refunding Bonds so as to make such representations not adverse to Attorneys' representation of City, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance and sale of the Refunding Bonds. Execution of this Agreement will signify the City's consent to Attorneys' representation of others consistent with the circumstances described in this paragraph.

13. DISPUTE RESOLUTION

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A. **Dispute Resolution Procedures.** The parties shall make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement ("Dispute") using the Dispute Resolution Procedures set forth in this Section.

B. **Negotiations.** First, the City's Project Representative and Attorney's Project Manager shall make reasonable efforts to resolve any Dispute by amicable negotiations and shall provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter shall be promptly referred to the City Administrator and the Attorney's Managing Partner who shall meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.

C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the City Administrator pursuant to subsection B above, either party may, by notice to the other party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court's Court-Directed Mediator Panel list. The duration of any such mediation shall not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) shall be borne equally by the parties, and each party shall bear its own costs of participating in mediation. The mediation shall take place within or in close proximity to the City of Carmel-by-the-Sea.

In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 shall be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute shall be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the Arbitration, and the prevailing party shall be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees shall be considered costs recoverable in that proceeding, and be included in any award.

14. TERMINATION OF AGREEMENT

Both parties may terminate this Agreement, in whole or in part, with or without cause, at any time during the Agreement Term upon ninety (90) days written notice.

15. LEGAL ACTION / VENUE

**CITY OF CARMEL-BY-THE-SEA
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**WITH JONES HALL, A PROFESSIONAL LAW CORPORATION, FOR
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Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules and venue shall be in the Monterey County Superior Court.

16. MISCELLANEOUS PROVISIONS

A. **Non-discrimination**. During the performance of this Agreement, Attorney, and its subconsultants, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sexual orientation, either in Consultant's employment practices or in the furnishing of services to recipients. Consultant further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.

B. **Acceptance of Services Not a Release**. Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Attorney from professional responsibility for the Services performed.

C. **Force Majeure**. Either party shall be absolved from its obligation under this Agreement when and to the extent that performance is delayed or prevented, and in the City's case, when and to the extent that its need for vehicles, materials, or Services to be supplied hereunder are reduced or eliminated by any course, except financial, for reasons beyond its control. Such reasons include, but are not limited to: earthquake, flood, epidemic, fire, explosion, war, civil disorder, act of God or of the public enemy, act of federal, state or local government, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

D. **Headings**. The headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.

E. **Entire Agreement**. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter.

F. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and may be signed in counterparts, but all of which together shall constitute one and the same Agreement.

G. **Multiple Copies of Agreement**. Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that shall take precedence should any difference exist among counterparts of this Agreement.

H. **Authority**. Any individual executing this Agreement on behalf of the City or Attorney represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

I. **Severability**. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Agreement for any

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cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

J. **Non-exclusive Agreement.** This Agreement is non-exclusive and both the City and Attorney expressly reserve the right to enter into agreements with other Attorneys for the same or similar services, or may have its own employees perform the same or similar services.

K. **Assignment of Interest.** The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.

L. **Applicability to Improvement Authority.** The Bonds will be issued by the City of Carmel-by-the-Sea Public Improvement Authority, which is a joint powers agency between the City and its Parking Authority. All references in this Agreement to the City will include the Authority.

M. **Laws.** Attorney agrees that in the performance of this Agreement it will reasonably comply with all applicable federal, state and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Carmel-by-the-Sea.

IN WITNESS WHEREOF, the parties enter into this Agreement hereto on the day and year first above written in Carmel-by-the-Sea, California.

CITY OF CARMEL-BY-THE-SEA

By: _____ Date: _____
Chip Rerig, City Administrator

ATTORNEY

By: _____ Date: _____
Charles F. Adams, Esq.
Jones Hall APLC

ATTEST:

By: _____ Date: _____
Britt Avrit, City Clerk

ATTEST:

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By: _____ Date: _____
Brian Pierik, City Attorney

**Exhibit A
Scope of Engagement as Bond Counsel**

Attorneys shall perform all of the following services as Bond Counsel in connection with the issuance and sale of the Refunding Bonds:

- a. Consultation and cooperation with the City and the City staff to assist in the formulation of a coordinated financial and legal issuance and sale of the Refunding Bonds.
- b. Preparation of all legal proceedings for the authorization, issuance and sale of the Refunding Bonds by the City; including (a) preparation of a resolution of the governing board of the City authorizing the issuance and sale of the Refunding Bonds and approving related documents and actions, (b) preparation of all related lease financing documents, (c) preparation of all documents required for the closing of the issue, (d) supervising the closing, and (e) preparation of all other proceedings incidental to or in connection with the issuance and sale of the Refunding Bonds.
- c. Advising the City, from the time Attorneys are hired as Bond Counsel until the Refunding Bonds are delivered, as to compliance with federal tax law as required to ensure that interest on the Refunding Bonds is exempt from federal income taxation.

