

# *City of Brisbane*

## *Agenda Report*

To: City Council via City Manager

From: Stuart Schillinger, Administrative Services Director

Subject: Approval of Resolution 2013-13 authorizing the City of Brisbane to proceed with the sale of Lease Revenue Bonds to pay off existing Pension Obligations

Date: May 20, 2013

### **Purpose:**

To reduce the short-term payment of existing pension debt of the City without increasing future costs to the City or increasing the length of time needed to pay off the City's unfunded pension obligations.

### **Recommendation:**

Approve Resolution 2013-13 which authorizes the issuance and sale of bonds in a principal amount not to exceed \$2,000,000 to refund certain pension obligations of the City, approving the from and authorizing the execution of a site and facility lease between the City and the Brisbane Financing Authority, a lease agreement between the City and the Brisbane Financing Authority, and a letter agreement for purchase the by and among Umpqua Bank and the Authority of the lease payment made by the City to the Financing Authority and authorizing actions related thereto.

Approve Resolution BPFA 2013-01 which authorizes the execution of certain lease financing documents in connection with the funding by the City of Brisbane of its unfunded liability to the California Public Employees Retirement System relating to the City's miscellaneous pension side fund.

### **Background:**

At its March 18, 2013 meeting City Council directed staff to develop the required documents for the sale of bonds to pay off the City's side fund at California Public Employee Retirement System (PERS). The plan presented at the City Council was to sell Lease Revenue Bonds backed by an asset of the City. The term of the bonds were to be no more than ten years in order for the City to get the best interest rates available. The City went out and solicited proposals from banks. The anticipated interest rate was 4% a year.

### **Discussion:**

The City solicited bids for the sale of the bonds. Umpqua bank provided the lowest bid. Their interest rate was 3.7%. The original debt owed to PERS would have been paid off in 2028 and the current debt will be paid off in 2023. The savings over the life of the original debt will be about \$600,000 with a net present value savings of about \$300,000. The debt will wrap around existing Pension Obligation Bonds, which means as existing bonds are paid off we will pay a higher amount of the current bonds. This allows us to keep consistent debt payments throughout the life of the bonds and save money.

Brian Quint, our bond counsel, has written the necessary documents to sell the bonds. These are included as attachments to this report.


**Fiscal Impact:**

The City will save about \$40,000 a year while the existing Pension Obligations are being retired. After they are retired we will have a negative savings however, this will allow us to pay off the obligation five years early.

**Attachments:**

1. Resolution 2013-13
2. Resolution BPFA 2013-01
3. Site and Facility Lease
4. Lease Agreement
5. Assignment Agreement; and
6. Letter Agreement for Purchase.

  
\_\_\_\_\_  
Administrative Services Director  
Stuart Schillinger

  
\_\_\_\_\_  
City Manager  
Clay Holstine

**Brisbane Public Finance Authority, California**  
**Taxable Direct Placement Lease (Pension Project), Series 2013**  
**Issue Summary and Sources and Uses**

**Issue Summary**

Dated Date	06/05/2013
Delivery Date	06/05/2013
TIC	3.70006%
Arbitrage Yield Limit	3.70006%
NIC	3.70000%
Average Life	7.23
Estimated Savings	\$586,224
Estimated Present Value	\$353,310
Savings %	23.180%

**Sources**

Par Amount	1,601,000.00
Original Issue Premium	0.00
Accrued Interest	<u>0.00</u>
Total	1,601,000.00

**Uses**

PERS Payoff	1,524,219.00
Net Underwriting	0.00
Insurance	0.00
Issuance Costs	76,781.00
Reserve Fund	0.00
Accrued Interest	0.00
Miscellaneous	<u>0.00</u>
Total	1,601,000.00

**Brisbane Public Finance Authority, California**  
**Taxable Direct Placement Lease (Pension Project), Series 2013**  
**Debt Service Schedule**

<b>Date</b>	<b>Principal</b>	<b>Rate</b>	<b>Interest</b>	<b>Total Debt Service</b>	<b>Annual Debt Service</b>
06/05/2013					
12/01/2013	20,000	3.700%	28,960.31	48,960.31	
06/01/2014	20,000	3.700%	29,248.50	49,248.50	98,208.81
12/01/2014	25,000	3.700%	28,878.50	53,878.50	
06/01/2015	25,000	3.700%	28,416.00	53,416.00	107,294.50
12/01/2015	30,000	3.700%	27,953.50	57,953.50	
06/01/2016	30,000	3.700%	27,398.50	57,398.50	115,352.00
12/01/2016	35,000	3.700%	26,843.50	61,843.50	
06/01/2017	35,000	3.700%	26,196.00	61,196.00	123,039.50
12/01/2017	40,000	3.700%	25,548.50	65,548.50	
06/01/2018	40,000	3.700%	24,808.50	64,808.50	130,357.00
12/01/2018	80,000	3.700%	24,068.50	104,068.50	
06/01/2019	85,000	3.700%	22,588.50	107,588.50	211,657.00
12/01/2019	95,000	3.700%	21,016.00	116,016.00	
06/01/2020	95,000	3.700%	19,258.50	114,258.50	230,274.50
12/01/2020	110,000	3.700%	17,501.00	127,501.00	
06/01/2021	110,000	3.700%	15,466.00	125,466.00	252,967.00
12/01/2021	175,000	3.700%	13,431.00	188,431.00	
06/01/2022	175,000	3.700%	10,193.50	185,193.50	373,624.50
12/01/2022	188,000	3.700%	6,956.00	194,956.00	
06/01/2023	188,000	3.700%	3,478.00	191,478.00	386,434.00
	1,601,000		428,208.81	2,029,208.81	2,029,208.81

**Brisbane Public Finance Authority, California  
Taxable Direct Placement Lease (Pension Project), Series 2013  
Pricing Schedule**

Date	Principal	Coupon	Yield	Par Call: 04/01/2019	
				Price	Production
06/05/2013					
12/01/2013	20,000	3.700%	3.700%	100.000	20,000.00
06/01/2014	20,000	3.700%	3.700%	100.000	20,000.00
12/01/2014	25,000	3.700%	3.700%	100.000	25,000.00
06/01/2015	25,000	3.700%	3.700%	100.000	25,000.00
12/01/2015	30,000	3.700%	3.700%	100.000	30,000.00
06/01/2016	30,000	3.700%	3.700%	100.000	30,000.00
12/01/2016	35,000	3.700%	3.700%	100.000	35,000.00
06/01/2017	35,000	3.700%	3.700%	100.000	35,000.00
12/01/2017	40,000	3.700%	3.700%	100.000	40,000.00
06/01/2018	40,000	3.700%	3.700%	100.000	40,000.00
12/01/2018	80,000	3.700%	3.700%	100.000	80,000.00
06/01/2019	85,000	3.700%	3.700%	100.000	85,000.00
12/01/2019	95,000	3.700%	3.700%	100.000	95,000.00
06/01/2020	95,000	3.700%	3.700%	100.000	95,000.00
12/01/2020	110,000	3.700%	3.700%	100.000	110,000.00
06/01/2021	110,000	3.700%	3.700%	100.000	110,000.00
12/01/2021	175,000	3.700%	3.700%	100.000	175,000.00
06/01/2022	175,000	3.700%	3.700%	100.000	175,000.00
12/01/2022	188,000	3.700%	3.700%	100.000	188,000.00
06/01/2023	188,000	3.700%	3.700%	100.000	188,000.00
	1,601,000.00	Par Amount			1,601,000.00
	<u>0.00</u>	+ Premium Bid			
	1,601,000.00	= Amount Bid		Avg Price	100.000
	<u>0.00</u>	+ Gross Underwriter's Spread			
	1,601,000.00	= Price to Public			

**Brisbane Public Finance Authority, California**  
**Taxable Direct Placement Lease (Pension Project), Series 2013**  
**Yield Calculation**

Date	Debt Service	TIC Present Value	Adjusted Debt Service	AYL Present Value
06/05/2013				
12/01/2013	48,960.31	48,090.57	48,960.31	48,090.57
06/01/2014	49,248.50	47,494.97	49,248.50	47,494.97
12/01/2014	53,878.50	51,016.30	53,878.50	51,016.30
06/01/2015	53,416.00	49,659.65	53,416.00	49,659.65
12/01/2015	57,953.50	52,899.41	57,953.50	52,899.41
06/01/2016	57,398.50	51,441.13	57,398.50	51,441.13
12/01/2016	61,843.50	54,418.04	61,843.50	54,418.04
06/01/2017	61,196.00	52,870.17	61,196.00	52,870.17
12/01/2017	65,548.50	55,601.85	65,548.50	55,601.85
06/01/2018	64,808.50	53,975.58	64,808.50	53,975.58
12/01/2018	104,068.50	85,098.81	104,068.50	85,098.81
06/01/2019	107,588.50	86,379.14	107,588.50	86,379.14
12/01/2019	116,016.00	91,453.38	116,016.00	91,453.38
06/01/2020	114,258.50	88,431.95	114,258.50	88,431.95
12/01/2020	127,501.00	96,888.70	127,501.00	96,888.70
06/01/2021	125,466.00	93,610.47	125,466.00	93,610.47
12/01/2021	188,431.00	138,035.12	188,431.00	138,035.12
06/01/2022	185,193.50	133,199.26	185,193.50	133,199.26
12/01/2022	194,956.00	137,673.87	194,956.00	137,673.87
06/01/2023	191,478.00	132,761.65	191,478.00	132,761.65
	2,029,208.81	1,601,000.00	2,029,208.81	1,601,000.00
<b>Target Value</b>				
Par Amount		1,601,000.00		1,601,000.00
Disc/Prem		0.00		0.00
Insurance				0.00
Accured Interest				0.00
		1,601,000.00		1,601,000.00
TIC/AYL		3.70006%		3.70006%

**Brisbane Public Finance Authority, California**  
**Taxable Direct Placement Lease (Pension Project), Series 2013**  
**Combined Pension Bonds Debt Service**

Fiscal Year	Existing Debt Service	Proposed Debt Service	Total Debt Service
2013	557,075		
2014	576,725	98,209	674,934
2015	599,175	107,295	706,470
2016	619,150	115,352	734,502
2017	636,650	123,040	759,690
2018	659,631	130,357	789,988
2019	149,381	211,657	361,038
2020	157,038	230,275	387,312
2021	158,813	252,967	411,780
2022	0	373,625	373,625
2023	0	386,434	386,434
2024	0	0	0
2025	0	0	0
2026	0	0	0
2027	0	0	0
2028	0	0	0
	4,113,638	2,029,209	5,585,771

**Brisbane Public Finance Authority, California**  
**Taxable Direct Placement Lease (Pension Project), Series 2013**  
**Present Value Savings Estimate**

Date	PERS Debt Service	Proposed Debt Service	Debt Service Savings	Present Value Savings
06/05/2013				
12/01/2013	70,285	48,960	21,324	20,945
06/01/2014	70,285	49,249	21,036	20,287
12/01/2014	72,393	53,879	18,515	17,531
06/01/2015	72,393	53,416	18,977	17,642
12/01/2015	74,565	57,954	16,612	15,163
06/01/2016	74,565	57,399	17,167	15,385
12/01/2016	76,802	61,844	14,959	13,162
06/01/2017	76,802	61,196	15,606	13,483
12/01/2017	79,106	65,549	13,558	11,500
06/01/2018	79,106	64,809	14,298	11,908
12/01/2018	81,479	104,069	(22,590)	(18,472)
06/01/2019	81,479	107,589	(26,110)	(20,962)
12/01/2019	83,924	116,016	(32,093)	(25,298)
06/01/2020	83,924	114,259	(30,335)	(23,478)
12/01/2020	86,441	127,501	(41,060)	(31,202)
06/01/2021	86,441	125,466	(39,025)	(29,117)
12/01/2021	89,035	188,431	(99,397)	(72,813)
06/01/2022	89,035	185,194	(96,159)	(69,162)
12/01/2022	91,706	194,956	(103,251)	(72,913)
06/01/2023	91,706	191,478	(99,773)	(69,177)
12/01/2023	94,957		94,957	64,642
06/01/2024	94,957		94,957	63,468
12/01/2024	97,291		97,291	63,847
06/01/2025	97,291		97,291	62,687
12/01/2025	100,209		100,209	63,395
06/01/2026	100,209		100,209	62,243
12/01/2026	103,215		103,215	62,946
06/01/2027	103,215		103,215	61,803
12/01/2027	106,312		106,312	62,501
06/01/2028	106,312		106,312	61,365
	2,615,433	2,029,209	586,224	353,310



CITY OF BRISBANE

RESOLUTION NO. 2013-13

**RESOLUTION APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE FUNDING OF THE CITY'S UNFUNDED LIABILITY TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM RELATING TO THE CITY'S MISCELLANEOUS PENSION SIDE FUND AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

RESOLVED, by the City Council (the "City Council") of the City of Brisbane (the "City"), as follows:

WHEREAS, the City has determined that at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to fund its unfunded liability to the California Public Employees Retirement System ("PERS") relating to the City's Miscellaneous Pension Side Fund (the "Side Fund") by entering into a lease financing to accomplish such funding;

WHEREAS, it is in the public interest and for the public benefit that the City Council authorize and direct execution of certain financing documents in connection therewith; and

WHEREAS, the documents below specified have been filed with the City and the members of the City Council, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, it is hereby DECLARED and ORDERED, as follows:

*Section 1.* The City Council hereby approves the funding of its unfunded liability to PERS relating to the Side Fund.

