

**TRUST AGREEMENT**

**Dated as of October 1, 2020**

**by and among**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee**

**and**

**CUPERTINO PUBLIC FACILITIES CORPORATION**

**and**

**CITY OF CUPERTINO**

**Relating to the**

**\$\_\_\_\_\_**

**CITY OF CUPERTINO  
2020A CERTIFICATES OF PARTICIPATION**

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## TRUST AGREEMENT

THIS TRUST AGREEMENT, is dated as of October 1, 2020, and entered into by and among THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized under the laws of the United States of America, as trustee (the "Trustee"), the CUPERTINO PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, as lessor under the Lease hereinafter referred to (the "Corporation"), and the CITY OF CUPERTINO, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California, as lessee under the Lease (the "City");

### WITNESSETH:

WHEREAS, the City and the Corporation have heretofore entered into a Lease Agreement, dated as of May 1, 2012 (the "2012 Lease Agreement"), pursuant to which the Corporation agreed to lease to the City certain real property and improvements located thereon; and

WHEREAS, the City has previously executed and delivered its \$43,940,000 Certificates of Participation (2012 Refinancing Project) (the "Refunded Certificates"), which Refunded Certificates were secured by lease payments under and pursuant to the terms the 2012 Lease Agreement; and

WHEREAS, the City and the Corporation have entered into a Lease Agreement, dated as of October 1, 2020 (the "Lease"), whereby the City has agreed to lease the Leased Premises (defined below) from the Corporation; and

WHEREAS, in order to prepay the 2012 Lease Agreement and to defease and refinance the Refunded Certificates, the City and the Corporation have authorized the sale of the \$\_\_\_\_\_ City of Cupertino 2020A Certificates of Participation (the "Certificates"); and

WHEREAS, as security for the Certificates, the Corporation has assigned the rights to receive all Lease Payments described in the Lease, and the Corporation and the City have granted a security interest in all moneys held by the Trustee hereunder (other than the Rebate Fund as described herein) to the extent described herein to the Trustee for the benefit of the Owners (defined below) of Certificates and any Additional Certificates (defined below) executed and delivered hereunder; and

WHEREAS, Section 5450 *et seq.* of the California Government Code (the "Government Code") provides statutory authority for pledging collateral for the payment of principal or prepayment price of, and interest on, any agreement, including certificates of participation, and the Government Code creates a continuing perfected security interest which shall attach immediately to such collateral irrespective of whether the parties to the pledge document have notice of the pledge and without the need for any physical delivery, recordation, filing or further act, and, therefore, the City and the Corporation hereby warrant and represent that pursuant to the Lease, this Trust Agreement and the Government Code, the Trustee has a first priority perfected security interest in the Lease Payments described in the Lease represented by the Certificates pursuant to the Government Code; and

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

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions and Rules of Construction.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Trust Agreement, have the meanings herein specified. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Trust Agreement, refer to this Trust Agreement as a whole.

“Additional Certificates” means certificates of participation authorized by a Supplemental Agreement that are executed and delivered by the Trustee under and pursuant to Section 2.11 hereof.

“Additional Payments” means all amounts payable by the City as Additional Payments as defined in Section 4.11 of the Lease.

“Assignment Agreement” means the Assignment Agreement, dated as of the date hereof, by and between the Trustee and the Corporation, and any duly authorized and executed amendments thereto.

“Beneficial Owner” means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Certificates (including persons holding Certificates through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Certificates for federal income tax purposes.

“Business Day” means any day other than (i) a Saturday or Sunday, or (ii) a day on which banking institutions in the State of New York or the State of California are authorized or required by law or executive order to remain closed.

“Certificates” means the \$ \_\_\_\_\_ City of Cupertino 2020A Certificates of Participation to be executed and delivered by the Trustee pursuant to this Trust Agreement.

“Certificate Year” means the period extending from June 2 each year to June 1 of the subsequent calendar year, provided that the first Certificate Year shall commence on the Delivery Date and end on June 1, 2021.

“City” means the City of Cupertino, a municipal corporation and a general law city organized and existing under the laws and Constitution of the State, and its successors and assigns.

“City Representative” means the Mayor, the City Manager, the Assistant City Manager, the Administrative Services Director, or any other person authorized by the City Manager of the City to act on behalf of the City with respect to the Lease or this Trust Agreement.

“Code” means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code shall be deemed to be a reference to any successor to any such section.

“Continuing Disclosure Certificate” means that certain Continuing Disclosure Certificate dated as of October \_\_, 2020, executed by the City and acknowledged by the Trustee, as Dissemination Agent, as it may be amended from time to time in accordance with the terms thereof.

“Corporation” means the Cupertino Public Facilities Corporation, a nonprofit public benefit corporation organized under the laws of the State, its successors and assigns.

“Corporation Representative” means the President, Vice President, Secretary, and Treasurer of the Corporation, or any other person authorized by the President or Treasurer to act on behalf of the Corporation under or with respect to the Lease.

“Delivery Cost Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.02 hereof.

“Delivery Cost Requisition” means a written requisition substantially in the form attached hereto as Exhibit B.

“Delivery Costs” means and includes all items of expense directly or indirectly payable by or reimbursable to the City or the Corporation relating to the prepayment of the Refunded Certificates from the proceeds of the Certificates, including but not limited to costs provided in the contract of purchase with the Original Purchaser, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, initial fees and charges of the Trustee, including its first annual administration fee and the fees of its counsel, legal fees and charges, financing and other professional consultant fees, fees of auctioning the Certificates, costs of rating agencies and costs of providing information to such rating agencies, any computer and other expenses incurred in connection with the Certificates, fees for execution, transportation and safekeeping of the Certificates and charges and fees in connection with the foregoing.

“Delivery Date” means the date on which the Certificates, duly executed by the Trustee, are delivered to the Original Purchaser thereof.

“Depository” means the securities depository acting as depository pursuant to Section 2.09 hereof.

“DTC” means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York in its capacity as securities depository for the Certificates.

“Escrow Fund” means the Escrow Fund established under the 2012A Certificates Escrow Agreement.