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- d. Upon completion of proceedings to Attorneys' satisfaction, providing a legal opinion (the "Bond Counsel Opinion") approving the validity and enforceability of the proceedings for the authorization, issuance and sale of the Refunding Bonds, and stating that interest on the Refunding Bonds is (a) excluded from gross income for purposes of federal income taxes and (b) exempt from California personal income taxation. The Bond Counsel Opinion will be addressed to the City, and may also be addressed to the underwriter of the Refunding Bonds and other participants in the financing. In rendering the Bond Counsel Opinion, Attorneys will rely upon the certified proceedings and other certifications of public officials and other persons furnished to Attorneys without undertaking to verify the same by independent investigation, and Attorneys will be entitled to assume continuing compliance by the City with applicable laws relating to the Refunding Bonds.
- e. Review those sections of the Official Statement to be disseminated in connection with the issuance of the Refunding Bonds involving summary descriptions of the Refunding Bonds, the legal proceedings leading to the authorization, issuance and sale of the Refunding Bonds, the legal documents under which the Refunding Bonds will be delivered, and federal tax law and securities law provisions applicable to the Refunding Bonds, as to completeness and accuracy.
- f. Assist the City in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance and sale of the Refunding Bonds.
- g. Such other and further services as are traditionally performed by Bond Counsel and within the scope of expertise of Bond Counsel in connection with similar financings.

Scope of Engagement as Disclosure Counsel

Attorneys shall perform all of the following services as disclosure counsel in connection with the issuance and sale of the Refunding Bonds:

- a. Prepare the disclosure document to be reviewed by potential investors, known as the Official Statement (both preliminary and final), or other disclosure documents in connection with the offering of the Refunding Bonds.
- b. Confer and consult with the officers and administrative staff of the City as to matters relating to the Official Statement.
- c. Facilitate the review and discussion of the Official Statement as deemed necessary by Attorneys for the proper exercise of their due diligence with respect to the Official Statement.
- d. On behalf of the City, prepare the bond purchase contract or official notice

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of sale pursuant to which the Refunding Bonds will be sold and a continuing disclosure certificate of the City to assist the underwriter with complying with Securities and Exchange Commission Rule 15c2-12.

- e. Subject to the completion of proceedings to the satisfaction of Attorneys, provide a letter of Attorneys addressed to the City and the underwriter that, although Attorneys are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement and make no representation that Attorneys have independently verified the accuracy, completeness or fairness of any such statements, no facts have come to Attorneys' attention that cause Attorneys to believe that the Official Statement as of the date of the Official Statement or the date of Closing contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, provided, that the opinion need not address financial and statistical data and forecasts, numbers, estimates, assumptions and expressions of opinion, and information concerning insurance, if any, and information concerning the Depository Trust Company and the book-entry system for the Refunding Bonds, which Attorneys may expressly exclude from the scope of their opinion.

Excluded Services

Attorneys' duties in this engagement are limited to those expressly set forth above , unless otherwise set forth in a written amendment to this Agreement. Among other things, Attorneys' duties do not include:

- a. Preparing requests for tax rulings from the Internal Revenue Service, or "no-action" letters from the Securities and Exchange Commission.
- b. Preparing blue sky or investment surveys with respect to the Refunding Bonds, or performing research regarding the City's past compliance with regard to prior continuing disclosure undertakings pursuant to Securities and Exchange Commission Rule 15c2-12, if any.
- c. Drafting state constitutional or legislative amendments.
- d. Pursuing test cases or any other litigation, including but not limited to contested validation actions or legal challenges which arise during the course of the proceedings relating to the Refunding Bonds, except as set forth above.
- e. Making an investigation or expressing any view as to the creditworthiness of the City or the Refunding Bonds.
- f. After Closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking under Securities

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and Exchange Commission Rule 15c2-12.

- g. Representing the City in Internal Revenue Service examinations, audits or inquiries, or Securities and Exchange Commission investigations.
- h. After Closing, unless specifically requested to do so by the City, and agreed to by Attorneys, providing continuing advice to the City or any other party concerning any actions that need to be taken regarding the Refunding Bonds; e.g., actions necessary to assure that interest paid on the Refunding Bonds will continue to be excludable from gross income for federal income tax purposes (e.g., our engagement does not include rebate calculations for the Refunding Bonds).
- i. Reviewing or opining on the business terms of, validity, or federal tax consequences of any investment agreement that the City may choose as an investment vehicle for the proceeds of the Refunding Bonds, unless the City and Attorneys agree on the terms of such review and compensation for such review.
- j. Reviewing or opining on the business terms of, validity, or federal tax consequences of any derivative financial products that the City may choose to enter into in connection with the issuance of the Refunding Bonds, unless the City and Attorneys agree on the terms of such review and compensation for such review.
- k. Reviewing, advising or opining on service contracts relating to proposed bond projects such as architect contracts, construction contracts or the methods of obtaining said services, or providing advice or opining on or reviewing applications relating to federal or state grant programs or other matching fund programs.
- l. Other than explaining legal requirements or considerations, advising on financial or business decisions with respect to a proposed issue, such as the par amount of the debt to be issued or other pricing variables.
- m. Addressing any other matter not specifically set forth above that is not required to render our Bond Counsel Opinion or Disclosure Counsel.