*Section 2.* The below-enumerated documents, substantially in the forms on file with the City Clerk, be and are hereby approved, and the Mayor, the City Manager or the Finance Director, or the designee of any such official, is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, the execution thereof to be conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to attest to such official's signature:

(a) a site and facility lease, between the City, as lessor, and the Brisbane Public Financing Authority (the "Authority"), as lessee (the "Site and Facility Lease"), pursuant to which the City will lease certain existing real property and the improvements thereon (the "Property") to the Authority;

(b) a lease agreement, by and between the Authority, as lessor, and the City, as lessee (the "Lease Agreement"), pursuant to which the Authority will lease the Property back to the

City, so long as the total principal amount of the Lease Agreement does not exceed \$2,000,000, so long as the term of the Lease Agreement does not extend beyond June 1, 2023, and the interest rate payable with respect to the Lease Agreement is not greater than 4.00% per annum; and

(c) a letter agreement for purchase by and among Umpqua Bank, the Authority and the City, whereby Umpqua Bank agrees to acquire the rights of the Authority to the lease payments to be made by the City under the Lease Agreement and the rights of the Authority under the Site and Facility Lease.

*Section 3.* Quint & Thimmig LLP, San Francisco, California, is hereby designated as bond counsel to the City in connection with the financing. The Mayor, the City Manager or the Finance Director, or the designee of any such official, is hereby authorized and directed in the name and on behalf of the City to execute an agreement for legal services with such firm in the form on file with the City Clerk, with such changes, insertions and omissions as may be approved by such official, the execution thereof to be conclusive evidence of such approval.

*Section 4.* Brandis Tallman LLC, San Francisco, California, is hereby designated as placement agent in connection with the financing. The Mayor, the City Manager or the Finance Director, or the designee of any such official, is hereby authorized and directed in the name and on behalf of the City to execute an agreement for placement agent services with such firm in the form on file with the City Clerk, with such changes, insertions and omissions as may be approved by such official, the execution thereof to be conclusive evidence of such approval.

*Section 5.* JNA Consulting Group, LLC, Boulder City, San Mateo, is hereby designated as financial advisor in connection with the financing. The Mayor, the City Manager or the Finance Director, or the designee of any such official, is hereby authorized and directed in the name and on behalf of the City to execute an agreement for financial advisory services with such firm in the form on file with the City Clerk, with such changes, insertions and omissions as may be approved by such official, the execution thereof to be conclusive evidence of such approval.

*Section 6.* The Mayor, the City Manager, the Finance Director, the City Clerk and all other appropriate officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates and to take such other actions as may be necessary to effect the purposes of this resolution and the financing herein authorized.

*Section 7.* This Resolution shall take effect upon its adoption by this City Council.

CITY OF BRISBANE

By \_\_\_\_\_  
Raymond C. Miller, Mayor

PASSED AND ADOPTED by the City Council of the City of Brisbane this 20th day of May, 2013, by the following vote:

AYES:

NOES:

ABSENT:

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Sheri Marie Spediacci, City Clerk

**BRISBANE PUBLIC FINANCING AUTHORITY**

**RESOLUTION NO. FA 2013-01**

**RESOLUTION APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE FUNDING BY THE CITY OF BRISBANE OF ITS UNFUNDED LIABILITY TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM RELATING TO THE CITY'S MISCELLANEOUS PENSION SIDE FUND AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

RESOLVED, by the Board of Directors (the "Board") of the Brisbane Public Financing Authority (the "Authority"), as follows:

WHEREAS, the City has determined that at this time, due to prevailing interest rates in the municipal bond market and for other reasons, to fund its unfunded liability to the California Public Employees Retirement System relating to the City's Miscellaneous Pension Side Fund by entering into a lease financing to accomplish such funding;

WHEREAS, it is in the public interest and for the public benefit that the Board authorize and direct execution of certain financing documents in connection therewith; and

WHEREAS, the documents below specified have been filed with the Authority and the members of the Board, with the aid of its staff, have reviewed said documents;

NOW, THEREFORE, it is hereby ORDERED and DETERMINED, as follows:

*Section 1.* The below-enumerated documents, substantially in the forms on file with the Secretary, be and are hereby approved, and the Chairman, the Executive Director or the Treasurer, or the designee of any such official, is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, the execution thereof to be conclusive evidence of such approval, and the Secretary is hereby authorized and directed to attest to such official's signature:

(a) a site and facility lease, between the City, as lessor, and the Authority, as lessee (the "Site and Facility Lease"), pursuant to which the City will lease certain existing real property and the improvements thereon (the "Property") to the Authority;

(b) a lease agreement, by and between the Authority, as lessor, and the City, as lessee (the "Lease Agreement"), pursuant to which the Authority will lease the Property back to the City;

(c) an assignment agreement, by and between the Authority and Umpqua Bank (the "Assignee"), pursuant to which the Authority will assign certain of its rights under the Site and Facility Lease and the Lease Agreement, including its right to receive lease payments thereunder, to the Assignee; and

(d) a letter agreement for purchase by and among the Assignee, the Authority and the City, whereby the Assignee agrees to acquire the rights of the Authority to the lease payments to be made by the City under the Lease Agreement and the rights of the Authority under the Site and Facility Lease.

*Section 2.* The Chairman, the Executive Director, the Treasurer, the Secretary and other officials of the Authority are hereby authorized and directed to execute such other agreements, documents and certificates and to take such other actions as may be necessary to effect the purposes of this resolution and the lease financing herein authorized.

*Section 3.* This Resolution shall take effect upon its adoption by the Board.

BRISBANE PUBLIC FINANCING  
AUTHORITY

By \_\_\_\_\_  
Raymond C. Miller, Chairman

PASSED AND ADOPTED by the Board of Directors of the Brisbane Public Financing Authority this 20th day of May, 2013, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Sheri Marie Spediacci, Secretary

Quint & Thimmig LLP

04/24/13  
04/26/13  
05/02/13  
05/07/13

AFTER RECORDATION PLEASE RETURN TO:

Quint & Thimmig LLP  
575 Market Street, Suite 3600  
San Francisco, CA 94105-2874  
Attention: Brian D. Quint, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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**SITE AND FACILITY LEASE**

**Dated as of June 1, 2013**

**by and between the**

**CITY OF BRISBANE, as Lessor**

**and the**

**BRISBANE PUBLIC FINANCING AUTHORITY, as Lessee**

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## SITE AND FACILITY LEASE

THIS SITE AND FACILITY LEASE (this "Site and Facility Lease"), dated as of June 1, 2013, is by and between the CITY OF BRISBANE, a municipal corporation and general law city, duly organized and existing under and by virtue of the laws of the State of California (the "City"), as lessor, and the BRISBANE PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), as lessee;

### WITNESSETH:

WHEREAS, pursuant to this Site and Facility Lease, the City proposes to lease those certain parcels of real property situated in the City of Brisbane, San Mateo County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Authority, all for the purpose of enabling the City to fund its unfunded liability to the California Public Employees Retirement System relating to the City's Miscellaneous Pension Side Fund;

WHEREAS, the Authority proposes to lease the Property back to the City pursuant to that certain Lease Agreement, dated as of June 1, 2013, a memorandum of which is recorded concurrently herewith (the "Lease Agreement") and to assign all of its rights, title and interest in, to and under this Site and Facility Lease and the Lease Agreement, including its right to receive lease payments under the Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under the Lease Agreement in the event of a default thereunder by the City, to Umpqua Bank (the "Assignee") pursuant to that certain Assignment Agreement, dated as of June 1, 2013, by and between the Authority and the Assignee, and recorded concurrently herewith;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

Section 1. Definitions. Capitalized terms used, but not otherwise defined, in this Site and Facility Lease shall have the meanings ascribed to them in the Lease Agreement.

Section 2. Site and Facility Lease. The City hereby leases to the Authority and the Authority hereby leases from the City, on the terms and conditions hereinafter set forth, the Property.

Section 3. Term. The term of this Site and Facility Lease shall commence on the date of recordation of this Site and Facility Lease in the Office of the County Recorder of the County of San Mateo, State of California, and shall end on June 1, 2023, unless such term is extended or sooner terminated as hereinafter provided. If, on June 1, 2023, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid by reason of abatement, default or otherwise, or provision shall not have been made for their payment in accordance with the Lease Agreement, then the term of this Site and Facility Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment, but in no event later than June 1, 2033. If, prior to June 1, 2023, all Lease Payments shall be fully paid or provision made for such payment in accordance with the Lease Agreement, the term of this Site and Facility Lease shall end.

Section 4. Advance Rental Payment. The City agrees to lease the Property to the Authority in consideration of the payment by the Authority of an advance rental payment of \$1,601,000. The City and the Authority agree that by reason of the assignment of the Lease

Payments to the Assignee under and pursuant to the Assignment Agreement, the advance rental payment referenced in the preceding sentence shall be deemed to have been paid.

Section 5. Purpose. The Authority shall use the Property solely for the purpose of leasing the Property to the City pursuant to the Lease Agreement and for such purposes as may be incidental thereto; *provided, however*, that in the event of default by the City under the Lease Agreement, the Authority and its assigns may exercise the remedies provided in the Lease Agreement.

Section 6. City's Interest in the Property. The City represents, warrants and covenants that it is the owner in fee of the Property and shall continue to be the owner of the Property throughout the entire term of this Site and Facility Lease.

Section 7. Assignments and Subleases. Unless the City shall be in default under the Lease Agreement, the Authority may not assign its rights under this Site and Facility Lease or sublet the Property, except as provided in the Lease Agreement and the Assignment Agreement, without the written consent of the City and the Assignee. If the City is in default under the Lease Agreement, the Assignee (including its successors and assigns under the Lease Agreement) may fully and freely assign and sublease the Property or any portion thereof, subject to this Site and Facility Lease.

Section 8. Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 9. Termination. The Authority agrees, upon the termination of this Site and Facility Lease, to quit and surrender the Property in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site and Facility Lease shall remain thereon and title thereto shall vest in the City.

Section 10. 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 and Facility Lease, which default continues for thirty (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 the fee interest of the City in the Property or any leasehold interest created under this Site and Facility Lease and the Lease Agreement shall occur as a result thereof and the City shall have no right to terminate this Site and Facility Lease as a remedy for such default. Notwithstanding the foregoing, so long as the Lease Agreement remains in effect, the City will continue to pay the Lease Payments to the Assignee without offset or abatement, except as specifically provided for therein.

In the event of the occurrence of an Event of Default under the Lease Agreement, the Authority may (i) exercise the remedies provided in the Lease Agreement, (ii) use the Property for any lawful purpose, subject to any applicable legal limitations or restrictions, and (iii) exercise all options provided herein.

Section 11. Quiet Enjoyment. The Authority, at all times during the term of this Site and Facility Lease, shall peaceably and quietly have, hold and enjoy all of the Property subject to the provisions of the Lease Agreement.

Section 12. Waiver of Personal Liability. All liabilities under this Site and Facility Lease on the part of the Authority are solely liabilities of the Authority and the City hereby releases



each and every Boardmember, director, officer, employee and agent of the Authority of and from any personal or individual liability under this Site and Facility Lease. No Boardmember, director, officer, employee or agent of the Authority shall at any time or under any circumstances be individually or personally liable under this Site and Facility Lease for anything done or omitted to be done by the Authority hereunder.

Section 13. Taxes. All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Property or the Authority's interest in the Property created by this Site and Facility Lease (including both land and improvements) will be paid by the City in accordance with the Lease Agreement.

Section 14. Eminent Domain. In the event the whole or any part of the Property is 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 component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Authority or its assignee, and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the City. The City hereby waives, to the extent permitted by law, any and all rights that it has or may hereafter have to acquire the interest of the Authority in and to the Property through the eminent domain powers of the City. However, the City hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the City with respect to the Property shall be in an amount not less than the total unpaid principal component of Lease Payments, the interest component of Lease Payments accrued to the date of payment of all Lease Payments and any premium due with respect to the prepayment of Lease Payments under the Lease Agreement.

Section 15. Use of the Proceeds. The City and the Authority hereby agree that the lease to the Authority of the City's right and interest in the Property pursuant to Section 2 serves the public purposes of the City.

Section 16. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site and Facility Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site and Facility Lease shall be affected thereby, and each provision of this Site and Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 17. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, at the addresses set forth in the Lease Agreement, or to such other addresses as the respective parties may from time to time designate by notice in writing.

Section 18. Binding Effect. This Site and Facility Lease shall inure to the benefit of and shall be binding upon the City and the Authority and their respective successors and assigns. The Assignee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

Section 19. Amendment. This Site and Facility Lease may not be amended except as permitted under the Lease Agreement.

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 and Facility Lease.

Section 21. Applicable Law. This Site and Facility Lease shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California.