“Event of Default” means an event of default under the Lease, as defined in Section 9.1 thereof.

“Fiscal Year” means the fiscal year of the City commencing July 1 and ending June 30 of the next year.

“Government Obligations” means Permitted Investments of the type described in paragraphs (A) or (B) of the definition thereof.

“Independent Counsel” means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Corporation, the Trustee or the City.

“Interest Payment Date” means June 1 and December 1 of each year commencing \_\_\_\_\_ 1, 20\_\_.

“Lease” means the Lease Agreement related to the Certificates, dated as of the date hereof, by and between the City and the Corporation, and any duly authorized and executed amendments thereto.

“Lease Payment” means any of the Lease Payments required to be paid by the City to the Corporation pursuant to Section 4.4 of the Lease.

“Lease Payment Date” means the second Business Day prior to each Interest Payment Date.

“Lease Payment Fund” means the fund by that name established and held by the Trustee pursuant to Section 5.02 hereof.

“Lease Proceeds” has the meaning set forth in Section 5.01(c).

“Leased Premises” has the meaning set forth in the Lease.

“Letter of Representations” means the letter of the City delivered to and accepted by the Depository on or prior to delivery of the Certificates as book-entry certificates making reference to the DTC Operational Arrangements memorandum, as it may be amended from time to time, setting forth the basis on which the Depository serves as depository for such book-entry certificates, as such letters were originally executed or as they may be supplemented or revised or replaced by letters from the City and the Trustee delivered to and accepted by the Depository.

“Moody’s” means Moody’s Investors Service or any successors or assigns thereto.

“Net Proceeds” means any proceeds of any insurance, performance bonds or taking by eminent domain or condemnation paid with respect to the Leased Premises remaining after payment therefrom of any expenses (including attorneys’ fees) incurred in the collection thereof.

“Net Proceeds Fund” means the fund by that name established and held by the Trustee pursuant to Section 7.01 hereof.

“Nominee” means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant to Section 2.09 hereof.

“Original Purchaser” means Stifel, Nicolaus & Company, Incorporated, as original purchaser of the Certificates on the Delivery Date.

“Outstanding” when used as of any particular time with respect to Certificates, means (subject to the provisions of Section 10.03 hereof) all Certificates or Additional Certificates theretofore executed and delivered by the Trustee under this Trust Agreement except:



(1) Certificates or Additional Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;

(2) Certificates or Additional Certificates for the payment or prepayment of which funds or Government Obligations, together with interest earned thereon, in the necessary amount shall have theretofore been deposited with the Trustee (whether upon or prior to the maturity or prepayment date of such Certificates or Additional Certificates), provided that, if such Certificates are to be prepaid prior to maturity, notice of such prepayment shall have been given as provided in Section 4.05 hereof or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(3) Certificates or Additional Certificates in lieu of or in exchange for which other Certificates or Additional Certificates shall have been executed and delivered by the Trustee pursuant to Sections 2.05 and 2.06 hereof.

“Owner” or “Certificate Owner” or “Owner of a Certificate”, or any similar term, when used with respect to a Certificate means the person in whose name such Certificate is registered on the registration books maintained by the Trustee.

“Participants” means those broker-dealers, banks and other financial institutions from time to time for which the Depository holds book-entry certificates as securities depository.

“Permitted Investments” means, if and to the extent permitted by law and by any policy guidelines promulgated by the City:

A. Direct 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) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. Farmers Home Administration (FmHA)  
Certificates of beneficial ownership
2. Federal Housing Administration Debentures (FHA)
3. General Services Administration  
Participation certificates
4. Government National Mortgage Association (GNMA or “Ginnie Mae”)  
GNMA-guaranteed mortgage-backed bonds  
GNMA-guaranteed pass-through obligations

5. U.S. Maritime Administration  
Guaranteed Title XI financing (qualified under the Ship Financing Act of 1972)
6. U.S. Department of Housing and Urban Development (HUD)  
Project Notes  
Local Corporation Bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System  
Senior debt obligations
2. Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”)  
Participation certificates  
Senior debt obligations
3. Federal National Mortgage Association (FNMA or “Fannie Mae”)  
Mortgage-backed securities and senior debt obligations (excluding stripped mortgage securities which are valued greater than par on the portion of unpaid principal)
4. Student Loan Marketing Association (SLMA or “Sallie Mae”)  
Senior debt obligations
5. Resolution Funding Corp (REFCORP)  
The interest only component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York
6. Farm Credit System Corp. - Consolidated system-wide bonds and notes

D. Money market funds registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating by Standard & Poor’s of “AAAm-G,” “AAAm” or “AAm” or by Moody’s of “Aaa,” “Aa1” or “Aa2,” including funds for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries of the Trustee provide investment advisory or other management services.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above and having a maturity of one year or less. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks whose short-term obligations are rated “A-1+” by Standard & Poor’s and “Prime-1” by Moody’s, which may include the Trustee and its affiliates. The collateral must be held by a third party and the Owners must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC (including those of the Trustee and its affiliates).

G. Commercial paper rated at the time of investment “Prime - 1” by Moody’s and “A-1+” or better by Standard & Poor’s.

H. Investment agreements, including guaranteed investment agreements, acceptable to the Trustee.

I. Bonds or notes issued by any state or municipality which are rated by Moody’s or Standard & Poor’s in one of the two highest rating categories assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured or unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody’s or “A-1+” or better by Standard & Poor’s, including those of the Trustee and its affiliates.

K. Repurchase agreements rated “AA” or better by Standard and Poor’s and that provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the Trustee (buyer/lender), and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee, in exchange for the securities at a specified date or dates.

L. Any guaranteed investment contract, including forward delivery agreements (“FDAs”) and forward purchase agreements (“FPAs”), with a financial institution or insurance company which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims-paying ability rated within the two highest rating categories of Standard & Poor’s or Moody’s. Only Permitted Investments described in clauses A, B or C above and having maturities equal to or less than 30 years from their date of delivery will be considered eligible for any collateralization/delivery purposes for guaranteed investment contracts, FDAs or FPAs;

M. Pre-refunded municipal bonds rated “Aaa” by Moody’s and “AAA” by Standard & Poor’s. If, however, the issue is only rated by Standard & Poor’s (i.e., there is no Moody’s rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals to satisfy this condition.