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PROFESSIONAL SERVICES AGREEMENT
NHA Advisors, LLC**

Attachment 9

**For Municipal Advisory Services in Connection with the
Refunding of Outstanding 2010 Refunding Lease Revenue Bonds**

THIS AGREEMENT is executed this ____ day of September 2020, by and between the City of Carmel-by-the-Sea, a municipal corporation, (hereinafter "City"), and NHA Advisors, LLC (hereinafter "Consultant"), collectively referred to herein as the "parties".

WHEREAS, the City of Carmel-by-the-Sea (the "City") and the City of Carmel-by-the-Sea Public Improvement Authority (the "Authority") have previously financed improvements to the Sunset Center Theater from the proceeds of the Sunset Center Lease Revenue Certificates of Participation, Series 2001 in the aggregate principal amount of \$9,900,000 (the "2001 Certificates") and, in order to realize debt service savings to the City, the Authority has previously issued its 2010 Refunding Lease Revenue Bonds in the aggregate principal amount of \$7,575,000 (the "2010 Bonds"), to refinance the 2001 Certificates and the related lease payment obligations of the City; and

WHEREAS, under the Joint Exercise of Powers Agreement which governs the Authority, the Authority is authorized to provide financial assistance to any local City through the issuance of its bonds; and

WHEREAS, the 2010 Bonds are subject to redemption at the option of the Authority on November 1, 2020, and the City and the Authority have determined that it is in their best interests to refund the 2010 Bonds for the purpose of realizing additional debt service savings to the City; and

WHEREAS, the Authority is proceeding to issue its 2020 Refunding Lease Revenue Bonds and the Authority and the City require the advice and assistance of a municipal financial advisor in connection with the issuance and sale of the Refunding Bonds.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

1. SERVICES

- A. **Scope of Services**. Consultant agrees to provide municipal advisory services consisting of project management, financial structuring analysis and project management pertaining to the refinancing of the 2010 Refunding Lease Revenue Bonds, as the scope of services ("Scope of Services") under this Agreement as identified within Exhibit A of the attached City of Carmel-by-the-Sea 2010 Refunding Lease Revenue Bonds Regulatory Disclosure Letter.

2. COMPENSATION

- A. **Total Fee**. The City agrees to pay and Consultant agrees to accept as full and fair consideration for the performance of this Agreement a total amount not-to-exceed Sixty One Thousand and Five Hundred Dollars (\$61,500) for municipal advisory services, assistance with the credit rating process and management of the solicitation process to retain other financial services as specified within Exhibit B of the attached City of Carmel-by-the-Sea 2010 Refunding Lease Revenue Bonds Regulatory Disclosure Letter. Compensation will be contingent on completion of the financing and is expected to be paid from proceeds of the transaction at the time of closing.
- B. **Audit and Examination of Accounts:**

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- i. Consultant shall keep and will cause any assignee or subconsultant under this Agreement to keep accurate books of records and accounts, in accordance with sound accounting principles, which pertain to services to be performed under this Agreement.
- ii. Any audit conducted of books of records and accounts shall be in accordance with generally accepted professional standards and guidelines for auditing.
- iii. Consultant hereby agrees to disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City.
- iv. Consultant shall include the requirements of Section 2C in all contracts with assignees or subconsultants under this Agreement.
- v. All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of services hereunder. All records, which pertain to actual disputes, litigation, appeals or claims, shall be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

3. AGREEMENT TERM

- A. **Term.** The work under this Agreement shall commence on January 22, 2020 and end on the earlier of June 30, 2021 or upon closing of the transaction, unless the Term of the Agreement is otherwise terminated or extended. Any extension must be mutually agreed to in writing signed by both parties.

4. CONSULTANT'S EMPLOYEES AND SUBCONSULTANTS

- A. **Not an Agent of the City.** Nothing in this Agreement shall be interpreted so as to render the City the agent, employer, or partner of Consultant, or the employer of anyone working for or subcontracted by Consultant, and Consultant must not do anything that would result in anyone working for or subcontracted by Consultant being considered an employee of the City. Consultant is not, and must not claim to be, an agent of the City.
- B. **Independent Contractor.** Consultant is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City shall not control or direct the details, means, methods or processes by which Consultant performs the Services. Consultant is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for herein. Consultant shall be solely liable for the work quality and conditions of any partners, employees and subconsultants.

No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Consultant shall not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Consultant's performance of Services under this Agreement. In connection therewith, Consultant shall defend, indemnify and hold the

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City harmless from any and all liability, which the City may incur because of Consultant's failure to pay such taxes.

5. REPRESENTATIVES AND COMMUNICATIONS

- A. **City's Project Representative.** The City appoints the individual named below as the City's Project Representative for the purposes of this Agreement ("City's Project Representative"). The City may unilaterally change its project representative upon notice to Consultant.