Section 22. No Merger. Neither this Site and Facility Lease, the Lease Agreement nor any provisions hereof or thereof nor any act or omission by the City or the Authority or any of their respective successors or assigns shall effect a merger of the City's fee title to the Property or the title of the City to the Property under this Site and Facility Lease and the City's leasehold interest therein under the Lease Agreement.

Section 23. Execution in Counterparts. This Site and Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

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

CITY OF BRISBANE, as Lessor

By \_\_\_\_\_  
Clayton L. Holstine  
City Manager

ATTEST:

\_\_\_\_\_  
Wendy Franklin-Ricks  
Deputy City Clerk

BRISBANE PUBLIC FINANCING  
AUTHORITY, as Lessee

By \_\_\_\_\_  
Clayton L. Holstine  
Executive Director

ATTEST:

\_\_\_\_\_  
Wendy Franklin-Ricks  
Assistant Secretary

[NOTARY ACKNOWLEDGMENTS TO BE ATTACHED]

## EXHIBIT A

### DESCRIPTION OF THE SITE

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

#### PARCEL ONE:

COMMENCING at a point which bears 2720.80 feet due South; thence 683.66 feet due East; thence South  $0^{\circ} 52' 45''$  East 177.89 feet; thence South  $58^{\circ} 10'$  West 117.0 feet and thence North  $39^{\circ} 00'$  West 252.0 feet from the North corner of Block 3, of the Amended Map of Subdivisions 1, 2, 3, of the City of Visitacion which map was filed in the office of the Recorder of the County of San Mateo, State of California in Book 6 of Maps at page 45; and running thence from said point of beginning North  $62^{\circ} 36'$  East 100.0 feet; thence South  $39^{\circ} 00'$  East 50.0 feet; thence South  $62^{\circ} 36'$  West 100.00 feet and thence North  $39^{\circ} 00'$  West 50.0 feet to the point of beginning.

#### PARCEL TWO:

Part of the Rancho Canada de Guadalupe La Visitacion Rodeo Viego, more particularly described as follows:

COMMENCING at a point which bears 2720.80 feet due South; thence 683.66 feet due East; thence South  $0^{\circ} 52' 45''$  East 117.89 feet; thence South  $58^{\circ} 10'$  West 117.0 feet; and thence North  $39^{\circ} 00'$  West 202.0 feet from the North corner of Block 3 of the Amended Map of Subdivision 1, 2, 3 of the City of Visitacion, filed for record in Book 6 of Maps at page 45, Records of San Mateo County and running thence from said point of beginning North  $62^{\circ} 36'$  East 100.0 feet; thence South  $39^{\circ} 00'$  East 50.0 feet; thence South  $62^{\circ} 36'$  West 100.0 feet and thence North  $39^{\circ} 00'$  West 50.0 feet to the point of beginning.

#### PARCEL THREE:

A portion of the Rancho Canada de Guadalupe La Visitacion Rodeo Viego, more particularly described as follows:

BEGINNING at the southwest corner of Lot 6 in Block 51, as said lot block are shown on the map entitled "Amended Map of Subdivisions Nos. 1, 2 & 3 of City of Visitacion California", which map was recorded October 14, 1908 in Volume 6 of Maps at Page 45, San Mateo County Records; thence leaving said lot S  $21^{\circ} 00'$  E 205 feet and S  $4^{\circ} 40'$  E 184.32 feet to the most easterly corner of lands described in Parcel 30 of the Deed from San Mateo County Title Company, a corporation, to Louise H. Horr, dated July 10, 1943 and recorded July 30, 1943 in Book 1069 of Official Records of San Mateo County at Page 421 (88016-E); thence along the southeasterly line of said land S  $60^{\circ} 36'$  W 39.35 feet to the most southerly corner thereof, which corner is a point on the northeasterly line of lands described in Deed from San Mateo County Title Company, a corporation, to Robert J. Kelly and wife, dated September 29, 1941 and recorded September 21, 1948, in Book 1571 of Official Records of San Mateo County at Page 637 (52867-H); thence along said northeasterly line S  $84^{\circ} 32' 50''$  E 36.87 feet to the most westerly corner of lands described in Deed from San Mateo County Title Company, a corporation, to Eric J. Koster and wife, dated April 25, 1939 and recorded April 25, 1939 in Book 837 of Official Records of San Mateo County at Page 188 (57988-D); thence along the northwesterly line of said lands of Koster N  $62^{\circ} 36'$  E 100.00 feet to a point thereon, and the True Point of Beginning of the parcel to be described herein; thence from said True Point of Beginning continuing along said northwesterly line of the lands of Koster, N  $62^{\circ} 36'$  E 10.00 feet; thence leaving said line S  $39^{\circ} 31' 18''$  W 10.00 feet to the northeasterly line of lands described in Deed from Eric J. Koster and wife, to Clyde Henry, dated November 4, 1940 and recorded November 16, 1940 in Book 927 of Official Records of San Mateo County at Page 289 (5071-E); thence along said northeasterly line N  $39^{\circ} 00'$  W 4.00 feet to the True Point of Beginning.

PARCEL FOUR:

An ingress and egress easement granted to the City of Brisbane by Ruth S. Sheldon and Thomas J. LaFlesh, by Grant Deed of Easement recorded December 31, 1980 in Book 8019, Page 2290 as Instrument No. 30037AR of Official Records.

APN 007502140

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY**

The Facility is the Glen Park Water Tank, a 200,000 gallon water tank built in 2006. It has a steel frame, roof & wall on a concrete foundation.

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**LEASE AGREEMENT**

**Dated as of June 1, 2013**

**by and between the**

**BRISBANE PUBLIC FINANCING AUTHORITY, as Sublessor**

**and the**

**CITY OF BRISBANE, CALIFORNIA, as Sublessee**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement"), dated as of June 1, 2013, is by and between the BRISBANE PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF BRISBANE, a municipal corporation and general law city, duly organized and existing under and by virtue of the laws of the State of California, as lessee (the "City");

### WITNESSETH:

WHEREAS, pursuant to that certain Site and Facility Lease, dated as of June 1, 2013 (the "Site and Facility Lease"), the City has leased those certain parcels of real property situated in the City of Brisbane, San Mateo County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Authority, all for the purpose of enabling the City to fund its unfunded liability to the California Public Employees Retirement System ("PERS") relating to the City's Miscellaneous Pension Side Fund;

WHEREAS, the Authority proposes to lease the Property back to the City pursuant to this Lease Agreement and to assign all of its rights, title and interest in, to and under this Lease Agreement, including its right to receive lease payments under this Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the City and its rights under the Site and Facility Lease, to Umpqua Bank (the "Assignee"), pursuant to that certain Assignment Agreement, dated as of June 1, 2013, by and between the Authority and the Assignee; and

WHEREAS, the City and the Authority have agreed to enter into this Lease Agreement providing for Lease Payments with an aggregate principal component in the amount of \$1,601,000 for the purpose of implementing the financing transactions described above.

### AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS; RULES OF INTERPRETATION

Section 1.1. Definitions. All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Lease Agreement.

*"Additional Payments"* means the amounts specified as such in Section 4.3(b) of this Lease Agreement.

*"Applicable Environmental Laws"* means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections 6901 *et seq.*; the Federal Water Pollution Control Act, 33 USC Sections 1251 *et seq.*; the Clean Air Act, 42 USC Sections 7401 *et seq.*; the California Hazardous Waste Control Law ("HWCL"), California Health & Safety Code Sections 25100 *et seq.*; the Hazardous Substance Account Act ("HSAA"), California Health & Safety Code Sections 25300 *et seq.*; the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), California Water Code Sections 1300 *et seq.*; the Air Resources Act, California Health & Safety Code Sections 3900 *et seq.*; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 *et seq.*; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (a) the existence, cleanup, and/or remedy of contamination on property;
- (b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

*"Assignee"* means (a) initially, Umpqua Bank, as assignee of all rights, title and interests of the Authority hereunder, and (b) any other entity to whom the rights of the Authority hereunder are assigned, including subsequent assignees of the Assignee.

*"Assignment Agreement"* means the Assignment Agreement, dated as of June 1, 2013, between the Authority, as assignor of its rights under the Site and Facility Lease and this Lease Agreement, and the Assignee, as assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

*"Authority"* means Brisbane Public Financing Authority, a joint exercise of powers authority, organized and existing under the laws of the State.

*"Bond Counsel"* means (a) Quint & Thimmig LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations of municipal entities.

*"Business Day"* means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State.

*"City"* means the City of Brisbane, California, a municipal corporation and general law city organized and existing under the laws of the State.

*"City Representative"* means the Mayor, the City Manager, the Finance Director, or the designee of any such official, or any other person authorized by resolution delivered to the Authority and the Assignee to act on behalf of the City under or with respect to the Site and Facility Lease and this Lease Agreement.

*"Closing Date"* means the date this Lease Agreement or a memorandum thereof is recorded in the office of the County Recorder of the County of San Mateo.

*"Contract"* means any indenture, trust agreement, contract, agreement (other than this Lease Agreement), other contractual restriction, lease, mortgage or instrument.

*"Event of Default"* means any of the events of default as defined in Section 8.1.

*"Facility"* means those certain existing facilities more particularly described in Exhibit B to the Site and Facility Lease and in Exhibit B to the Lease Agreement.

*"Federal Securities"* means any direct general non-callable 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), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

*"Fiscal Year"* means each twelve-month period during the Term of this Lease Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

*"Governmental Authority"* means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

*"Hazardous Substance"* means any substance that shall, at any time, be listed as "hazardous" or "toxic" in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the Property, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 *et seq.*).

*"Lease Agreement "* means this Lease Agreement, dated as of June 1, 2013, between the Authority and the City.

*"Lease Payment Date"* means June 1 and December 1 in each year, commencing December 1, 2013, and continuing to and including the date on which the Lease Payments are paid in full.

*"Lease Payments"* means all payments required to be paid by the City under Section 4.3, including any prepayment thereof under Sections 9.2 or 9.3.

*"Material Adverse Effect"* means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the City, (b) the ability of the City to carry out its business in the manner conducted as of the date of this Lease Agreement or to meet or perform its obligations under

this Lease Agreement on a timely basis, (c) the validity or enforceability of this Lease Agreement, or (d) the exclusion of the interest component of the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

*"Material Litigation"* means any action, suit, proceeding, inquiry or investigation against the City in any court or before any arbitrator of any kind or before or by any Governmental Authority, (i) if determined adversely to the City, may have a Material Adverse Effect, (ii) seek to restrain or enjoin any of the transactions contemplated by this Lease Agreement, or (iii) may adversely affect (A) the exclusion of the interest component of the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes or (B) the ability of the City to perform its obligations under this Lease Agreement.

*"Net Proceeds"* means any insurance or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

*"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 VI of this Lease Agreement; (b) the Site and Facility Lease, this Lease Agreement and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy issued with respect to the Property issued as of the Closing Date; and (e) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and as of the Closing Date which the City and the Authority certify in writing will not materially impair the use of the Property for its intended purposes or reduce the value of the Property.

*"Property"* means, collectively, the Site and the Facility.

*"Rental Period"* means each period during the Term of the Lease commencing on and including June 2 in each year and extending to and including the next succeeding June 1. The first Rental Period begins on the Closing Date and ends on June 1, 2014.

*"Site"* means that certain real property more particularly described in Exhibit A to the Site and Facility Lease and in Exhibit A to the Lease Agreement.

*"Site and Facility Lease"* means the Site and Facility Lease, dated as of June 1, 2013, by and between the City, as lessor, and the Authority, as lessee, together with any duly authorized and executed amendments thereto.

*"State"* means the State of California.

*"Term of this Lease Agreement"* or *"Term"* means the time during which this Lease Agreement is in effect, as provided in Section 4.2.

#### Section 1.2. Interpretation.

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

## 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:

(a) *Due Organization and Existence*. The City is a municipal corporation and general law city, duly organized and existing under and by virtue of the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Site and Facility Lease and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the City has duly authorized the execution and delivery by the City of the Site and Facility Lease and this Lease Agreement.

(b) *Due Execution*. Each representative of the City executing the Site and Facility Lease and this Lease Agreement has been fully authorized to execute the same by a resolution duly adopted by the City Council of the City.

(c) *Valid, Binding and Enforceable Obligations*. The Site and Facility Lease and this Lease Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.

(d) *No Conflicts*. The execution and delivery of the Site and Facility Lease 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 and Facility Lease or 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 and Facility Lease 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 and notice of which has been served on the City 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 and Facility Lease 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 this Lease Agreement, or the financial condition, assets, properties or operations of the City.

(g) *Sufficient Funds*. The City reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(h) *No Defaults*. The City has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, or other debt obligations.

(i) *Fee Title*. The City is the owner in fee of title to the Property. Except for Permitted Encumbrances, no lien or encumbrance encumbers the Property or materially impairs the City's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(j) *Use of the Property*. During the term of this Lease Agreement, the Property will be used by the City only for the purpose of performing one or more governmental or proprietary functions of the City consistent with the permissible scope of the City's authority.

(k) *Change in Financial Condition*. The City has experienced no material change in its financial condition since June 30, 2012.