N. The Local Agency Investment Fund of the State, provided that the Trustee may deposit and withdraw monies in its own name.

O. Any other investment which the City is permitted by law to make (including investment agreements and forward delivery or forward purchase agreements).

“Value” of the above investments shall be determined by the manner currently employed by the Trustee or any other manner consistent with industry standard.

“Prepayment” means any payment made by the City pursuant to Article X of the Lease as a prepayment of Lease Payments.

“Prepayment Fund” means the fund by that name established and held by the Trustee pursuant to Section 4.01 hereof.

“Principal Office or Corporate Trust Office” means the corporate trust office of the Trustee in Los Angeles, California, or such other or additional offices as may be designated by the Trustee; provided, however, that for the purposes of payment, transfer or exchange of Certificates such term means the office or agency of the Trustee at which, at any particular time its corporate trust agency business shall be conducted.

“Project” means the real property and public capital improvements refinanced with proceeds of the Refunded Certificates and any other project identified in the Lease or any supplement thereto as a Project.

“Rebate Fund” has the meaning set forth in Section 8.08(a).

“Rebate Requirement” has the meaning set forth in Section 8.08(a).

“Record Date” means the close of business on the fifteenth (15th) day of the month preceding each Interest Payment Date, whether or not such fifteenth (15th) day is a Business Day.

“Refunded Certificates” means the \$43,940,000 aggregate principal amount of the City of Cupertino Certificates of Participation (2012 Refinancing Project).

“Series” means the Certificates and such Additional Certificates which are secured by Lease Payments.

“S&P” or “Standard & Poor’s” means S&P Global Ratings, a Standard & Poor’s Financial Services LLC business, or any successors or assigns thereto.

“Site Lease” means the Site Lease related to the Certificates, dated the date hereof, by and between the Corporation and the City, and any duly authorized and executed amendments thereto .

“Special Counsel” means Stradling Yocca Carlson & Rauth, a Professional Corporation, or any other attorney or firm of attorneys of nationally recognized standing in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions and acceptable to the City.

“State” means the State of California.

“Supplemental Agreement” means a supplement to this Trust Agreement providing for the execution and delivery of Additional Certificates pursuant to Section 2.11 hereof.

“Tax Certificate” means the Tax Certificate, dated as of the Delivery Date, concerning matters pertaining to the use and investment of proceeds of the Certificates executed and delivered to the City on the date of execution and delivery of the Certificates, including any and all exhibits attached thereto.

“Term” means the time during which the Lease is in effect, as provided in Section 4.2 of the Lease.

“Treasury Regulations” has the meaning set forth in Section 8.08(a).

“Trustee” means The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America, and any successor trustee.

“Trust Agreement” or “Agreement” means this Trust Agreement, together with any amendments hereof or supplements hereto permitted to be made hereunder.

“2012A Certificates Escrow Agreement” means that certain 2012A Certificates Escrow Agreement dated as of October 1, 2020, by and between the City and The Bank of New York Mellon Trust Company, N.A., as Escrow Agent, providing for the defeasance of the Refunded Certificates.

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

**Section 1.03 Equal Security.** In consideration of the acceptance of the Certificates by the Owners, this Trust Agreement shall be deemed to be and shall constitute a contract between the Trustee and the Owners to secure the full and final payment of the interest, if any, and principal represented by the Certificates which may be executed and delivered hereunder, subject to each of the agreements, conditions, covenants and terms contained herein; and all agreements, conditions, covenants and terms contained herein required to be observed or performed by or on behalf of the Trustee shall be for the equal and proportionate benefit, protection and security of all Owners without distinction, preference or priority as to security or otherwise of any Certificates of a Series over any other Certificates of a Series by reason of the number or date thereof or the time of execution or delivery thereof or for any cause whatsoever, except as expressly provided herein or therein. All of the Certificates of a Series are equally secured as provided in this Section, except as may be otherwise expressly provided in this Trust Agreement.

## ARTICLE II

### THE CERTIFICATES OF PARTICIPATION

**Section 2.01 Authorization.** Upon written request of the City Representative, the Trustee will execute and deliver to the Original Purchaser Certificates in an aggregate principal amount of \$\_\_\_\_\_ representing proportionate ownership interests in the Lease Payments and the Prepayments. The Certificates shall be initially executed and delivered as book-entry certificates.

## Section 2.02 Description of Certificates.

(a) Each Certificate shall be dated the Delivery Date and shall mature on June 1 in each of the years and in the amounts, and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

<i>Maturity (June 1)</i>	<i>Principal Amount</i>	<i>Interest Rate</i>
2021	\$	%
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		

The Certificates shall be delivered in fully registered form, numbered from one upwards in consecutive numerical order (with such alphabetical prefix as the Trustee shall determine). The Certificates shall be executed and delivered in the denominations of Five Thousand Dollars (\$5,000) and any integral multiple thereof.

Each Certificate shall bear interest from the Interest Payment Date next preceding the date of execution thereof, unless (i) it is executed during the period from the day after the Record Date for an Interest Payment Date to and including such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (ii) it is executed on or prior to the Record Date for the first Interest Payment Date, in which event interest shall be payable from the Delivery Date; provided, however, that if, at the time of execution of any Certificate interest with respect to such Certificate is in default, such Certificate shall bear interest from the Interest Payment Date to which interest has been paid or made available for payment with respect to such Certificate.