Name: Sharon Friedrichsen
Title: Director of Budget and Contracts, City of Carmel-by-the Sea
Address: P. O. Box CC, Carmel-by-the-Sea, CA 93921

- B. **Consultant's Project Manager.** Consultant appoints the person named below as its Project Manager for the purposes of this Agreement ("Consultant's Project Manager").

Name: Rob Schmidt
Title: Vice President, NHA Advisors, LLC
Address: 4040 Civic Center Drive, Suite 200, San Rafael, CA 94903

- C. **Meet and Confer.** Consultant agrees to meet and confer with the City's Project Representative, its agents or employees with regard to Services as set forth herein as may be required by the City to insure timely and adequate performance of this Agreement.

- D. **Communications and Notices.** All communications between the City and Consultant regarding this Agreement, including performance of Services, shall be between the City's Project Representative and Consultant's Project Manager. Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing and shall be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

6. INDEMNIFICATION

Consultant hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs, reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant or subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnatee shall not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnatee.

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Notwithstanding the provisions of the above paragraph, Consultant agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Consultant or Consultant's employees, subconsultants, representatives, patrons, guests or invitees.

Consultant further agrees to indemnify the City for damage to or loss of City property to the proportionate extent they arise out of Consultant's negligent performance of the work associated with this Agreement or to the proportionate extent they arise out of any negligent act or omission of Consultant or any of Consultant's employees, agents, subconsultants, representatives, patrons, guests or invitees; excepting such damage or loss arising out of the negligence of the City.

In no event shall the obligation of the Consultant exceed the limitations on the duty to defend and indemnify as set forth in Civil Code Sections 2782 and 2782.6.

7. INSURANCE

Consultant shall submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- B. Professional Liability Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Consultant will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.
- C. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.
- D. Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant shall maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.
- E. Other Insurance Requirements:
 - i. All insurance required under this Agreement must be written by an insurance company either:
 - a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; **or**
 - b. an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

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- ii. Each insurance policy required by this Agreement shall not be canceled, except with prior written notice to the City.
- iii. The general liability and auto policies shall:
 - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
 - b. Provide that such Consultant's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea shall be excess to the Consultant's insurance and shall not contribute with it.
 - c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
 - d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.
- iv. Prior to the start of work under this Agreement, Consultant shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Consultant shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
- v. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. All coverage available to the Consultant as named insured shall also be available and applicable to the additional insured. Notwithstanding the insurance requirements contained herein, Consultant is financially liable for its indemnity obligations under this Agreement.
- vi. All policies shall be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retention ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured shall reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event shall any SIR or insurance policy contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.
- vii. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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- viii. Consultant shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein.

8. PERFORMANCE STANDARDS

- A. Consultant shall furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant shall not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.
- B. Consultant agrees to perform all work under this Agreement to the satisfaction of the City and as specified herein. The City's Project Representative or his or her designee shall perform evaluation of the work. If the quality of work is not satisfactory, City in its discretion may meet with Consultant to review the quality of work and resolve the matters of concern, and may require Consultant to repeat the work at no additional fee until it is satisfactory.

9. CITY INFORMATION AND RESOURCES

- A. **Available Information.** The City shall make available to Consultant all relevant information, plans, maps, reports, specifications, standards and pertinent data which is in the hands of the City and is required by Consultant to perform the Services. Consultant shall be entitled to rely upon the accuracy and completeness of such information and data furnished by the City, except where it is stated otherwise or unreasonable.
- B. **City Resources.** The City acknowledges that Consultant's ability to provide the Services in accordance with this Agreement may be dependent on the City providing available information and resources in a prompt and timely manner as reasonably required by Consultant. To the extent that the City fails to provide City resources, Consultant shall not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event shall such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor shall Consultant be entitled to extra compensation for same.
- C. **Obligations of Consultant.** No reviews, approvals, or inspections carried out or supplied by the City shall derogate from the duties and obligations of Consultant, and all responsibility related to performance of the Services shall be and remain with Consultant.

10. OWNERSHIP AND USE OF MATERIALS

- A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on the City's behalf) and other documents or products produced by Consultant under this Agreement (collectively, "the Materials") are and shall remain the property of the City even though Consultant or another party may have physical possession of them or a portion thereof. Consultant

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hereby waives, in favor of the City, any moral rights Consultant, its employees, subconsultants, vendors, successors or assignees may have in the Materials.

- B. **No Patent or Copyright Infringement.** Consultant guarantees that in its creation of the Materials produced under this Agreement, no federal or state patent or copyright laws were violated. Consultant agrees that all copyrights, which arise from creation of the work or Services pursuant to this Agreement, shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Consultant covenants that it will defend, indemnify and hold City harmless from any claim or legal action brought against the City for alleged infringement of any patent or copyright related to City's use of Materials produced by Consultant and its employees, agents and subconsultants under this Agreement.
- C. **Delivery and Use of the Materials.** All Materials shall be transferred and delivered by Consultant to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Consultant requesting delivery by Consultant to the City of all or any part of the Materials in which event Consultant shall forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.
- D. **Survival of Ownership and Use Provisions.** It is understood and agreed that the provisions contained in Section 10, Ownership and Use of Materials, shall survive the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.