(l) *Hazardous Substances*. The Property is free of all Hazardous Substances, and the City is in full compliance with all Applicable Environmental Laws.

(m) *Flooding Risk*. The Property is not located in a flood hazard area and has never been subject to material damage from flooding.

(n) *Value of Property*. The insured value of the Property (real property replacement cost) is not less than \$2,000,000.

(o) *Essential to City Operations*. The Property is essential to the City's efficient and economic operations and the lease thereof for use by the City is in the best interest of the City.

(p) *Financial Statements*. The statement of financial position of the City as of June 30, 2012, and the related statement of activities and statement of cash flows and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Assignee, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the City at such date and for such period, and were prepared in accordance with generally accepted accounting principles. Since the period of such statements, there has been no (i) change which would have a Material Adverse Effect and (ii) no material increase in the indebtedness of the City.

(q) *No Material Adverse Change*. Since the most current date of the information, financial or otherwise, supplied by the City to the Assignee:

(i) There has been no change in the assets, liabilities, financial position or results of operations of the City which might reasonably be anticipated to cause a Material Adverse Effect.

(ii) The City has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.

(iii) The City has not (A) incurred any material indebtedness, other than the Lease Payments, and trade accounts payable arising in the ordinary course of the City's business and not past due, or (B) guaranteed the indebtedness of any other person.

(r) *Accuracy of Information.* All information, reports and other papers and data furnished by the City to the Assignee were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Assignee a true and accurate knowledge of the subject matter and were provided in expectation of the Assignee's reliance thereon in entering into the transactions contemplated by this Lease Agreement. No fact is known to the City which has had or, so far as the City can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements previously furnished to the Assignee or in other such information, reports, papers and data or otherwise disclosed in writing to the Assignee prior to the Closing Date. Any financial, budget and other projections furnished to the Assignee by the City or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the City's best estimate of its future financial performance. No document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Lease Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

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

(a) *Due Organization and Existence.* The Authority is a joint powers authority duly organized and existing under the laws of the State, has full legal right, power and authority to enter into the Site and Facility Lease, this Lease Agreement and the Assignment Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the Authority has duly authorized the execution and delivery by the Authority of the Site and Facility Lease, this Lease Agreement and the Assignment Agreement.

(b) *Due Execution.* Each representative of the Authority executing the Site and Facility Lease, this Lease Agreement and the Assignment Agreement is fully authorized to execute the same under official action taken by the Board of Directors of the Authority.

(c) *Valid, Binding and Enforceable Obligations.* The Site and Facility Lease, this Lease Agreement and the Assignment Agreement 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 the Site and Facility Lease, this Lease Agreement and the Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, 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 the Site and Facility Lease, this Lease Agreement and the Assignment Agreement 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 the Site and Facility Lease, this Lease Agreement or the Assignment Agreement, 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 and notice of which has been served on the Authority 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 the Site and Facility Lease, this Lease Agreement or the Assignment Agreement, 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 the Site and Facility Lease, this Lease Agreement or the Assignment Agreement or the financial condition, assets, properties or operations of the Authority.

## ARTICLE III

### DEPOSIT AND APPLICATION OF FUNDS

Section 3.1. Deposit of and Application of Funds. On the Closing Date, the Authority shall cause the amount of \$1,524,219.00 to be transferred to PERS. Such amount shall be derived from amounts paid by the Assignee under the Assignment Agreement. In addition, a portion of the amounts paid by the Assignee under the Assignment Agreement shall be applied by the Assignee, on behalf of the City, to pay financing costs of the transaction in the amount of \$76,781.00.

## ARTICLE IV

### LEASE OF PROPERTY; LEASE PAYMENTS

#### Section 4.1. Sublease of Property by the Authority Back to the City.

(a) The Authority hereby subleases the Property to the City, and the City hereby subleases the Property from the Authority, upon the terms and conditions set forth in this Lease Agreement.

(b) The leasing of the Property by the City to the Authority pursuant to the Site and Facility Lease shall not affect or result in a merger of the City's subleasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Site and Facility Lease.

Section 4.2. Term. The Term of this Lease Agreement commences on the date of recordation of this Lease Agreement or a memorandum hereof and ends on June 1, 2023, or the date on which all of the Lease Payments have been paid in full. If on June 1, 2023, the Lease Payments payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental interruption insurance or other sources, or the City shall have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and continues without cure by the City, then the term of this Lease Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, as necessary to accommodate the final payment of all Lease Payments due hereunder, not to exceed fifteen (15) years. The provisions of this Section 4.2 are subject to the provisions of Section 6.1 relating to the taking in eminent domain of the Property or any portion thereof.

#### Section 4.3. Lease Payments.

(a) *Obligation to Pay.* Subject to the provisions of Sections 6.1 and 6.3 and the provisions of Article IX, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Exhibit C attached hereto (including any supplements thereto) and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Exhibit C. The Lease Payments payable in any Rental Period with respect to the Property shall be for the use of the Property during such Rental Period. The interest component of the portion of the Lease Payments shown in Exhibit C have been calculated based on an interest rate of 3.70% per annum, on the basis of a 360-day year of twelve 30-day months. The City understands that the Assignee will send an invoice to the City in advance of each Lease Payment Date.

(b) *Additional Payments.* In addition to the Lease Payments set forth herein, the City agrees to pay as Additional Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Property or upon any interest of the Authority therein or in this Lease Agreement; provided, however, the City may, at the City's expense and in its name, in good faith contest any such taxes and assessments and, in the event of such contest, may permit such taxes and assessments to remain unpaid during the period of such contest and appeal therefrom unless the Authority shall notify the City that, in the opinion of Bond Counsel, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property, or any portion thereof, will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes and assessments or provide the Authority with full

security against any loss which may result from nonpayment, in form satisfactory to the Authority;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof; and

(iii) any other reasonable fees, costs or expenses incurred by the Authority in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Property, including, without limitation, any amounts which may become due; provided, however, the City shall not be responsible for any costs incurred by the Authority associated with any assignment made by the Assignee.

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

(c) *Effect of Prepayment.* If the City prepays all Lease Payments in full under Sections 9.2 or 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 components of the remaining Lease Payments will be applied to the remaining Lease Payments in inverse order of maturity and the interest component of each remaining Lease Payment will be recalculated accordingly.

(d) *Rate on Overdue Payments.* If the City fails to make any of the payments required in this Section 4.3, 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 all payments hereunder with interest thereon, from the date of default to the date of payment at the rate of 12% per annum or any lesser maximum legal rate.

(e) *Fair Rental Value.* The Lease Payments, the Additional Payments and the obligation to make payments in accordance with Section 5.1, all as they come due and payable during each Rental Period constitute the total rental for the Property for such Rental Period, and will be paid 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 Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments due during each Rental Period are not in excess of the fair rental value of the Property during such Rental Periods. In making this determination, consideration has been given to the estimated fair market value of the Property, the estimated replacement cost of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(f) *Source of Payments; Budget and Appropriation.* The Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of Sections 6.1, 6.3 and 9.1. The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

(g) *Allocation of Lease Payments.* All Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(h) *No Offsets.* Notwithstanding any dispute between the Authority, or the Assignee and the City, or any default by the Authority or the Assignee in any transaction with the City, the City shall make all Lease Payments when due without deduction or offset of any kind and shall not withhold any Lease Payments pending the final resolution of such dispute or as a setoff against any claims of the City.

(i) *Assignment Agreement.* The City understands and agrees that all Lease Payments have been assigned by the Authority to the Assignee under the Assignment Agreement executed concurrently herewith, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Assignee (or to its assignees as directed pursuant to Section 7.4 hereof) all payments payable by the City under this Section 4.3 and all amounts payable by the City under Article IX. Lease Payments shall be paid to the Assignee as follows, which may be changed from time to time by the Assignee upon notice to the City and the Authority:

**Payments by check:**

Umpqua Bank  
Attn: Loan Support Services  
PO Box 1580  
Roseburg, OR 97470  
Loan # \_\_\_\_\_

**Payments by wire:**

Umpqua Bank  
2998 Douglas Blvd., Ste 100  
Roseville, CA 95661  
(916) 783-8999  
Attention: Wire Department  
Routing Number: 121141819  
Loan # \_\_\_\_\_  
For Benefit of: City of Brisbane  
Contact: \_\_\_\_\_ at (916) 677-\_\_\_\_\_

Section 4.4. Quiet Enjoyment. Throughout the Term of this Lease Agreement, the Authority will provide the City with quiet use and enjoyment of the Property and the City will peaceably and quietly have and hold and enjoy the 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 and the Assignee have the right to inspect the Property as provided in Sections 5.12(c) and 7.2.

Section 4.5. Title. At all times during the Term of this Lease Agreement, the City shall hold fee title to the Property, and the Authority shall hold leasehold title to the Property, including all additions which comprise fixtures, repairs, replacements or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.2.

Upon the termination of this Lease Agreement (other than under Section 8.2(b) hereof), all right, title and interest of the Authority in and to the Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Property, or

upon the deposit by the City of security for such Lease Payments as provided in Section 9.1, all right, title and interest of the Authority in and to the Property shall be transferred to and vested in the City. The Authority agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer.

Section 4.6. Release of Excess Property. The City may, at any time and from time to time, release any portion of the Property (the "Released Property") from the Lease, with the prior written consent of the Assignee, which consent shall be at the Assignee's sole discretion, and upon satisfaction of all of the following requirements which are conditions precedent to such release:

(a) The City shall certify to the Authority and the Assignee that no Event of Default has occurred and is continuing, and no event giving rise to an abatement of Lease Payments under Section 6.3 has occurred or is continuing with respect to the Property to be remaining following release of the Released Property;

(b) The City shall file with the Authority and the Assignee, and cause to be recorded in the office of the San Mateo County Recorder, an amendment to this Lease Agreement and the Site and Facility Lease which deletes the Released Property from the description of the Property;

(c) The City shall file with the Authority and the Assignee a written certificate of the City stating the City's determination that the estimated value of the real property which will remain leased under this Lease Agreement following such release is at least equal to the original principal components of the Lease Payments and upon request of the Assignee, the City shall provide to the Assignee additional information and documents to evidence the value of the remaining portion of the Property;

(d) The City shall file with the Authority and the Assignee a written certificate of the City stating the City's determination that the estimated fair rental value, for each remaining Rental Period and in the aggregate, of the Property remaining after release of the Released Property is at least equal to the remaining Lease Payments for each remaining Rental Period and in the aggregate; and

(e) The City shall file with the Authority and the Assignee such other information, documents and instruments as the Authority or the Assignee shall reasonably request, including (if requested by the Assignee) evidence of the insurable value of the Property to be remaining following release of the Released Property, indicating that such value is in excess of the then unpaid principal component of the Lease Payments and such endorsements to the title policy delivered on the Closing Date.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon 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. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge this Lease Agreement of record against the Released Property.

Section 4.7. Substitution of Property. (a) In the event of damage or destruction of the Property due to earthquake or other uninsured casualty for which rental interruption insurance is not available or in the event that following the condemnation of all or a portion of the Property the fair rental value of the Property remaining after such condemnation is less than the remaining Lease Payments due under this Lease Agreement, the City shall substitute under the Site and Facility Lease and this Lease Agreement one or more parcels of unimpaired and



unencumbered real property, the fair rental value of which, for each remaining Rental Period and in the aggregate, shall be at least equal to the remaining Lease Payments hereunder.

(b) If for any reason the City is unable to so substitute real property for the Property with a fair rental value at least equal to the remaining Lease Payments hereunder, the City shall use its best efforts to obtain other financing in an amount necessary to prepay the principal component of the Lease Payments not supported by the fair rental value of the substituted property, if any.

For resolution of doubt, nothing in this Section 4.7 shall be construed to entitle the City to any reduction, diminution, extension or other modification of the Lease Payments whatsoever.

## 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 Property, all improvement, repair and maintenance of the Property are the sole responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Property, as hereinbefore more specifically set forth. 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 will 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 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 is obligated to 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 the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City will 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. The City shall promptly notify the Assignee of any tax, assessment, utility or other charge it elects to contest and shall provide the Assignee with updates on such contest as the Assignee may reasonably request.

Section 5.2. Modification of Property. The City has the right, at its own expense, to make additions, modifications and improvements to the Property or any portion thereof. All additions, modifications and improvements to the Property will thereafter comprise part of the Property and become subject to the provisions of this Lease Agreement. Such additions, modifications and improvements may not in any way damage the Property, or cause the Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto under this Section, must 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 lien or other lien to be established or remain against the Property for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section 5.2 provided that if any such lien is established and the City shall first notify the Authority of the City's intention to do so the City may in good faith contest any lien filed or established against the 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. The City shall promptly notify the Assignee of any such lien and contest and shall provide the Assignee with updates on such lien and contest as the Assignee may reasonably request.

Section 5.3. Public Liability Insurance. The City shall maintain or cause to be maintained throughout the Term of this Lease Agreement a standard comprehensive general liability insurance policy or policies in protection of the City, the Assignee 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 Property. Such policy or policies must provide coverage with limits of at least \$1,000,000 per occurrence, \$3,000,000 in the aggregate, for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount (including any deductibles) satisfactory to the Assignee. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with Assignee's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 5.4. Casualty Insurance. The City will 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 Property and owned by the City, in an amount at least equal to the greater of the replacement value of the insured buildings and the aggregate principal amount of the Lease Payments outstanding, with a lender's loss payable endorsement. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$25,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with the Assignee's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as provided in Section 6.2.