(b) Payment Provisions. Interest with respect to any Certificate shall be payable in lawful money of the United States of America by check or draft of the Trustee, mailed no later than the Interest Payment Date to the Owner at its address as it appears, on the Record Date, on the registration books maintained by the Trustee or at such other address as has been furnished to the Trustee in writing by the Owner on or prior to such Record Date; provided, however, that at the written request of the Owner of at least One Million Dollars (\$1,000,000) in aggregate principal amount of Outstanding Certificates filed with the Trustee prior to any Record Date, interest with respect to such Certificates shall be paid to such Owner on each succeeding Interest Payment Date (unless such request has been revoked in writing) by wire transfer of immediately available funds to an account in the continental United States designated in such written request. Payments of defaulted interest with respect to the Certificates shall be paid by check or draft to the registered Owners of the Certificates as of a special record date to be fixed by the Trustee, notice of which special record date shall be given to the registered Owners of the Certificates no less than ten (10) days prior thereto. The principal of and premium, if any, on the Certificates is payable when due upon surrender thereof at the Principal Office in lawful money of the United States of America.

**Section 2.03 Form of Certificates.** The Certificates and the assignment to appear thereon shall be substantially in the forms set forth in Exhibit A attached hereto and by this reference incorporated herein with such appropriate additions, modifications, and insertions as are permitted or required by this Trust Agreement. Pending the preparation of definitive Certificates, the Certificates may be executed and delivered in temporary form exchangeable for definitive Certificates when ready for delivery. If the Trustee delivers temporary Certificates, it shall execute and deliver definitive Certificates in an equal aggregate principal amount of authorized denominations, when available, without additional charge, and thereupon the temporary Certificates shall be surrendered to the Trustee at its Principal Office. Until so exchanged, the temporary Certificates shall be entitled to the same benefits under this Trust Agreement as definitive Certificates.

**Section 2.04 Execution.** The Certificates shall be executed by and in the name of the Trustee by the manual signature of any authorized signatory of the Trustee. The Trustee shall insert the date of execution of each Certificate in the place provided thereon.

**Section 2.05 Transfer and Exchange.**

(a) Transfer of Certificates. Any Certificate may, in accordance with its terms, be transferred upon the books required to be kept pursuant to the provisions of Section 2.08 hereof by the person in whose name it is registered, in person or by its duly authorized attorney, upon surrender of such Certificate for cancellation at the Principal Office accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Certificate or Certificates shall be surrendered for transfer, the Trustee shall execute and deliver a new Certificate or Certificates of the same tenor and maturity, for like aggregate principal amount in authorized denominations. The cost of printing Certificates and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the City. The Trustee shall require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, and there shall be no other charge to any Owner for any such transfer.

(b) Exchange of Certificates. Certificates may be exchanged at the Principal Office for a like aggregate principal amount of Certificates of other authorized denominations of the same tenor and maturity. The Trustee may require the payment by the Certificate Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. The cost of printing Certificates and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the City. All Certificates surrendered pursuant to the provisions of this Section shall be cancelled and destroyed by the Trustee and shall not be redelivered.

(c) Time for Transfer or Exchange. The Trustee shall not be obligated to transfer or exchange any Certificate after a Record Date and before the following Interest Payment Date, or during the period in which it is selecting Certificates for prepayment, or after notice of prepayment has been given as provided in Section 4.05 hereof.

**Section 2.06 Certificates Mutilated, Lost, Destroyed or Stolen.** If any Certificate shall become mutilated, the Trustee, at the expense of the Owner of said Certificate, shall execute and deliver a new Certificate of like tenor, maturity and principal amount in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee shall be cancelled by it. If any Certificate

shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and, if an indemnity, satisfactory to the Trustee indemnifying the Trustee, the Corporation and the City, shall be given, the Trustee, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like tenor, maturity and principal amount and numbered as the Trustee shall determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each new Certificate delivered under this Section and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section. Any Certificate executed under the provisions of this Section in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. Notwithstanding any other provision of this Section, in lieu of delivering a new Certificate in place of one which has been mutilated, lost, destroyed or stolen, and which has matured, or has been called for prepayment, the Trustee may make payment with respect to such Certificate upon receipt of the above-mentioned indemnity.

**Section 2.07 Execution of Documents and Proof of Ownership.** Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Owner or its attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged before him the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of its authority.

(b) The fact of the ownership of Certificates by any person, the amount and numbers of such Certificates and the date of execution shall be proved by the registration books maintained pursuant to Section 2.08 hereof.

Nothing contained in this Article II shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient in its sole discretion. Any request or consent of the Owner of any Certificate shall bind every future Owner of the same Certificate in respect of anything done or to be done by the Trustee in pursuance of such request or consent.

**Section 2.08 Certificate Register.** The Trustee will keep or cause to be kept at its Principal Office or another office designated by the Trustee sufficient books for the registration and transfer of the Certificates which shall, during normal working hours and upon reasonable notice, be open to inspection by the City and the Corporation; and, upon presentation for such purpose, the



Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Certificates as hereinbefore provided. The City, the Corporation and the Trustee shall be entitled to treat the registered owner of a Certificate as the absolute owner thereof for all purposes, whether or not a Certificate shall be overdue and the City, the Corporation and the Trustee shall not be affected by any notice to the contrary.

## **Section 2.09 Book-Entry System.**

(a) Election of Book-Entry System. Prior to the execution and delivery of the Certificates, the City may provide that such Certificates shall be initially executed and delivered as book-entry Certificates. If the City shall elect to deliver any Certificates in book-entry, then the City shall cause the delivery of a separate single fully registered Certificate (which may be typewritten) for each maturity date of such Certificates in an authorized denomination corresponding to that total principal amount of the Certificates designated to mature on such date. Upon initial execution and delivery, the ownership of each such Certificate shall be registered in the Certificate register in the name of the Nominee, as nominee of the Depository, and ownership of the Certificates, or any portion thereof, may not thereafter be transferred except as provided in subsection (d) of this Section 2.09.