11. CONFIDENTIALITY

- A. **No Disclosure.** Consultant shall keep confidential and shall not disclose, publish or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Consultant shall not use for Consultant's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Consultant may acquire as a result of the performance of the Services under this Agreement. Consultant shall promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section shall survive the expiration or earlier termination of this Agreement.
- B. **California Public Records Act.** Consultant acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Consultant further acknowledges that it may have access to personal information as defined under the PRA, and Consultant shall not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

All Scopes of Services and related documents received shall be public records, with the exception of those elements, identified by the Consultant as business trade secrets and are plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required

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under the PRA or otherwise by law, the City shall not be liable or responsible for the disclosure of any such records and the Consultant shall indemnify, defend, and hold the City harmless for any such disclosure.

12. CONFLICT OF INTEREST

Consultant, Consultant's employees, and subconsultants agree as follows:

- A. That they shall conduct their duties related to this Agreement with impartiality, and shall, if they exercise discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring the impartiality of Consultant or its employees into question;
- B. Shall not influence, seek to influence, or otherwise take part in a decision of the City knowing that the decision may further their private interests;
- C. Shall not accept any commission, discount, allowance, payment, gift, or other benefit connected, directly or indirectly, with the performance of Services related to this Agreement, that causes, or would appear to cause, a conflict of interest;
- D. Shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services related to this Agreement, and if such financial interest is acquired during the term of this Agreement, Consultant shall promptly declare it to the City, and;
- E. Shall not, during the term of this Agreement, perform a service for, or provide advice to, any person, firm, or corporation, which gives rise to a conflict of interest between the obligations of Consultant under this Agreement and the obligations of Consultant to such other person, firm or corporation.

13. DISPUTE RESOLUTION

- A. **Dispute Resolution Procedures.** The parties shall make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement ("Dispute") using the Dispute Resolution Procedures set forth in this Section.
- B. **Negotiations.** First, the City's Project Representative and Consultant's Project Manager shall make reasonable efforts to resolve any Dispute by amicable negotiations and shall provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter shall be promptly referred to the City Administrator and the Consultant's Managing Partner who shall meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.
- C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the City Administrator pursuant to subsection B above, either party may, by notice to the other party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court's Court-Directed Mediator Panel list. The duration of any such mediation shall not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) shall be borne equally by the parties, and each party shall bear its own costs of participating in mediation. The mediation shall take place within or in close proximity to the City of Carmel-by-the-Sea.

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In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 shall be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute shall be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

- D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the Arbitration, and the prevailing party shall be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees shall be considered costs recoverable in that proceeding, and be included in any award.

14. TERMINATION OF AGREEMENT

Both parties may terminate this Agreement, in whole or in part, with or without cause, at any time during the Agreement Term upon ninety (90) days written notice.

15. LEGAL ACTION / VENUE

Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules and venue shall be in the Monterey County Superior Court.

16. MISCELLANEOUS PROVISIONS

- A. **Non-discrimination.** During the performance of this Agreement, Consultant, and its subconsultants, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sexual orientation, either in Consultant's employment practices or in the furnishing of services to recipients. Consultant further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.
- B. **Acceptance of Services Not a Release.** Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the Services performed.
- C. **Force Majeure.** Either party shall be absolved from its obligation under this Agreement when and to the extent that performance is delayed or prevented, and in the City's case,

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when and to the extent that its need for vehicles, materials, or Services to be supplied hereunder are reduced or eliminated by any course, except financial, for reasons beyond its control. Such reasons include, but are not limited to: earthquake, flood, epidemic, fire, explosion, war, civil disorder, act of God or of the public enemy, act of federal, state or local government, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

- D. **Headings.** The headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.
- E. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter.
- F. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and may be signed in counterparts, but all of which together shall constitute one and the same Agreement.
- G. **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that shall take precedence should any difference exist among counterparts of this Agreement.
- H. **Authority.** Any individual executing this Agreement on behalf of the City or Consultant represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- I. **Severability.** If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
- J. **Non-exclusive Agreement.** This Agreement is non-exclusive and both the City and Consultant expressly reserve the right to enter into agreements with other Consultants for the same or similar services, or may have its own employees perform the same or similar services.
- K. **Assignment of Interest.** The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.
- L. **Laws.** Consultant agrees that in the performance of this Agreement it will reasonably comply with all applicable federal, state and local laws and regulations. This Agreement

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shall be governed by and construed in accordance with the laws of the State of California and the City of Carmel-by-the-Sea.

- M. **Applicability to Improvement Authority.** The Bonds will be issued by the City of Carmel-by-the-Sea Public Improvement Authority, which is a joint powers agency between the City and its Parking Authority. All references in this Agreement to the City will include the Authority.

IN WITNESS WHEREOF, the parties enter into this Agreement hereto on the day and year first above written in Carmel-by-the-Sea, California.