Section 5.5. Rental Interruption Insurance. The City will 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 the Property and the improvements situated thereon 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 Lease Payments coming due and payable during any future 24 month period. 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 authority or other program providing pooled insurance; provided that such rental interruption insurance shall not be self-insured by the City. The Net Proceeds of such insurance shall be paid into a Lease Payment Fund established with the Assignee and credited towards the payment of the Lease Payments as the same become due and payable.

Section 5.6. Worker's Compensation Insurance. If required by applicable California law, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Property and, upon request, shall furnish to the Authority certificates evidencing such coverage throughout the Term of this Lease Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance.

Section 5.7. Recordation Hereof; Title Insurance. On or before the Closing Date, the City shall, at its expense, (a) cause this Lease Agreement, the Site and Facility Lease and the Assignment Agreement, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the San Mateo County Recorder with respect to the Property, and (b) obtain a CLTA title insurance policy insuring the Assignee's interests in the leasehold estate established under the Site and Facility Lease and hereunder in the Property, subject only to Permitted Encumbrances, in an amount equal to the total principal components of the Lease Payments. The City will apply the Net Proceeds of such insurance as provided in Section 6.2.

Section 5.8. Insurance Net Proceeds; Form of Policies. All insurance policies (or riders) required by this Article V and provided by third party insurance carriers shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten days before the cancellation or revision becomes effective. Each insurance policy or rider required by Sections 5.3, 5.4 and 5.5 and provided by third party insurance carriers shall name the City and the Assignee as insured parties and the Assignee as loss payee and shall include a lender's loss payable endorsement for the benefit of the Assignee. In the case of coverage pursuant to Section 5.3, the Authority and the Assignee shall be added as an additional insureds. Prior to the Closing Date, the City will deposit with the Assignee policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Assignee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the City shall notify the Assignee of such fact.

Section 5.9. 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 Property. All such items shall remain the sole property of the City, in which the Authority has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the 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, provided that no such lien or security interest may attach to any part of the Property.

Section 5.10. Liens. The City will 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 Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Assignee do not materially and adversely affect the leasehold estate in the Property hereunder and for which the Assignee provides its prior written approval, which approval shall be at Assignee's sole discretion. Except as expressly provided in this Article V, 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, if the same shall arise at any time. The City will reimburse the Assignee for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. Advances. If the City fails to perform any of its obligations under this Article V, the Authority may take such action as may be necessary to cure such failure,

including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder on demand, with interest at the rate set forth in Section 4.3(d).

Section 5.12. Environmental Covenants.

(a) *Compliance with Laws; No Hazardous Substances.* The City will comply with all Applicable Environmental Laws with respect to the Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Property.

(b) *Notification of Assignee.* The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Property and any operations conducted thereon or any conditions existing thereon to the Assignee, and the City will notify the Assignee in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Assignee.

(c) *Access for Inspection.* The City will permit the Assignee, its agents, or any experts designated by the Assignee to have full access to the Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Assignee has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

Section 5.13. City Consent to Assignment Agreement. The Authority's rights under this Lease Agreement (excluding the right to receive notices, the right to reimbursement of costs and to indemnification), including the right to receive and enforce payment of the Lease Payments, and the Site and Facility Lease, are being assigned to the Assignee pursuant to the Assignment Agreement. The City hereby consents to such assignment and to any additional assignment of such rights by the Assignee or its assignees. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Assignee or its assignees to protect their interests in the Property and in this Lease Agreement. The City acknowledges and agrees that the Assignee is not liable for and does not assume responsibility for the performance of any of the covenants, agreements, duties or obligations specified in this Lease Agreement to be kept, paid or performed by the Authority. The City hereby covenants and agrees to the extent it may lawfully do so that so long as any obligation under the Assignment Agreement to deliver to the Assignee any Lease Payments even if no Lease Payments are then due remains outstanding, the City will not exercise the power of condemnation with respect to the Property. The City further covenants and agrees to the extent it may lawfully do so that if for any reason the foregoing covenant is determined to be unenforceable or if the City should fail or refuse to abide by such covenant and condemns the Property the appraised value of the Property for purposes of any condemnation award shall not be less than the total amount of the principal component of the unpaid Lease Payments.

## ARTICLE VI

### EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.1. Eminent Domain. If all of the Property shall be taken permanently under the power of eminent domain or sold to a governmental entity threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (1) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments in an amount equal to the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the City and the Assignee such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

#### Section 6.2. Application of Net Proceeds.

##### (a) *From Insurance Award*.

(i) Any Net Proceeds of insurance against damage to or destruction of any part of the Property collected by the City in the event of any such damage or destruction shall be deposited by the City promptly upon receipt thereof in a special fund with the Assignee designated as the "Insurance and Condemnation Fund."

(ii) Within ninety (90) days following the date of such deposit, the City shall, in its reasonable, good faith judgment, determine and notify the Authority and the Assignee in writing of its determination either (A) that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the City and the Net Proceeds, together with other moneys available therefor, are sufficient to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.3 hereof, or (B) that all or a portion of such Net Proceeds are to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property and the fair rental value of the Property following such repair, restoration, replacement, modification or improvement will at least equal the unpaid principal component of the Lease Payments.

(iii) In the event the City's determination is as set forth in clause (A) of subparagraph (ii) above, such Net Proceeds shall be promptly applied to the prepayment of Lease Payments and other amounts pursuant to Section 9.3 of this Lease Agreement; *provided, however*, that in the event of damage or destruction of the Property in full, such Net Proceeds may be so applied only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments, all accrued and unpaid interest, Prepayment Premiums described in Section 9.2, and all other costs related to such prepayments pursuant to Section 9.3 of this Lease Agreement and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property; *provided further, however*, that in the event of damage or destruction of the Property in part, such Net Proceeds may be applied to the prepayment of Lease Payments only if the resulting Lease Payments following such prepayment from Net Proceeds represent fair consideration for the remaining portions of the Property and otherwise such Net Proceeds shall be applied to the prompt replacement, repair,

restoration, modification or improvement of the Property, evidenced by a certificate signed by a City Representative.

(iv) In the event the City's determination is as set forth in clause (B) of subparagraph (ii) above, such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property by the City, and until the Property has been restored to its prior condition, the City shall not place any lien or encumbrance on the Property that is senior to this Lease Agreement without the prior written consent of the Assignee, at its sole discretion.

(b) *From Eminent Domain Award.* If all or any part of the Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited by the City in the Insurance and Condemnation Fund and shall be applied and disbursed as follows:

(i) If the City has given written notice to the Authority and the Assignee of its determination, which shall be made in its reasonable, good faith judgment, that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are not needed for repair or rehabilitation of the Property, the City shall so certify to the Authority and the Assignee, and the City shall apply such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.3 of this Lease Agreement.

(ii) If the City has given written notice to the Authority and the Assignee of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Property, the City shall so certify to the Authority and the Assignee, and the City shall apply such amounts for such repair or rehabilitation.

(iii) If (A) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the City has given written notice to the Authority and the Assignee of its determination that such eminent domain proceedings have materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement or (B) all of the Property shall have been taken in such eminent domain proceedings, then the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.3 of this Lease Agreement.

(iv) In making any determination under this Section 6.2(b), the City may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Authority and the Assignee. Any such determination by the City shall be final.

(c) *From Title Insurance.* The Net Proceeds from a title insurance award to the City shall be deposited by the City in the Insurance and Condemnation Fund and applied towards the prepayment of Lease Payments required to be paid pursuant to Section 9.3 of this Lease Agreement.

(d) Security Interest. As additional security for its obligations hereunder, the City hereby irrevocably grants to the Assignee a security interest in the Insurance and Condemnation Fund and any and all Net Proceeds and any and all other amounts required to be deposited therein as provided herein which are not applied to the repair or replacement of the Property. The City shall not cause or permit any other lien or security interest to exist thereon or any adverse claim to exist with respect thereto. Upon the occurrence of an Event of Default hereunder, the Assignee may exercise its rights and remedies as a secured creditor with respect thereto.

Section 6.3. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the City of the Property or any portion thereof to the extent to be agreed upon by the City and the Assignee. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon an appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of a City Representative to the Authority and the Assignee. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Insurance and Condemnation Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.



## 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 PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CITY LEASES THE PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event is the Authority liable 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 Property by the City.

Section 7.2. Access to the Property; Grant and Conveyance of Right of Entry. The City agrees that the Authority, and the Authority's successors or assigns, has the right at all reasonable times, following at least 48 hours written notice provided to the City, to enter upon and to examine and inspect (to the extent permitted by law and public policy) the Property or any part thereof. The City further agrees that the Authority, and the Authority's successors or assigns shall have such rights of access to the Property or any component thereof, following at least 48 hours written notice provided to the City, as may be reasonably necessary to cause the proper maintenance of the Property if the City fails to perform its obligations hereunder. Neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

The City further grants, conveys and confirms to the Authority, for the use, benefit and enjoyment of the Authority, its successors in interest to the Property, including the Assignee, and its sublessees, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public visiting the Property, a right of entry which shall be irrevocable for the Term of this Lease Agreement over, across and under the property of the City adjacent to the Property to and from the Property for the purpose of: (a) ingress, egress, passage or access to and from the Property by pedestrian or vehicular traffic; (b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and (c) other purposes and uses necessary or desirable for access to and from and for operation and maintenance of the Property.

Section 7.3. Release and Indemnification Covenants. The City hereby indemnifies the Authority, the Assignee and their respective directors, officers, agents, employees, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the City or the City's employees, agents, contractors, invitees or licensees, (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 Property, (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Property, (e) the acquisition, construction, improvement and equipping of the Property, (f) the clean-up of any Hazardous Substances or toxic wastes from the Property, or (g) any claim alleging violation of any Applicable Environmental Laws, or the authorization of payment of the costs thereof. No indemnification is made under this Section 7.3 or elsewhere in this Lease Agreement for willful misconduct or gross negligence under this Lease Agreement by the Authority, the Assignee, or their respective officers, agents, employees, successors or assigns. The indemnification hereunder shall continue in full force and effect notwithstanding the full payment of all

obligations under this Lease Agreement or the termination of the Term of this Lease Agreement for any reason. The City and the Authority each agree to promptly give notice to each other and the Assignee of any claim or liability hereby indemnified against following learning thereof.

Section 7.4. Assignment Agreement by the Authority. The Authority's rights, title and interests under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the City hereunder, have been pledged and assigned to the Assignee; provided that the Authority's rights to indemnification and payment or reimbursement for any costs or expenses hereunder have been retained by the Authority to the extent such rights accrue to the Authority and shall have been assigned to the Assignee to the extent such rights accrue to the Assignee. The City hereby consents to such assignment. Whenever in this Lease Agreement any reference is made to the Authority, such reference shall be deemed to refer to the Assignee (including its assignees).

The Assignee may make additional assignments of its rights, title and interests herein, but no such assignment will be effective as against the City unless and until the Assignee has filed with the City at least five (5) Business Days' prior written notice thereof and an executed copy of an investor's letter addressed to the City and the Authority substantially in the form of the letter delivered by the Assignee on the Closing Date. The City shall pay all Lease Payments hereunder to the Assignee, as provided in Section 4.3(h) hereof, or under the written direction of the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Lease Agreement, the City will keep a complete and accurate record of all such notices of assignment.

Section 7.5. Assignment Agreement and Subleasing by the City. This Lease Agreement may not be assigned, mortgaged, pledged or transferred by the City. The City may sublease the Property, or any portion thereof, with the prior written consent of the Assignee, at the Assignee's sole discretion, 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, and any sublease shall be subject and subordinate to this Lease Agreement.

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

(c) No such sublease by the City may cause the Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State.

(d) The City shall furnish the Authority and the Assignee with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become subject to personal income taxation by the State.

(e) Any such sublease shall be subject and subordinate in all respects to the Site and Facility Lease and this Lease Agreement.

Notwithstanding the foregoing, in connection with any sublease entered into for financing purposes, the principal component of the then remaining Lease Payments plus the principal component of the sublease payments shall not exceed the fair market value of the Property.

If the City subleases the entire Property and receives sublease rents therefor in any amount in excess of the Lease Payments, then the City shall remit such excess to the Assignee and the amounts so remitted shall be applied to prepayment of Lease Payments. If the City subleases a portion but not all of the Property, then the City shall not be obligated to remit the

sublease rents thereunder to the Assignee unless an Event of Default has occurred and is continuing, in which case the City shall remit all such sublease rents to the Assignee and the amounts so remitted shall be applied to prepayment of the Lease Payments.

Section 7.6. Amendment of Lease Agreement. This Lease Agreement may be amended with the prior written consent of the Authority and the Assignee (at the Assignee's sole discretion) provided such amendment does not, in the Assignee's sole judgment, adversely affect the Assignee.

Section 7.7. Financial Statements; Budgets.