With respect to book-entry Certificates, the City and the Trustee shall have no responsibility or obligation to any Participant or to any person on behalf of which such a Participant holds an interest in such book-entry Certificates. Without limiting the immediately preceding sentence, the City and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee, or any Participant with respect to any ownership interest in book-entry Certificates, (ii) the delivery to any Participant or any other person, other than an Owner as shown in the Certificate register, of any notice with respect to book-entry Certificates, including any notice of prepayment, (iii) the selection by the Depository and its Participants of the beneficial interests in book-entry Certificates to be prepaid in the event the City prepaays the Certificates in part, or (iv) the payment by the Depository or any Participant or any other person, of any amount with respect to principal, premium, if any, or interest evidenced and represented by book-entry Certificates. The City and the Trustee may treat and consider the person in whose name each book-entry Certificate is registered in the Certificate register as the absolute Owner of such book-entry Certificate for the purpose of payment of principal, premium and interest with respect to such Certificate, for the purpose of giving notices of prepayment and other matters with respect to such Certificate, for the purpose of registering transfers with respect to such Certificate, and for all other purposes whatsoever. The Trustee shall pay all principal, premium, if any, and interest evidenced and represented by the Certificates only to or upon the order of the respective Owner, as shown in the Certificate register, or its respective attorney duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal, premium, if any, and interest evidenced and represented by the Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Certificate register, shall receive a Certificate evidencing the obligation to make payments of principal, premium, if any, and interest evidenced and represented by the Certificates. Upon delivery by the Depository to the Owner and the Trustee, of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to Record Dates, the word "Nominee" in this Trust Agreement shall refer to such nominee of the Depository.

(b) Delivery of Letter of Representations. In order to qualify the book-entry Certificates for the Depository's book-entry system, the City shall execute and deliver to the Depository a Letter of Representations. The execution and delivery of a Letter of Representations shall not in any way impose upon the City any obligation whatsoever with respect to persons having interests in such book-entry Certificates other than the Owners, as shown on the Certificate register. In addition to the execution and delivery of a Letter of Representations, the City shall take such other actions, not inconsistent with this Trust Agreement, as are reasonably necessary to qualify book-entry Certificates for the Depository's book-entry program.

(c) Selection of Depository. In the event (i) the Depository determines not to continue to act as securities depository for book-entry Certificates, or (ii) the City determines that continuation of the book-entry system is not in the best interest of the beneficial owners of the Certificates or the City, then the City will discontinue the book-entry system with the Depository. If the City determines to replace the Depository with another qualified securities depository, the City shall prepare or direct the preparation of a new single, separate, fully registered Certificate for each of the maturity dates of such book-entry Certificates, registered in the name of such successor or substitute qualified securities depository or its Nominee as provided in subsection (d) of this Section 2.09. If the City fails to identify another qualified securities depository to replace the Depository, then the Certificates shall no longer be restricted to being registered in such Certificate register in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging such Certificates shall designate, in accordance with the provisions of Section 2.05 hereof.

(d) Payments to Depository. Notwithstanding any other provision of this Trust Agreement to the contrary, so long as all Outstanding Certificates are held in book-entry and registered in the name of the Nominee, all payments with respect to principal, prepayment premium, if any, and interest evidenced and represented by such Certificate and all notices with respect to such Certificate shall be made and given, respectively to the Nominees, as provided in the Letter of Representations or as otherwise instructed by the Depository and agreed to by the Trustee notwithstanding any inconsistent provisions herein.

(i) The Certificates shall be initially executed and delivered as provided in Section 2.01 hereof. If such Certificates are initially registered in the name of the Nominee, then registered ownership of such Certificates, or any portions thereof, may not thereafter be transferred except:

(A) to any successor of DTC or its nominee, or of any substitute depository designated pursuant to clause (B) of subsection (i) of this Section 2.09(d) ("Substitute Depository"); provided that any successor of DTC or Substitute Depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(B) to any Substitute Depository, upon (1) the resignation of DTC or its successor (or any Substitute Depository or its successor) from its functions as depository, or (2) a determination by the City that DTC (or its successor) is no longer able to carry out its functions as depository; provided that any such Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(C) to any person as provided below, upon (1) the resignation of DTC or its successor (or any Substitute Depository or its successor) from its functions as depository,

or (2) a determination by the City that DTC or its successor (or Substitute Depository or its successor) is no longer able to carry out its functions as depository.

(ii) In the case of any transfer pursuant to clause (A) or clause (B) of subsection (i) of this Section 2.09(d), upon receipt of all Outstanding Certificates by the Trustee, together with a written request of the City to the Trustee designating the Substitute Depository, a single new Certificate, which the City shall prepare or cause to be prepared, shall be executed and delivered for each maturity of Certificates then Outstanding, registered in the name of such successor or such Substitute Depository or their Nominees, as the case may be, all as specified in such written request of the City. In the case of any transfer pursuant to clause (C) of subsection (i) of this Section 2.09(d), upon receipt of all Outstanding Certificates by the Trustee, together with a written request of the City to the Trustee, new Certificates, which the City shall prepare or cause to be prepared, shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such written request of the City, subject to the limitations of Section 2.01 hereof, provided that the Trustee shall not be required to deliver such new Certificates within a period of less than sixty (60) days from the date of receipt of such written request from the City.

(iii) In the case of a partial prepayment or an advance prepayment of any Certificates evidencing a portion of the principal maturing in a particular year, DTC or its successor (or any Substitute Depository or its successor) shall make an appropriate notation on such Certificates indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee, all in accordance with the Letter of Representations. The Trustee shall not be liable for such Depository's failure to make such notations or errors in making such notations.

(iv) The City and the Trustee shall be entitled to treat the person in whose name any Certificate is registered as the Owner thereof for all purposes of this Trust Agreement and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the City; and the City and the Trustee shall not have responsibility for transmitting payments to, communicating with, notifying, or otherwise dealing with any beneficial owners of the Certificates. Neither the City nor the Trustee shall have any responsibility or obligation, legal or otherwise, to any such beneficial owners or to any other party, including DTC or its successor (or Substitute Depository or its successor), except to the Owner of any Certificates, and the Trustee may rely conclusively on its records as to the identity of the Owners of the Certificates.

**Section 2.10 Destruction of Cancelled Certificates.** Whenever in this Trust Agreement provision is made for the surrender or cancellation by the Trustee and the delivery to the City of any Certificates, the Trustee will cancel and destroy such Certificates and deliver a certificate of such destruction to the City upon its request.