CITY OF CARMEL-BY-THE-SEA

By: _____ Date: _____
Chip Rerig, City Administrator

CONSULTANT

By: _____ Date: _____
Craig Hill, Managing Partner
NHA Advisors, LLC

ATTEST:

By: _____ Date: _____
Britt Avrit, City Clerk

ATTEST:

By: _____ Date: _____
Brian Pierik, City Attorney

4040 Civic Center Drive, Suite 200
San Rafael, CA 94903

Office: 415.785.2025
www.NHAadvisors.com

July 6, 2020

Chip Rerig, City Administrator
Sharon Friedrechsén, Director of Budget and Contracts
Robin Scattini, Finance Manager
City of Carmel-by-the-Sea
P.O. Box CC
Carmel-by-the-Sea, CA 93921

RE: City of Carmel-by-the-Sea 2010 Refunding Lease Revenue Bonds – Regulatory Disclosure Letter

Dear Chip, Sharon & Robin,

NHA Advisors, LLC (“NHA Advisors”) is required to send this Regulatory Disclosure Letter per Municipal Securities Rulemaking Board (“MSRB”) rules. This letter specifies the terms and details of the work that NHA Advisors will perform for the City of Carmel-by-the-Sea (the “City”) relating to the above referenced project (the “Project”). Additionally, this letter provides certain duties and disclosures that municipal advisors must present to all clients prior to beginning work on a municipal transaction.

Scope of Municipal Advisory Activities to be Performed

A detailed Scope of Services can be found in Exhibit A.

Independent Registered Municipal Advisor (“IRMA”)

If acting in the capacity of an Independent Registered Municipal Advisor (“IRMA”), with regard to the IRMA exemption of the U. S. Securities and Exchange Commission (“SEC”) Rule, NHA Advisors will review all third-party recommendations submitted to NHA Advisors in writing by the City.

Term of the Project

The Project will commence on January 22, 2020 and end on the earlier of either June 30, 2021 or upon closing of the transaction, unless the term of the Agreement is otherwise terminated or extended. Any extensions must be mutually agreed upon by all parties in writing.

Termination of NHA Advisors’ Role on Project

The City may terminate NHA Advisors’ role on the Project at any time and without cause upon written notification to NHA Advisors.

In the event of termination, NHA Advisors shall be entitled to compensation for services performed to the effective date of termination. The City, however, may condition payment of such compensation upon NHA Advisors delivering to the City any or all documents, photographs, computer software, video and audio

tapes, and other materials provided to NHA Advisors or prepared by or for NHA Advisors or the City in connection with NHA Advisors' work on the Project.

NHA Advisors may terminate upon 45 days' written notice to the City and shall include in such notice the reasons for termination.

Compensation and Out-of-Pocket Expenses

A detailed proposal for compensation and expenses can be found in Exhibit B.

Fiduciary Duty

NHA Advisors is registered as a Municipal Advisor with the SEC and MSRB. As such, NHA Advisors has a fiduciary duty to the City and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care:

- a) exercise due care in performing its municipal advisory activities;
- b) possess the degree of knowledge and expertise needed to provide the City with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to the City's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the City; and
- d) undertake a reasonable investigation to determine that NHA Advisors is not forming any recommendation on materially inaccurate or incomplete information; NHA Advisors must have a reasonable basis for:
 - i. any advice provided to or on behalf of the City;
 - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the City, any other party involved in the municipal securities transaction or municipal financial product, or investors in the City securities; and
 - iii. any information provided to the City or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty:

NHA Advisors must deal honestly and with the utmost good faith with the City and act in the City's best interests without regard to the financial or other interests of NHA Advisors. NHA Advisors will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). NHA Advisors will not engage in municipal advisory activities with the City as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the City's best interest.

Conflicts of Interest and Other Matters Requiring Disclosures

- As of the commencement date of the Project, there are no actual or potential conflicts of interest other than those noted below that NHA Advisors is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If NHA Advisors becomes aware of any potential conflict of interest that arise after this disclosure, NHA Advisors will disclose the detailed information in writing to the City in a timely manner.

- The fee paid to NHA Advisors increases the cost of investment to the City. The increased cost occurs from compensating NHA Advisors for municipal advisory services provided. This conflict of interest will not impair NHA Advisors' ability to render unbiased and competent advice or to fulfill its fiduciary duty to the issuer.
- NHA Advisors does not act as principal in any of the transaction(s) related to its role/work on the Project.
- During the term of the municipal advisory relationship, any agreement between the City and NHA Advisors will be promptly amended to reflect any material changes or additions.
- NHA Advisors does not have any affiliate that provides any advice, service, or product to or on behalf of the City that is directly or indirectly related to the municipal advisory activities to be performed by NHA Advisors;
- NHA Advisors has not made any payments directly or indirectly to obtain or retain the City's municipal advisory business;
- NHA Advisors has not received any payments from third parties to enlist NHA Advisors' recommendation to the City of its services, any municipal securities transaction or any municipal finance product;
- NHA Advisors has not engaged in any fee-splitting arrangements involving NHA Advisors and any provider of investments or services to the City;
- NHA Advisors has a conflict of interest from compensation for municipal advisory activities to be performed that are contingent on the size or closing of any transactions as to which NHA Advisors is providing advice;
- NHA Advisors serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of another NHA Advisors client. For example, NHA Advisors serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to the City. These other clients may, from time to time and depending on the specific circumstances, have competing interests. In acting in the interests of its various clients, NHA Advisors could potentially face a conflict of interest arising from these competing client interests. NHA Advisors fulfills its regulatory duty and mitigates such conflicts through dealing honestly and with the utmost good faith with the City; and
- NHA Advisors does not have any legal or disciplinary event that is material to the City's evaluation of the municipal advisory or the integrity of its management or advisory personnel.