(a) Within two hundred ten (210) days following the end of each Fiscal Year of the City during the Term of this Lease Agreement, the City will provide the Authority and the Assignee with a copy of its audited financial statements for such Fiscal Year. Such audited financial statements shall include the City's Comprehensive Annual Financial Report ("CAFR"), including such information as is required by applicable Government Accounting Standards Board pronouncements and applicable State law. Within fifteen (15) days after adoption, the City will provide the Assignee with a copy of its annual budget and will promptly provide all interim updates or modifications to such budget.

(b) The City hereby agrees to provide the Assignee with such other information as may be reasonably requested by the Assignee.

Section 7.8. Records and Accounts. The City covenants and agrees that it shall keep proper books of record and accounts of its operations, in which complete and correct entries shall be made of all transactions relating to the City. Said books and records shall at all reasonable times be subject to the inspection of the Assignee upon 72 hours' prior notice.

Section 7.9. Observance of Laws and Regulations. The City will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the City, including the City's right to exist and carry on business as a municipal corporation, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

Section 7.10. Notices. During the Term of this Lease Agreement, the City shall provide to the Assignee:

(a) immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Lease Agreement, together with a detailed statement by a City representative of the steps being taken by the City to cure the effect of such Event of Default.

(b) prompt written notice of any Material Litigation, or any investigation, inquiry or similar proceeding by any Governmental Authority.

(c) with reasonable promptness, such other information respecting the City, and the operations, affairs and financial condition of the City as the Assignee may from time to time reasonably request.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. Any one or more of the following events constitutes 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 hereunder, other than as referred to in the preceding clause (a) of this Section, 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 Assignee. However, 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 Authority and the Assignee shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.

(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 federal or State act now existing or which may hereafter be enacted.

(d) Any statement, representation or warranty made by the City in or pursuant to this Lease Agreement or its execution, delivery or performance is false, incorrect, misleading or breached in any material respect and the City fails to cure such breach within 10 days after written notification from the Authority.

(e) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the City is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by the Assignee or any affiliate of the Assignee, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$500,000.

(f) Any default by the City to observe any covenant, condition or agreement on its part to be observed or performed under the Site and Facility Lease.

(g) Any court of competent jurisdiction shall find or rule that the Site and Facility Lease or this Lease Agreement is not valid or binding against the City.

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; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every 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; provided, that no termination of this Lease Agreement shall 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 any one or more of the following remedies:

(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 Property, or, if the Authority is unable to re-lease the 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 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 Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place in San Mateo County 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 Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-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 Property upon demand of the Authority for the purpose of enabling the Property to be re-let under this paragraph. Any rental obtained by the Authority in excess of the sum of Lease Payments plus costs and expenses incurred by the Authority for its services in re-leasing the Property shall be paid to the City.

(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 Property, subject to the Site and Facility Lease. If the Authority terminates this Lease Agreement at its option and in the manner hereinafter provided due to a default by the City (and notwithstanding any re-entry upon the Property by the Authority in any manner whatsoever or the re-leasing of the 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 Payments. Any surplus received by the Authority from such re-leasing shall be applied by the Authority to Lease Payments due under this Lease Agreement. 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 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.

(d) *Remedies under the Site and Facility Lease.* If an Event of Default occurs and continues hereunder, the Authority may exercise its rights under the Site and Facility Lease.

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 shall be cumulative and shall be 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 shall impair any such right or power or shall be construed to be 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 VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

Section 8.4. Agreement to Pay Attorneys' Fees and Expenses. If either party to this Lease Agreement defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur 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 agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

Section 8.5. No Additional Waiver Implied by One Waiver. If any agreement contained in this Lease Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 8.6. Assignee to Exercise Rights. Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Assignee, to which assignment the City hereby consents. Such rights and remedies shall be exercised solely by the Assignee.

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 in whole or in part by depositing with the Assignee or a fiduciary reasonably satisfactory to the Assignee, in trust, an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Assignee, which cash so held 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 Exhibit C, or (b) invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be required to make Lease Payments or any prepayment in an amount which is sufficient, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Assignee and addressed and delivered to the Assignee), together with interest to accrue thereon and without reinvestment and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.3(a) or when due on any optional prepayment date under Section 9.2, as the City instructs at the time of said deposit. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (i) the Term of this Lease Agreement shall continue, (ii) all obligations of the City under this Lease Agreement, and all security provided by this Lease Agreement for said obligations, shall thereupon cease and terminate, excepting only (A) the obligation of the City to make, or cause to be made, all of the Lease Payments from such security deposit and, to the extent of any deficiency, as rent payable from other legally available funds of the City, and (B) the release and indemnification obligations of the City under subparagraphs (f) and (g) of Section 7.3, and (iii) under Section 4.5, the Authority's leasehold interest in the Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. The City hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Assignee. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement and, notwithstanding anything to the contrary herein, Lease Payments therefrom shall not be subject to abatement under Section 6.3 hereof to the extent payable from the funds held by the Assignee or the fiduciary as described in the first sentence of this Section 9.1.

Section 9.2. Optional Prepayment. The City may prepay the principal component of the Lease Payments in full or in part on any date in a prepayment amount equal to the principal amount of Lease Payments to be prepaid, together accrued interest to the date fixed for prepayment, and a prepayment premium calculated as a percentage of the amount prepaid, as set forth below:

<u>Prepayment Period</u>	<u>Premium</u>
Closing Date through June 1, 2014	5%
June 2, 2014 through June 1, 2015	4%
June 2, 2015 through June 1, 2016	3%
June 2, 2014 through June 1, 2015	2%
June 2, 2015 through June 1, 2016	1%
June 2, 2016, and thereafter	0%

Section 9.3. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The City shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part on any date, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Property to be used for such purpose under Section 6.2, together with a prepayment premium calculated as a percentage of the amount

prepaid, as set forth in Section 9.2. The City and the Authority hereby agree that such proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be applied towards the City's obligations under this Section 9.3.

Section 9.4. Application of Prepayments. All partial prepayments of the principal component of Lease Payments made hereunder shall be applied to the remaining Lease Payments in inverse order of payment date and the interest component of each remaining Lease Payments will be recalculated accordingly.



## 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 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 either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City and the Assignee 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 Authority: Brisbane Public Financing Authority  
c/o City of Brisbane  
50 Park Place  
Brisbane, CA 94005  
Attention: City Manager  
Phone: (415) 467-1515  
Fax: (415) 467-4989

If to the City: City of Brisbane  
50 Park Place  
Brisbane, CA 94005  
Attention: City Manager  
Phone: (415) 467-1515  
Fax: (415) 467-4989

If to the Assignee: Umpqua Bank  
2998 Douglas Boulevard, Suite 100  
Roseville, CA 95661  
Attention: Mr. George Diesch  
Phone: (916) 677-1136  
Fax: (916) 783-2448

Section 10.2. Binding Effect. This Lease Agreement inures to the benefit of and is binding upon 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 is 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. Further Assurances and Corrective Instruments. The Authority and the City agree that they will, 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 Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

Section 10.6. Assignee as Beneficiary. The parties hereto expressly acknowledge and agree that Lender is an intended third party beneficiary of this Agreement and a direct

beneficiary under the Assignment Agreement and shall have the rights specified herein and therein. Without limiting the generality of the foregoing, any and all rights reserved to the Authority hereunder shall be jointly held by the Authority and the Assignee.

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 constitutes one and the same instrument.

Section 10.8. Applicable Law. This Lease Agreement is governed by and construed in accordance with the laws of the State.

Section 10.9. 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.

BRISBANE PUBLIC FINANCING  
AUTHORITY, as Lessor

By \_\_\_\_\_  
Clayton L. Holstine  
Executive Director

ATTEST:

\_\_\_\_\_  
Wendy Franklin-Ricks  
Assistant Secretary

CITY OF BRISBANE, as Lessee

By \_\_\_\_\_  
Clayton L. Holstine  
City Manager

ATTEST:

\_\_\_\_\_  
Wendy Franklin-Ricks  
Deputy City Clerk

## EXHIBIT A

### DESCRIPTION OF THE SITE

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

#### PARCEL ONE:

COMMENCING at a point which bears 2720.80 feet due South; thence 683.66 feet due East; thence South  $0^{\circ} 52' 45''$  East 177.89 feet; thence South  $58^{\circ} 10'$  West 117.0 feet and thence North  $39^{\circ} 00'$  West 252.0 feet from the North corner of Block 3, of the Amended Map of Subdivisions 1, 2, 3, of the City of Visitation which map was filed in the office of the Recorder of the County of San Mateo, State of California in Book 6 of Maps at page 45; and running thence from said point of beginning North  $62^{\circ} 36'$  East 100.0 feet; thence South  $39^{\circ} 00'$  East 50.0 feet; thence South  $62^{\circ} 36'$  West 100.00 feet and thence North  $39^{\circ} 00'$  West 50.0 feet to the point of beginning.

#### PARCEL TWO:

Part of the Rancho Canada de Guadalupe La Visitacion Rodeo Viego, more particularly described as follows:

COMMENCING at a point which bears 2720.80 feet due South; thence 683.66 feet due East; thence South  $0^{\circ} 52' 45''$  East 117.89 feet; thence South  $58^{\circ} 10'$  West 117.0 feet; and thence North  $39^{\circ} 00'$  West 202.0 feet from the North corner of Block 3 of the Amended Map of Subdivision 1, 2, 3 of the City of Visitation, filed for record in Book 6 of Maps at page 45, Records of San Mateo County and running thence from said point of beginning North  $62^{\circ} 36'$  East 100.0 feet; thence South  $39^{\circ} 00'$  East 50.0 feet; thence South  $62^{\circ} 36'$  West 100.0 feet and thence North  $39^{\circ} 00'$  West 50.0 feet to the point of beginning.

#### PARCEL THREE:

A portion of the Rancho Canada de Guadalupe La Visitacion Rodeo Viego, more particularly described as follows:

BEGINNING at the southwest corner of Lot 6 in Block 51, as said lot block are shown on the map entitled "Amended Map of Subdivisions Nos. 1, 2 & 3 of City of Visitation California", which map was recorded October 14, 1908 in Volume 6 of Maps at Page 45, San Mateo County Records; thence leaving said lot S  $21^{\circ} 00'$  E 205 feet and S  $4^{\circ} 40'$  E 184.32 feet to the most easterly corner of lands described in Parcel 30 of the Deed from San Mateo County Title Company, a corporation, to Louise H. Horr, dated July 10, 1943 and recorded July 30, 1943 in Book 1069 of Official Records of San Mateo County at Page 421 (88016-E); thence along the southeasterly line of said land S  $60^{\circ} 36'$  W 39.35 feet to the most southerly corner thereof, which corner is a point on the northeasterly line of lands described in Deed from San Mateo County Title Company, a corporation, to Robert J. Kelly and wife, dated September 29, 1941 and recorded September 21, 1948, in Book 1571 of Official Records of San Mateo County at Page 637 (52867-H); thence along said northeasterly line S  $84^{\circ} 32' 50''$  E 36.87 feet to the most westerly corner of lands described in Deed from San Mateo County Title Company, a corporation, to Eric J. Koster and wife, dated April 25, 1939 and recorded April 25, 1939 in Book 837 of Official Records of San Mateo County at Page 188 (57988-D); thence along the northwesterly line of said lands of Koster N  $62^{\circ} 36'$  E 100.00 feet to a point thereon, and the True Point of Beginning of the parcel to be described herein; thence from said True Point of Beginning continuing along said northwesterly line of the lands of Koster, N  $62^{\circ} 36'$  E 10.00 feet; thence leaving said line S  $39^{\circ} 31' 18''$  W 10.00 feet to the northeasterly line of lands described in Deed from Eric J. Koster and wife, to Clyde Henry, dated November 4, 1940 and recorded November 16, 1940 in Book 927 of Official Records of San Mateo County at Page 289 (5071-E); thence along said northeasterly line N  $39^{\circ} 00'$  W 4.00 feet to the True Point of Beginning.

PARCEL FOUR:

An ingress and egress easement granted to the City of Brisbane by Ruth S. Sheldon and Thomas J. LaFlesh, by Grant Deed of Easement recorded December 31, 1980 in Book 8019, Page 2290 as Instrument No. 30037AR of Official Records.

APN 007502140

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY**

The Facility is the Glen Park Water Tank, a 200,000 gallon water tank built in 2006. It has a steel frame, roof & wall on a concrete foundation.

## EXHIBIT C

### SCHEDULE OF LEASE PAYMENTS

Lease Payment Date	Principal Component	Interest Component (1)	Total Lease Payment
12/1/13	\$ 20,000	\$28,960.31	\$ 48,960.31
6/1/14	20,000	29,248.50	49,248.50
12/1/14	25,000	28,878.50	53,878.50
6/1/15	25,000	28,416.00	53,416.00
12/1/15	30,000	27,953.50	57,953.50
6/1/16	30,000	27,398.50	57,398.50
12/1/16	35,000	26,843.50	61,843.50
6/1/17	35,000	26,196.00	61,196.00
12/1/17	40,000	25,548.50	65,548.50
6/1/18	40,000	24,808.50	64,808.50
12/1/18	80,000	24,068.50	104,068.50
6/1/19	85,000	22,588.50	107,588.50
12/1/19	95,000	21,016.00	116,016.00
6/1/20	95,000	19,258.50	114,258.50
12/1/20	110,000	17,501.00	127,501.00
6/1/21	110,000	15,466.00	125,466.00
12/1/21	175,000	13,431.00	188,431.00
6/1/22	175,000	10,193.50	185,193.50
12/1/22	188,000	6,956.00	194,956.00
6/1/23	188,000	3,478.00	191,478.00

(1) Applicable interest rate is 3.70% per annum.