**Section 2.11 Additional Certificates.** Subsequent to the execution and delivery by the Trustee of the Certificates, the Trustee shall, upon written request or requests of the City Representative and of the Corporation Representative, execute and deliver from time to time one or more series of Additional Certificates in such aggregate principal amount as may be set forth in such written request or requests, provided that there shall have been compliance with all of the following conditions, which are hereby made conditions precedent to the preparation, execution and delivery of such Additional Certificates:

(a) The parties to this Trust Agreement shall have executed a Supplemental Agreement which sets forth the terms and provisions of such Additional Certificates, including the

establishment of such funds and accounts, which may be separate and apart from the funds and accounts established hereunder for the Certificates, as shall be necessary or appropriate;

(b) The scheduled principal and interest payable with respect to such Additional Certificates shall be payable only on Interest Payment Dates applicable to the Certificates;

(c) The Lease shall have been amended, if necessary, to (i) increase or adjust the Lease Payments due and payable on each Lease Payment Date to an amount sufficient to pay the principal, premium (if any) and interest payable with respect to all Outstanding Certificates, including all Additional Certificates as and when the same mature or become due and payable (except to the extent such principal, premium and interest may be payable out of moneys then on deposit with the Trustee in accordance with this Trust Agreement), and (ii) make such other revisions to the Lease as are necessitated by the execution and delivery of such Additional Certificates (provided, however, that such other revisions shall not prejudice the rights of the Owners of Outstanding Certificates as granted them under the terms of this Trust Agreement);

(d) There shall have been delivered to the Trustee a counterpart of the amendments required by subsection (c) of this Section 2.11;

(e) The Trustee shall have received a certificate of the Corporation Representative that there exists on the part of the Corporation no Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default);

(f) The Trustee shall have received a certificate of the City Representative that (i) there exists on the part of the City no Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) and (ii) the Lease Payments as increased or adjusted do not exceed in any year the fair rental value of the Leased Premises (as such term is defined in the amended Lease);

(g) The Trustee shall have received an opinion of Special Counsel substantially to the effect that (i) said Supplemental Agreement and said amendments to the Lease comply in all respects with the requirements of this Section, (ii) said Supplemental Agreement and said amendments to the Lease have been duly authorized, executed and delivered by the City and the Corporation, as applicable, (provided that said opinion of Special Counsel, in rendering the opinions set forth in this clause (ii), shall be entitled to rely upon one or more other opinions of counsel, including counsel to any of the respective parties to said Supplemental Agreement or said amendments to the Lease), (iii) assuming that no Event of Default has occurred and is continuing, this Trust Agreement, as amended by said Supplemental Agreement, and the Lease, as amended by the respective amendments thereto, constitute the legal, valid and binding obligations of the City and the Corporation, as applicable, enforceable against said parties in accordance with their respective terms (except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, moratorium, debt adjustment or other laws affecting creditors' rights generally, and except to the extent that enforcement thereof may be limited by general principles of equity, regardless of whether enforcement is sought in a legal or equitable proceeding) and (iv) the execution of such Supplemental Agreement and said amendments to the Lease, and performance by the parties thereunder, will not result in the inclusion of the interest portion of any Lease Payments payable with respect to any Certificates, including Additional Certificates (to the extent such Additional Certificates are executed and delivered as tax exempt Certificates), theretofore prepared, executed and delivered, in the gross income of the Owners of the Certificates or the owners of any Additional Certificates (to the extent

such Additional Certificates are executed and delivered as tax exempt Certificates) for purposes of federal income taxation;

(h) There shall have been delivered to the Trustee an endorsement to or reissuance of the title insurance policy delivered under Section 5.5 of the Lease providing that the insured amount is at least equal to the aggregate principal amount of all of the Certificates and Additional Certificates outstanding upon the execution and delivery of such Additional Certificates; and

(i) Such other conditions shall have been satisfied, and such other instruments shall have been duly executed and delivered to the Trustee, as the City or the Corporation shall have reasonably requested.

Upon delivery to the Trustee of the foregoing instruments, the Trustee shall cause to be executed and delivered Additional Certificates of a Series representing the aggregate principal amount specified in such Supplemental Agreement, and such Additional Certificates shall be equally and ratably secured with all Certificates of like Series, including any Additional Certificates, theretofore prepared, executed and delivered, all without preference, priority or distinction (other than with respect to maturity, payment, prepayment or sinking fund payment (if any)) of any one Certificate of a Series, including Additional Certificates, over any other; provided, however, that no provision of this Trust Agreement shall require the City to consent to or otherwise permit the preparation, execution and delivery of Additional Certificates, it being understood and agreed that any such consent or other action of the City to permit the preparation, execution and delivery of Additional Certificates, or lack thereof, shall be in the sole discretion of the City.

### ARTICLE III

#### APPLICATION OF PROCEEDS

**Section 3.01 Application of Proceeds and Other Amounts.** The net proceeds from the sale of the Certificates in the amount of \$\_\_\_\_\_ (representing the par amount of the Certificates of \$\_\_\_\_\_, plus original premium of \$\_\_\_\_\_, less Original Purchaser's discount of \$\_\_\_\_\_) shall be deposited with the Trustee as follows: \$\_\_\_\_\_ shall be deposited to the Delivery Cost Fund for the payment of Delivery Costs, and \$\_\_\_\_\_ shall be deposited to the Escrow Fund.

The Trustee may, in its discretion, establish a temporary fund or account in its books or records to facilitate such deposits and transfers.

**Section 3.02 Establishment of the Delivery Cost Fund.** There is hereby established a separate fund to be known as the "Delivery Cost Fund," which shall be held by the Trustee in trust. The moneys in the Delivery Cost Fund shall be used and withdrawn by the Trustee from time to time to pay the Delivery Costs upon submission of a Delivery Cost Requisition stating (a) the person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Delivery Cost Fund, and (e) that such amounts have not been the subject of a prior Delivery Cost Requisition. On the earlier of (i) six months from the Delivery Date, or (ii) the date of receipt by the Trustee of a Delivery Cost Requisition therefor, all amounts (if any) remaining in the Delivery Cost Fund shall be withdrawn therefrom by the Trustee and transferred to the Lease Payment Fund. Thereafter, the Delivery Cost

Fund shall be closed. Each such Delivery Cost Requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

## **ARTICLE IV**

### **PREPAYMENT FUND**

**Section 4.01 Establishment of Prepayment Fund.** The Trustee shall establish a special fund designated as the “City of Cupertino (2020A Certificates) Prepayment Fund,” referred to herein as the “Prepayment Fund”; shall keep such fund separate and apart from all other funds and moneys held by it; and shall administer such fund as herein provided. Moneys to be used for prepayment of the Certificates shall be deposited into the Prepayment Fund and used solely for the purpose of prepaying the Certificates in advance of their maturity on the date designated for prepayment and upon presentation and surrender of such Certificates to the Trustee.