Pursuant to MSRB G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

- NHA Advisors is currently registered as a Municipal Advisor with the SEC and the MSRB.
- Within the MSRB website at www.msrb.org, the City may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

Legal Events and Disciplinary History

NHA Advisors does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The City may

electronically access NHA Advisors' most recent Form MA and each most recent Form MA-I filed with the Commission at the following website:

www.sec.gov/edgar/searchedgar/companysearch.html

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Recommendations

If NHA Advisors makes a recommendation of a municipal securities transaction or municipal financial product or if the review of a recommendation of another party is requested in writing by the City and is within the scope of the engagement, NHA Advisors will determine, based on the information obtained through reasonable diligence of NHA Advisors whether a municipal securities transaction or municipal financial product is suitable for the City. In addition, NHA Advisors will inform the City of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation;
- the basis upon which NHA Advisors reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for the City; and
- whether NHA Advisors has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the City objectives.

If the City elects a course of action that is independent of or contrary to the advice provided by NHA Advisors, NHA Advisors is not required on that basis to disengage from the City.

Record Retention

Effective July 1, 2014, pursuant to the SEC record retention regulations, NHA Advisors is required to maintain in writing, all communication and created documents between NHA Advisors and the City for five (5) years.

If there are any questions regarding the above, please do not hesitate to contact NHA Advisors.

Sincerely,



Craig Hill, Managing Principal
NHA Advisors, LLC

EXHIBIT A

SCOPE OF SERVICES MUNICIPAL ADVISORY SERVICES

The scope of work will generally include, but may not be limited to, the following services:

◆ Project Management

- Manage financing process, including assembly of the financing team and assignment of tasks for all parties involved in the financing.
- Provide information and advice on the timing of the financing process and develop timeline (schedule) of tasks.
- Upon request, work with City staff to solicit and select a registered broker-dealer (underwriter or placement agent), bond/disclosure counsel, trustee service provider, or other consultants that may be required as part of financing process. Provide recommendation(s) and negotiate preferred terms and pricing for said consultant(s).

◆ Quantitative Analysis and Financial Structuring

- Prepare, review, analyze, and provide structuring advice for the proposed financing and or refinancing.
- Evaluate the method of sale (private placement or public offering), bond structure, legal approach, and financial advantages for each alternative, including the financing terms and call provisions.
- Analyze credit enhancement options (bond insurance and reserve surety bond policies).
- Meetings or conference calls with credit enhancement or insurance companies to discuss the transaction, as appropriate.

◆ Project Implementation

- Provide advice on the financing structure for incorporation into financing documents.
- Coordinate the efforts of bond counsel, disclosure counsel, and/or any other legal counsel to prepare the financing documents for approval by the City Council.
- Review financing documents to ensure accuracy with the financing plan.
- Upon request, NHA Advisors will make presentations or attend meetings with the City Council or stakeholders to answer questions about the financing and process.
- Work with selected financing partner or funding source to determine optimal bond structure, including serial/term bonds, premium/discount bonds, and redemption provisions.

- If a public offering method of sale is utilized:
 - Coordinate preparation of a comprehensive credit presentation to the rating services and bond insurance companies, if applicable.
 - Work with disclosure counsel to assemble the official statement (investor disclosure document) for the financing in a manner consistent with existing laws, regulations, and standards of the securities industry.
 - If completed as a negotiated sale, assist the City in the negotiation of underwriting spreads and interest rates for the proposed financing. Monitor the underwriter's sales effort to ensure the lowest financing costs are achieved.
 - Assist with the solicitation of an investment advisor to coordinate investment of bond proceeds and/or accounts, as necessary.
 - If completed as a competitive sale, engage a nationally recognized firm to market the bonds and establish a bidding platform.
 - Coordinate the delivery, printing and final approval of legal documents, and the preparation of closing certificates and final official statement.
- If a private placement method of sale is utilized:
 - Prepare a credit package for potential investor banks.
 - If a placement agent has been engaged, work with placement agent to solicit bids from various banks that invest in municipal debt.
 - Manage bond or loan pricing and final financing structure (debt service and bond terms).
 - Coordinate the delivery, final approval of legal documents, and the preparation of closing certificates.
- Work with bond counsel to finalize documents for execution by the City.
- Prepare or coordinate preparation of a closing memorandum outlining a detailed flow of funds at the time of closing.