AFTER RECORDATION RETURN TO:

Quint & Thimmig LLP  
575 Market Street, Suite 3600  
San Francisco, CA 94105-2874  
Attention: Brian D. Quint, Esq.

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

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## ASSIGNMENT AGREEMENT

For Value Received, the BRISBANE PUBLIC FINANCING AUTHORITY (the "Authority") without recourse does hereby sell, assign and transfer to UMPQUA BANK (the "Assignee"), and its successors and assigns, (i) all of its rights, title and interest in and to the Lease Agreement, dated as of June 1, 2013, a memorandum of which has been recorded concurrently herewith, by and between the Authority, as sublessor, and the City of Brisbane, California (the "City"), as sublessee (said Lease Agreement and any supplements, amendments, annexations, extensions or renewals thereof is referred to hereinafter as the "Lease Agreement"), as well as its rights to enforce payment of Lease Payments (as defined in the Lease Agreement) when due or otherwise to protect its interests and exercise all remedies in the event of a default or termination by the City under the Lease Agreement; provided that the Authority's rights to indemnification and payment or reimbursement for any costs or expenses thereunder have been retained by the Authority to the extent such rights accrue to the Authority and shall have been assigned to the Assignee to the extent such rights accrue to the Assignee, (ii) all of its rights, title and interest in and to the Site and Facility Lease, dated as of June 1, 2013, which has been recorded concurrently herewith, by and between the City, as lessor, and the Authority, as lessee (the "Site and Facility Lease"), and (iii) without limiting the generality of the foregoing, all moneys, sums and amounts now due or hereinafter to become due under the Lease Agreement. The Site and Facility Lease and the Lease Agreement delivered to the Assignee are duly executed duplicate originals that comprise the entire writing, obligation and agreement between the Authority and the City respecting the leases made thereunder and the lease payments made therefor.

The Authority represents, warrants and agrees as follows:

(1) it has made no prior sale or assignment of any of its right, title or interest in the Site and Facility Lease and the Lease Agreement and has not mortgaged or granted a security interest or otherwise encumbered its right, title or interest therein;

(2) that the Lease Agreement and Site and Facility Lease are genuine and in all respects are what they purport to be; and

(3) that Assignee is not liable for and does not assume responsibility for the performance of any of the covenants, agreements, duties or obligations specified in the Lease Agreement to be kept, paid or performed by the Authority.



The Authority further represents and warrants that as of the date of this Assignment Agreement, the Lease Agreement and Site and Facility Lease are in full force and effect and neither the City nor the Authority is in default of any of the terms set forth therein.

By its acceptance of this Assignment Agreement, the Assignee acknowledges that the price it has paid in consideration for assignment of the Lease Agreement is \$1,601,000.

This Assignment Agreement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in the State of California. Any provision of this Assignment Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Assignment Agreement.

This Assignment Agreement binds and inures to the benefit of the parties and their respective successors and assigns. In the event of litigation between the Authority and the Assignee arising under this Assignment Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses, including attorneys' fees which may be those of in-house counsel, incurred by the prevailing party in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions or provisions of this Assignment Agreement.

The Site and the Facility which are the subject of the Site and Facility Lease and the Lease Agreement are set forth in Exhibits A and B attached hereto and by this reference incorporated herein.

This Assignment 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.

Dated as of June 1, 2013

BRISBANE PUBLIC FINANCING  
AUTHORITY, as Assignor

By \_\_\_\_\_  
Clayton L. Holstine  
Executive Director

ATTEST:

\_\_\_\_\_  
Wendy Franklin-Ricks  
Assistant Secretary

ACCEPTANCE OF ASSIGNMENT:

UMPQUA BANK, as Assignee

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION OF THE SITE

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APN 007502140

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY**

The Facility is the Glen Park Water Tank, a 200,000 gallon water tank built in 2006. It has a steel frame, roof & wall on a concrete foundation.

## LETTER AGREEMENT FOR PURCHASE

May 21, 2013

City of Brisbane, California  
50 Park Place  
Brisbane, CA 94005  
Attention: City Administrator

Brisbane Public Financing Authority  
50 Park Place  
Brisbane, CA 94005  
Attention: Treasurer

Re: \$1,601,000 Lease Agreement, dated as of June 1, 2013, by and between the Brisbane Public Financing Authority and the City of Brisbane, California, assigned to Umpqua Bank

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Ladies and Gentlemen:

The undersigned, Umpqua Bank ("Umpqua"), offers, upon and subject to the terms and conditions set forth herein, to acquire (i) the rights, title and interest of the Brisbane Public Financing Authority (the "Authority") under the Lease Agreement (hereinafter defined), including its rights to the Lease Payments to be made by the City of Brisbane, California (the "City") under the Lease Agreement, dated as of June 1, 2013 (the "Lease Agreement"), by and between the City and the Authority; provided that the Authority's rights to indemnification and payment or reimbursement for any costs or expenses thereunder have been retained by the Authority to the extent such rights accrue to the Authority and shall have been assigned to the Assignee to the extent such rights accrue to the Assignee, by entering into an Assignment Agreement, dated as of June 1, 2013 (the "Assignment Agreement"), with the Authority, (ii) except for the Authority's obligation under Sections 4 and 9 thereof, the rights, title and interest of the Authority under the Site and Facility Lease, dated as of June 1, 2013 (the "Site and Facility Lease"), by and between the City and the Authority. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Lease Agreement and (iii) all moneys, sums and amounts now due or hereinafter to become due under the Lease Agreement.

1. *Purchase and Purchase Price; Terms of Authority's Obligations.* On and subject to the terms and conditions set forth herein, the City and the Authority agree to execute and deliver the Site and Facility Lease and the Lease Agreement, and Umpqua agrees to purchase the Authority's right, title and interest under the Lease Agreement and, except for the Authority's obligations under Sections 4 and 9 thereof, the right, title and interest of the Authority under the Site and Facility Lease and all moneys, sums and amounts now due or hereinafter to become due under the Lease Agreement, as described more specifically above and in the Assignment Agreement, at a purchase price of \$1,601,000.00. The Lease Payments under the Lease Agreement and the interest rates applicable thereto shall be as shown in Exhibits A-1 and A-2 hereto.

2. *Use of Funds.* The purchase price paid by Umpqua shall be used by the Authority to pay the City an advance rental of \$1,601,000.00, pursuant to Section 4 of the Site and Facility

Lease. The City shall use such advance rental payment received from the Authority to fund its unfunded liability to the California Public Employees Retirement System ("PERS") relating to the City's Miscellaneous Pension Side Fund.

3. *Disposition of Proceeds.* Upon the Closing Date, as defined below, purchase price paid by Umpqua shall be transferred by Umpqua for itself and on behalf of the Authority and the City, as follows:

(a) Umpqua shall retain an administrative fee of \$500.00.

(b) Umpqua shall transfer, via wire transfer, to PERS the sum of \$1,524,219.00.

(c) Umpqua shall transfer, via wire transfer, the following amounts to the following entities, in respect of the payment of the costs of the financing transaction:

(i) to Brandis Tallman LLC, \$6,000.00 (invoice with wire information to be provided prior to the Closing Date);

(ii) to JNA Consulting Group, LLC, \$25,000.00 (invoice with wire information to be provided prior to the Closing Date);

(iii) to Quint & Thimmig LLP, \$25,000.00 (invoice with wire information to be provided prior to the Closing Date);

(iv) to Seyfarth Shaw LLP, \$15,000.00 (invoice with wire information to be provided prior to the Closing Date); and

(v) to Stewart Title Guaranty Company, \$3,595.00 (invoice with wire information to be provided prior to the Closing Date); and

(d) Umpqua shall transfer to the City, \$1,686.00, to be applied to the City's costs of the transaction or applied to make the first Lease Payment. Wire instructions to be provided prior to the Closing Date.

Umpqua shall have no obligation to pay any costs of the transaction, such amounts to be paid solely from the purchase price as set forth above.

4. *Closing.* At 8:00 a.m. California Time, on June 5, 2013, or at such other time or on such earlier or later date as Umpqua, the Authority and the City mutually agree upon (the "Closing Date"), the City will deliver (or cause to be delivered) the Site and Facility Lease and the Lease Agreement executed by the City and the Authority, and the Assignment Agreement executed by the Authority and Umpqua, and Umpqua will pay the purchase price for the Authority's obligations as set forth in Section 1 hereof in federal or other immediately available funds.

5. *Representations and Warranties of the City.* The City represents, warrants, covenants and agrees with Umpqua as follows:

(a) The City is a general law city and municipal corporation organized and existing under the constitution and laws of the State of California and the City Council of the City, by adoption of a resolution of the City Council of the City (the "Resolution"), has duly approved the execution and delivery of the Site and Facility Lease and the Lease Agreement, and the City has full right, power and authority to execute, deliver and perform its obligations under the Site and Facility Lease and the Lease Agreement and to carry out and consummate the transactions contemplated by the Site and Facility Lease and the Lease Agreement.

(b) The City has, on or before the date hereof, duly adopted the Resolution and taken all action necessary to be taken by it prior to such date for (i) the execution and delivery of the Site and Facility Lease and the Lease Agreement and performance of its obligations thereunder, and (ii) the carrying out of, giving effect to, consummating and performing the transactions and obligations contemplated to be performed by it by the Site and Facility Lease and the Lease Agreement, provided that no representation is made with respect to compliance with the securities or "Blue Sky" laws of the various states of the United States, and the Resolution has not been amended, modified or repealed and is in full force and effect on the date hereof.

(c) The execution and delivery by the City of the Site and Facility Lease and the Lease Agreement, the compliance by it with the terms, conditions or provisions hereof and thereof, and the consummation on its part of the transactions herein and therein contemplated do not and will not, in any respect material for the performance by the City of its obligations under the Site and Facility Lease and the Lease Agreement, conflict with or constitute a breach of or a default under nor contravene any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, nor does any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the City under any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, deed of trust, resolution, agreement or other instrument in any respect material to the performance by the City of its obligations under the Site and Facility Lease and the Lease Agreement, except as provided in the Site and Facility Lease and the Lease Agreement.

(d) Except as may be required under Blue Sky or other securities laws of any state, there is no consent, approval, authorization or other order of, or filing with, or certification by, any regulatory authority having jurisdiction over the City required for the consummation by the City of the transactions contemplated by the Site and Facility Lease and the Lease Agreement, which has not been duly obtained or made on or prior to the date hereof.

(e) There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending against or, to the best knowledge of the City, threatened against or affecting the City wherein an unfavorable decision, ruling or finding would adversely affect (i) the validity or enforceability of, or the authority or ability of the City to perform its obligations under, the Site and Facility Lease and the Lease Agreement or (B) the transactions contemplated to be performed by it under the Site and Facility Lease and the Lease Agreement.

(f) The City is not in default as to the payment of principal or interest with respect to an obligation issued or incurred by the City and involving expenditure by the City in excess of \$100,000.

(g) The City covenants that it will not take any action which would cause interest payable with respect to the Lease Agreement to become subject to State of California personal income taxes.

(h) Any certificate of the City delivered to Umpqua in connection with the transactions contemplated by this Letter Agreement for Purchase shall be deemed a representation by the City to Umpqua as to the statements made therein.

(i) All representations and warranties of the City in the Site and Facility Lease and the Lease Agreement are true and correct as of the date hereof.



6. *Representations and Warranties of the Authority.* The Authority represents, warrants, covenants and agrees with Umpqua as follows:

(a) The Authority is a joint exercise of powers authority organized and existing under the constitution and laws of the State of California and the Board of Directors of the Authority, by adoption of a resolution of the Board of Directors of the Authority (the "Authority Resolution"), has duly approved the execution and delivery of the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, and the Authority has full right, power and authority to execute, deliver and perform its obligations under the Site and Facility Lease, the Lease Agreement and the Assignment Agreement and to carry out and consummate the transactions contemplated by the Site and Facility Lease, the Lease Agreement and the Assignment Agreement.

(b) The Authority has, on or before the date hereof, duly adopted the Authority Resolution and taken all action necessary to be taken by it prior to such date for (i) the execution and delivery of the Site and Facility Lease, the Lease Agreement and the Assignment Agreement and performance of its obligations thereunder, and (ii) the carrying out of, giving effect to, consummating and performing the transactions and obligations contemplated to be performed by it by the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, provided that no representation is made with respect to compliance with the securities or "Blue Sky" laws of the various states of the United States, and the Resolution has not been amended, modified or repealed and is in full force and effect on the date hereof.