**Section 4.02 Extraordinary Prepayment.** The Certificates are subject to prepayment prior to their respective maturity dates on any date, in whole or in part, from Net Proceeds which the Trustee shall deposit in the Prepayment Fund as provided in Section 6.1(c) of the Lease at least forty-five (45) days prior to the date fixed for prepayment and credited towards the prepayment made by the City pursuant to Section 10.2 of the Lease, at a prepayment price equal to the principal amount thereof together with accrued interest to the date fixed for prepayment, without premium.

**Section 4.03 Reserved.**

**Section 4.04 Selection of Certificates for Prepayment.** In the event of an extraordinary prepayment of Certificates pursuant to Section 4.02 hereof, the Trustee shall select Certificates for prepayment so that the Net Proceeds will be applied to prepay a proportionate amount of Certificates and Additional Certificates based on the Outstanding principal amount and by lot within any maturity. The Trustee shall promptly notify the City and the Corporation in writing of the Certificates so selected for prepayment by mailing to the City and the Corporation copies of the notice of prepayment provided for in Section 4.05 hereof.

**Section 4.05 Notice of Prepayment.**

(a) Content. When prepayment is authorized or required pursuant to this Article IV, the Trustee shall give notice of the prepayment of the Certificates. Such notice shall specify: (a) the prepayment date, (b) the prepayment price, (c) if less than all of the Outstanding Certificates of a maturity are to be prepaid, the Certificate numbers (and in the case of partial prepayment, the respective principal amounts), (d) the CUSIP numbers of the Certificates to be prepaid, (e) the place or places where the prepayment will be made, and (f) the original date of execution and delivery of the Certificates. Such notice shall further state that on the specified date there shall become due and payable upon each Certificate to be prepaid, the portion of the principal amount of such Certificate to be prepaid, together with interest accrued to said date, and that from and after such date, provided that moneys therefor have been deposited with the Trustee, interest with respect thereto shall cease to accrue and be payable.

(b) Recipients: Timing. Notice of such prepayment shall be sent by first class mail or delivery service postage prepaid, or by telecopy, to the Depository on the date of mailing of notice to the Owners by first class mail and by first class mail, postage prepaid, to the Corporation

and the respective Owners of any Certificates designated for prepayment at their addresses appearing on the Certificate registration books, at least twenty (20) days, but not more than sixty (60) days, prior to the prepayment date; provided that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of such Certificates. Under no circumstances shall the Trustee have any liability to any party for any inaccurate CUSIP number.

**Section 4.06 Partial Prepayment of Certificates.** Upon surrender by the Owner of a Certificate for partial prepayment at the Principal Office, payment of such partial prepayment of the principal amount of a Certificate will be paid to such Owner. Upon surrender of any Certificate prepaid in part only, the Trustee shall execute and deliver to the registered Owner thereof, at the expense of the City, a new Certificate or Certificates which shall be of authorized denominations equal in principal amount to the unprepaid portion of the Certificate surrendered and of the same tenor and maturity. Such partial prepayment shall be valid upon payment of the amount thereby required to be paid to such Owner, and the City, the Corporation and the Trustee shall be released and discharged from all liability to the extent of such payment.

**Section 4.07 Effect of Notice of Prepayment.** Notice having been given to the Owners of the Certificates as set forth in Section 4.05 hereof, and the moneys for the prepayment (including, the interest to the applicable date of prepayment), having been set aside in the Prepayment Fund, the Certificates shall become due and payable on said date of prepayment, and, upon presentation and surrender thereof at the Principal Office, said Certificates shall be paid at the prepayment price with respect thereto, plus interest accrued and unpaid to said date of prepayment.

If, on the date of a prepayment, moneys for the prepayment of all the Certificates to be prepaid, together with interest to said date of prepayment, shall be held by the Trustee so as to be available therefor on such date of prepayment, and, if notice of prepayment thereof shall have been given as set forth in Section 4.05 hereof, then, from and after said date of prepayment, interest with respect to the Certificates to be prepaid shall cease to accrue and become payable. All moneys held by or on behalf of the Trustee for the prepayment of Certificates shall be held in trust for the account of the Owners of the Certificates so to be prepaid, without liability for interest thereon.

All Certificates paid at maturity or prepaid prior to maturity pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

**Section 4.08 Surplus.** Any funds remaining in the Prepayment Fund after prepayment and payment of all Certificates Outstanding, including accrued interest and payment of any applicable fees and expenses to the Trustee pursuant to Sections 9.06 and 9.07 hereof and any other Additional Payments payable under the Lease or provision made therefor satisfactory to the Trustee, and provision for any amounts required to be transferred to the Rebate Fund pursuant to Sections 8.07 and 8.08 hereof, shall be withdrawn by the Trustee and remitted to the City.

## ARTICLE V

### LEASE PAYMENTS; LEASE PAYMENT FUND

#### Section 5.01 Security Provisions.

(a) Assignment of Rights in Lease. The Corporation has, pursuant to the Assignment Agreement, absolutely assigned and set over to the Trustee certain of its rights in the Lease, including but not limited to all of the Corporation's rights to receive and collect all of the Lease Payments, the Prepayments and all other amounts required to be deposited in the Lease Payment Fund pursuant to the Lease or pursuant hereto. All Lease Payments, Prepayments and such other amounts to which the Corporation may at any time be entitled (other than amounts due to the Corporation under Section 4.11 of the Lease) shall be paid directly to the Trustee, and all of the Lease Payments and Prepayments collected or received by the Corporation shall be deemed to be held and to have been collected or received by the Corporation as the agent of the Trustee and if received by the Corporation at any time shall be deposited by the Corporation with the Trustee within five (5) Business Days after the receipt thereof, and all such Lease Payments shall be forthwith deposited by the Trustee upon the receipt thereof in the Lease Payment Fund, all such Prepayments shall be forthwith deposited by the Trustee upon the receipt thereof in the Prepayment Fund.