EXHIBIT B

COMPENSATION SCHEDULE

For work described in the Scope of Services, compensation will be contingent on completion of the financing and is expected to be paid from proceeds of the transaction at the time of closing. The fee for these services is based on a number of factors, including the method of sale, financing structure, complexity, series of bonds, funding source, and the time expected to be required to manage the financing process.

Base Municipal Advisory Services

The transaction is expected to utilize one of three methods of sale: (1) private placement with a private party or bank (requiring no public offering disclosure document), (2) negotiated public offering with a pre-selected underwriter, or (3) competitive public offering engaging an underwriter through a competitive sale. Based on the method of sale, NHA Advisors will receive a fee for services as follows.

Method of Sale	Fee
Private Placement	\$42,500
Public Offering – Negotiated Sale	\$47,500
Public Offering – Competitive Sale	\$52,500

Additional Services

Credit Rating Process (as Needed) – For services related to a credit rating process, NHA Advisors will receive a fee for services as follows.

Credit Rating Process	Fee
Bond, Loan or Other Long-Term Financing	\$10,000

Request for Proposals (Upon Request) – If the City has not engaged consultants to provide certain services required as part of financing process, at the City's direction, NHA Advisors will undertake the solicitation of one or more of these parties for the fees outlined in the following rate table.

Request for Proposal Process	Fee
Broker-Dealer (Underwriter/Placement Agent)	\$4,000
Bond/Disclosure Counsel	\$2,000
Trustee	\$1,000

Expenses (Out-of-Pocket)

All expenses will be billed directly at cost to the City. Expenses will be limited to those necessary for completion of the project.

To: Honorable Chairman and Board of Directors, Public Improvement Authority
Honorable Mayor and Councilmembers, City Council

From: Sharon Friedrichsen, Director of Budget and Contracts

CC: Chip Rerig, City Administrator
Brian Pierik, City Attorney
Britt Avrit, City Clerk

Date: September 1, 2020

Subject: Supplemental Information for Agenda #1-Public Improvement Authority September 1, 2020 Special Meeting and Agenda Item #10- City Council September 1, 2020 Regular Meeting

On September 1, 2020, the Board of Directors of the Public Improvement Authority and the City Council will consider agenda items to approve resolutions authorizing the issuance and sale of Refunding Lease Revenue Bonds to refund outstanding 2010 Bonds related to the Sunset Center Theater, approve related documents and actions, and provide direction on how the savings will be captured. The staff reports for these respective agenda items included three options for the structuring of the refinancing of the 2010 Bonds: Option 1 (Level Savings), Option 2 (Upfront Savings) and Option 3 (Extended Term).

The City's Municipal Advisor has also developed a hybrid of Option 2 and Option 3, which is referred to as Option 4 (Short Extension). Unlike Option 2, Option 4 postpones principal payments in FY 2022-23, resulting in savings of approximately \$225,000. The first principal payment would occur in FY 2023-24, after the City's pension obligations mature. To do so, the final maturity date for the Refunding Lease Revenue Bonds would need to be extended by one year.

For each of these options, an estimated payment schedule has been provided in *Table 1: Estimated Debt Service Payments by Scenario (Option)* and is included for reference on the following page of this memorandum. Staff will present these options in more detail as part of the presentation for these agenda items.

Table 1: Estimated Debt Service Payments by Scenario (Option)					
Fiscal Year Ending	Status Quo (No Refinancing)	Option 1 (Level Savings)	Option 2 (Upfront Savings)	Option 3 (20-Years)	Option 4 (Short Extension)
2021	\$506,483	\$ 73,942	\$ 80,407	\$ 68,123	\$ 79,272
2022	\$506,463	\$ 420,825	\$ 152,350	\$ 276,825	\$ 150,200
2023	\$505,963	\$ 422,125	\$ 373,975	\$ 282,175	\$ 150,200
2024	\$479,856	\$ 426,500	\$ 503,300	\$ 281,475	\$ 512,800
2025	\$512,819	\$ 428,800	\$ 508,300	\$ 279,775	\$ 507,800
2026	\$504,981	\$ 420,700	\$ 502,700	\$ 277,875	\$ 512,200
2027	\$510,200	\$ 427,100	\$ 506,500	\$ 280,675	\$ 510,900
2028	\$513,400	\$ 427,800	\$ 509,500	\$ 278,175	\$ 509,000
2029	\$510,900	\$ 427,900	\$ 506,800	\$ 280,375	\$ 506,500
2030	\$507,800	\$ 422,500	\$ 503,500	\$ 277,275	\$ 508,300
2031	\$509,000	\$ 426,500	\$ 504,500	\$ 278,875	\$ 509,300
2032	\$494,700	\$ 419,150	\$ 494,900	\$ 282,325	\$ 514,550
2033				\$ 282,775	\$ 227,250
2034				\$ 277,888	
2035				\$ 282,600	
2036				\$ 282,144	
2037				\$ 281,106	
2038				\$ 279,478	
2039				\$ 277,719	
2040				\$ 280,763	
2041				\$ 278,609	
Total	\$6,062,564	\$ 4,743,842	\$ 5,146,732	\$ 5,667,029	\$ 5,198,272