(c) The execution and delivery by the Authority of the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, the compliance by it with the terms, conditions or provisions hereof and thereof, and the consummation on its part of the transactions herein and therein contemplated do not and will not, in any respect material for the performance by the Authority of its obligations under the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, conflict with or constitute a breach of or a default under nor contravene any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, nor does any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority under any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, deed of trust, resolution, agreement or other instrument in any respect material to the performance by the Authority of its obligations under the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, except as provided in the Site and Facility Lease, the Lease Agreement and the Assignment Agreement.

(d) Except as may be required under Blue Sky or other securities laws of any state, there is no consent, approval, authorization or other order of, or filing with, or certification by, any regulatory authority having jurisdiction over the Authority required for the consummation by the Authority of the transactions contemplated by the Site and Facility Lease, the Lease Agreement and the Assignment Agreement, which has not been duly obtained or made on or prior to the date hereof.

(e) There is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending against or, to the best knowledge of the Authority, threatened against or affecting the Authority wherein an unfavorable decision, ruling or finding would adversely affect (i) the validity or enforceability of, or the authority or ability of the Authority to perform its obligations under, the Site and Facility Lease, the Lease Agreement and the Assignment Agreement or (B) the transactions contemplated to be performed by it under the Site and Facility Lease, the Lease Agreement and the Assignment Agreement.

(f) The Authority covenants that it will not take any action which would cause interest payable with respect to the Lease Agreement to become subject to State of California personal income taxes.

(g) Any certificate of the Authority delivered to Umpqua in connection with the transactions contemplated by this Letter Agreement for Purchase shall be deemed a representation by the Authority to Umpqua as to the statements made therein.

(i) All representations and warranties of the Authority in the Site and Facility Lease and the Lease Agreement are true and correct as of the date hereof.

*7. Conditions Precedent to the Closing.* Other conditions precedent to the Closing are:

(a) The delivery by the City of a certified copy of (i) the Resolution, together with an incumbency certificate of the City, and (ii) the Authority Resolution, together with an incumbency certificate of the Authority;

(b) The delivery by the City of the fully executed Site and Facility Lease, Lease Agreement and Assignment Agreement in form and substance acceptable to Umpqua;

(c) Delivery of an opinion or opinions addressed to the City and Umpqua, dated the Closing Date, of Quint & Thimmig LLP, as Special Counsel, with respect to (i) the validity and enforceability of the Lease Agreement, the Site and Facility Lease, and the Assignment Agreement by and against the City and the Authority (as applicable), and (ii) the tax-exempt status of the interest component of the Lease Payments, in form and substance acceptable to Umpqua;

(d) The delivery of a certificate dated the Closing Date and signed by the Finance Director, or such other officer of the City as the City Council of the City may approve, to the effect that:

(i) there are no actions or proceedings against the City pending and notice of which has been served on the City or, to the best knowledge of the City, threatened that materially adversely affect the City's ability to pay the Lease Payments or to perform its obligations under the Site and Facility Lease and Lease Agreement;

(ii) no default by the City or the Authority under the Site and Facility Lease or Event of Default under and as defined in the Lease Agreement has occurred and is continuing;

(iii) the representations and warranties of the City contained in this agreement and the Lease Agreement 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

(iv) the City acknowledges receipt from Umpqua, on behalf of the Authority, of the advance rental payment specified in Section 4 of the Site and Facility Lease insuring the leasehold estate created under the Site and Facility Lease vested in Umpqua, subject only to such exceptions and including such endorsements as Umpqua may require;

(e) The delivery by the City of a title policy for the property that is the subject of the Site and Facility Lease and Lease Agreement in form and substance acceptable to Umpqua;

(f) The execution and delivery by the City of a certificate as to arbitrage;

(g) The delivery by Umpqua of an investor letter in form and substance as attached hereto as Exhibit B;

(h) Receipt by Umpqua of such other documents as may be reasonably requested by Umpqua;

(i) All representations and warranties herein and in the Site and Facility Lease and the Lease Agreement shall be true and correct in all material respects; and

(j) No default by the City or the Authority hereunder or under the Site and Facility Lease or Event of Default under and as defined in the Lease Agreement has occurred and is continuing.

*8. Events Permitting Umpqua to Terminate.*

(a) Umpqua may terminate its obligation to purchase the Authority's rights under the Lease Agreement to receive the Lease Payments, at any time subsequent to the date of this Letter Agreement for Purchase and at or prior to the Closing Date by notifying the City in writing or by telegram of its election so to do, if: Legislation shall be introduced, by amendment or otherwise, in, or be enacted by, the House of Representatives or the Senate of 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 United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the issuance, offering or sale of obligations of the general character of the Lease Agreement, as contemplated hereby, is or would be in violation of any provision of the Securities Act, the Securities Exchange Act of 1934 (the "Securities Exchange Act") or the Trust Indenture Act, as any of the foregoing Acts are amended, or with the purpose or effect of otherwise prohibiting the issuance, offering or sale of obligations of the general character of the Lease Agreement, as contemplated hereby.

(b) In addition, Umpqua may terminate this Letter Agreement for Purchase at any time subsequent to the date of this Letter Agreement for Purchase and at or prior to the Closing Date by notifying the City in writing or by telegram of its election to do so, if:

(i) Any legislation, resolution, ordinance, rule or regulation shall be introduced in, or be enacted by, any governmental body, department or agency of the United States, of the State of New York or of the State of California, or a decision by any court of competent jurisdiction within the United States, of the State of New York or of the State of California shall be rendered which, in Umpqua's reasonable opinion, materially adversely affects the marketability of the Lease Agreement.

(ii) Additional restrictions not in force as of the date hereof having a material adverse effect on the transactions contemplated hereby shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange.

(iii) A general banking moratorium shall have been established by federal, New York, Oregon or California authorities or trading in securities shall generally have been suspended on the New York Stock Exchange.

(iv) A war involving the United States shall have been declared, or any existing conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the financial community shall have occurred, which, in

Umpqua's reasonable opinion, materially adversely affects the marketability of the Lease Agreement.

(v) An event occurs or becomes known that has a material adverse effect on the financial condition of the City or the ability of the City to perform under the Site and facility Lease or the Lease Agreement.

9. Miscellaneous.

(a) Except as otherwise specifically provided in this Letter Agreement for Purchase, all notices, demands and formal actions under this Letter Agreement for Purchase shall be in writing and mailed, telegraphed or personally delivered to:

Umpqua: Umpqua Bank  
2998 Douglas Boulevard, Suite 100  
Roseville, CA 95661  
Attention: Mr. George Diesch

The City: City of Brisbane  
50 Park Place  
Brisbane, CA 94005  
Attention: City Administrator

(b) This Letter Agreement for Purchase will inure to the benefit of and be binding upon the City and Umpqua and their respective successors and assigns, and will not confer any rights upon any other person, partnership, association or corporation other than the City and persons, if any, controlling Umpqua within the meaning of the Securities Act or the Securities Exchange Act. The terms "successors" and "assigns" shall not include any purchaser or holder of any of the Lease Agreement.

(c) All of the representations, warranties and covenants of the City in this Letter Agreement for Purchase shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of Umpqua, (ii) delivery of and any payment for the Lease Agreement hereunder or (iii) termination of Umpqua's obligation to accept delivery of the Lease Agreement pursuant to this Letter Agreement for Purchase.

(d) Section headings have been inserted in this Letter Agreement for Purchase as a matter of convenience or for reference only, and it is agreed that such section headings are not a part of this Letter Agreement for Purchase and will not be used in the interpretation of any provisions of this Letter Agreement for Purchase.

(e) If any provision of this Letter Agreement for Purchase shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Bond Purchase Agreement invalid, inoperative or unenforceable to any extent whatever.

(f) This Letter Agreement for Purchase 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 document.

(g) This Letter Agreement for Purchase shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Letter Agreement for Purchase by their officers thereunto duly authorized as of the day and year first above written.

UMPQUA BANK

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

The foregoing is hereby agreed to and accepted as of the date first above written:

CITY OF BRISBANE

By \_\_\_\_\_  
Clayton L. Holstine  
City Manager

BRISBANE PUBLIC FINANCING  
AUTHORITY

By \_\_\_\_\_  
Clayton L. Holstine  
Executive Director

## EXHIBIT A-1

### SCHEDULE OF LEASE PAYMENTS

Lease Payment Date	Principal Component	Interest Component (1)	Total Lease Payment
12/1/13	\$ 20,000	\$28,960.31	\$ 48,960.31
6/1/14	20,000	29,248.50	49,248.50
12/1/14	25,000	28,878.50	53,878.50
6/1/15	25,000	28,416.00	53,416.00
12/1/15	30,000	27,953.50	57,953.50
6/1/16	30,000	27,398.50	57,398.50
12/1/16	35,000	26,843.50	61,843.50
6/1/17	35,000	26,196.00	61,196.00
12/1/17	40,000	25,548.50	65,548.50
6/1/18	40,000	24,808.50	64,808.50
12/1/18	80,000	24,068.50	104,068.50
6/1/19	85,000	22,588.50	107,588.50
12/1/19	95,000	21,016.00	116,016.00
6/1/20	95,000	19,258.50	114,258.50
12/1/20	110,000	17,501.00	127,501.00
6/1/21	110,000	15,466.00	125,466.00
12/1/21	175,000	13,431.00	188,431.00
6/1/22	175,000	10,193.50	185,193.50
12/1/22	188,000	6,956.00	194,956.00
6/1/23	188,000	3,478.00	191,478.00

(1) Applicable interest rate is 3.70% per annum.

## EXHIBIT B

### FORM OF INVESTOR LETTER

City of Brisbane, California  
50 Park Place  
Brisbane, CA 94005  
Attention: City Administrator

Brisbane Public Financing Authority  
50 Park Place  
Brisbane, CA 94005  
Attention: Treasurer

Re: \$1,601,000 Lease Agreement, dated as of June 1, 2013, by and between the Brisbane Public Financing Authority and the City of Brisbane, California, assigned to Umpqua Bank

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Ladies and Gentlemen:

The undersigned, Umpqua Bank ("Umpqua"), has agreed to acquire (i) the rights, title and interest of the Brisbane Public Financing Authority (the "Authority") under the Lease Agreement, dated as of June 1, 2013 (the "Lease Agreement"), by and between the City of Brisbane (the "City") and the Authority, including its rights to the lease payments to be made by the City under the Lease Agreement. In connection with such purchase, Umpqua hereby agrees and certifies to the Authority and the City that:

(a) Umpqua has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other obligations of a nature similar to the Lease Agreement to be able to evaluate the risks and merits of the investment represented by the purchase of the rights, title and interest of the Authority under the Lease Agreement.

(b) Umpqua is acquiring the rights, title and interest of the Authority under the Lease Agreement for its own account and not with a view to, or for sale in connection with, any distribution thereof or any part thereof. Umpqua has not offered to sell, solicited offers to buy, or agreed to sell the rights, title and interest of the Authority under the Lease Agreement or any part thereof, and Umpqua has no current intention of reselling or otherwise disposing of the rights, title and interest of the Authority under the Lease Agreement *provided, however*, such representation shall not preclude Umpqua from transferring or selling of the rights, title and interest of the Authority under the Lease Agreement assigned to Umpqua in accordance with the Lease Agreement. Umpqua is not acting in a broker-dealer capacity in connection with its purchase of the rights, title and interest of the Authority under the Lease Agreement.

(c) As a sophisticated investor, Umpqua has made its own credit inquiry and analysis with respect to the City and the Lease Agreement and has made an independent credit decision based upon such inquiry and analysis and in reliance on the truth, accuracy, and completeness of the representations and warranties of the City set forth in the Lease Agreement and in the information set forth in any materials submitted to Umpqua by the City. Umpqua acknowledges that it has reviewed information, including financial statements and other financial information, regarding the City and that Umpqua has had the opportunity to ask questions of and receive answers from knowledgeable individuals concerning the City and the Lease Agreement. Umpqua is able and willing to bear the economic risk of the purchase and ownership of the rights, title and interest of the Authority under the Lease Agreement.

(d) Umpqua understands that the Lease Agreement has not been registered under the United States Securities Act of 1933 or under any state securities laws. Umpqua agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Lease Agreement by it, and further acknowledges that any current exemption from registration of the Lease Agreement does not affect or diminish such requirements.

(e) Umpqua has the corporate authority to purchase the rights, title and interest of the Authority under the Lease Agreement and to execute any instruments and documents required to be executed by Umpqua in connection with the purchase of the rights, title and interest of the Authority under the Lease Agreement. The undersigned is a duly appointed, qualified, and acting officer of Umpqua and is authorized to cause Umpqua to make the agreements and certifications contained herein on behalf of Umpqua.

(f) Umpqua has been informed that the Lease Agreement (i) has not been and will not be registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

(g) Umpqua acknowledges that rights, title and interest of the Authority under the Lease Agreement are transferable with certain requirements, as described in the Lease Agreement.

(h) Umpqua has been informed that the Lease Agreement is exempt from the requirements of Rule 15c2-12 of the Securities and Exchange Commission and that the City has not undertaken to provide any continuing disclosure with respect to the Lease Agreement.

UMPQUA BANK

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_