(b) Security Interest in Moneys and Funds. The Corporation and the City, as their interests may appear, hereby grant to the Trustee for the benefit of the Owners of the Certificates a lien on and a security interest in all moneys in the following funds or accounts held by the Trustee under this Trust Agreement (excepting only the Rebate Fund and any moneys to be deposited into the Rebate Fund), including without limitation, the Lease Payment Fund, the Prepayment Fund and the Net Proceeds Fund, and all such moneys shall be held by the Trustee in trust and applied to the respective purposes specified herein and in the Lease.

(c) Pledge of Lease Payments and Proceeds. The Lease Payments are hereby irrevocably pledged to and shall be used for the punctual payment of the interest and principal represented by the Certificates (and Additional Certificates to the extent provided in a Supplemental Agreement). Any proceeds from the re-letting or any other disposition of the Leased Premises pursuant to Article IX of the Lease (the "Lease Proceeds") are hereby irrevocably pledged equally to the Certificates and any Additional Certificates. Except as permitted under Section 2.11 hereof with respect to Additional Certificates, the Lease Payments and Lease Proceeds shall not be used for any other purpose while any of the Certificates remain Outstanding. This pledge shall constitute a first lien on the Lease Payments and Lease Proceeds in accordance with the terms hereof, subject to Section 13.03 hereof and subject to Section 2.11 hereof.

**Section 5.02 Establishment of Lease Payment Fund.** The Trustee shall establish a special fund designated as the "City of Cupertino (2020A Certificates) Lease Payment Fund," referred to herein as the "Lease Payment Fund." All moneys at any time deposited by the Trustee in the Lease Payment Fund shall be held by the Trustee in trust for the benefit of the Owners of the Certificates. So long as any Certificates are Outstanding, neither the City nor the Corporation shall have any beneficial right or interest in the Lease Payment Fund or the moneys deposited therein, except only as provided in this Trust Agreement, and such moneys shall be used and applied by the Trustee as hereinafter set forth.



**Section 5.03 Deposits.** There shall be deposited in the Lease Payment Fund all Lease Payments and in the Prepayment Fund all Prepayments received by the Trustee, including any moneys received by the Trustee for deposit therein pursuant to Section 3.01 hereof and Section 4.4 of the Lease, including without limitation Section 5.4(c) of the Lease (regarding proceeds of rental interruption insurance) or pursuant to this Trust Agreement, which moneys shall be applied as a credit towards any Lease Payment then due.

**Section 5.04 Application of Moneys.** Except as provided in this Section, all amounts in the Lease Payment Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal and interest with respect to the Certificates as the same shall become due and payable, in accordance with the provisions of Article II and Article IV hereof, subject to the requirement that certain investment earnings may be transferred to the Rebate Fund, as provided in Section 8.08 hereof.

On or before each Interest Payment Date, the Trustee shall set aside an amount sufficient to pay the interest becoming due and payable on such Interest Payment Date on all Outstanding Certificates and Additional Certificates. Moneys so set aside shall be used and withdrawn by the Trustee solely for the purpose of paying the interest with respect to the Certificates as it shall become due and payable (including, accrued interest with respect to any Certificates prepaid prior to maturity).

On or before each Interest Payment Date on which the principal of the Certificates shall be payable, the Trustee shall set aside an amount equal to (i) the principal amount of the Certificates and Additional Certificates coming due and payable on such Interest Payment Date pursuant to Section 2.02 hereof, and (ii) the prepayment price of the Certificates and Additional Certificates (consisting of the principal amount thereof and any applicable premiums) required to be prepaid on such Interest Payment Date pursuant to any of the provisions of Article IV hereof. Moneys so set aside shall be used and withdrawn by the Trustee solely for the purpose of (i) paying the principal of the Certificates and Additional Certificates at the maturity thereof, or (ii) paying the principal of and premium (if any) on any Certificates and Additional Certificates upon the prepayment thereof pursuant to Section 4.03 hereof.

**Section 5.05 Surplus.** Any funds remaining in the Lease Payment Fund after payment of all Certificates Outstanding, including accrued interest and payment of any applicable fees to the Trustee pursuant to Sections 9.06 and 9.07 hereof and any other Additional Payments due under the Lease, or provision made therefor satisfactory to the Trustee, and provision for any amounts required to be transferred to the Rebate Fund pursuant to Section 8.08 hereof, shall be withdrawn by the Trustee and remitted to the City.

## **ARTICLE VI**

**[RESERVED]**

## **ARTICLE VII**

### **NET PROCEEDS FUND**

**Section 7.01 Establishment of Net Proceeds Fund: Deposits.** The Trustee shall establish when required a special fund designated as the “City of Cupertino (2020A Certificates) Net Proceeds

Fund,” referred to herein as the “Net Proceeds Fund,” to be maintained and held in trust for the benefit of the Owners, subject to disbursement therefrom as provided herein. The Trustee shall deposit Net Proceeds in the Net Proceeds Fund as provided in Section 6.1(a) of the Lease.

(a) Casualty Insurance. The Trustee shall disburse Net Proceeds for replacement or repair of the Leased Premises as provided in Section 6.1(b) of the Lease, or transfer such proceeds to the Prepayment Fund upon notification of the City Representative as provided in Section 6.1(c) of the Lease. Pending such application, such Net Proceeds may be invested by the Trustee as directed by the City Representative in Permitted Investments that mature not later than such times moneys are expected to be needed to pay such costs of repair or replacement. After all of the Certificates have been paid and the entire amount of principal and interest with respect to the Certificates has been paid in full, or provision made for payment satisfactory to the Trustee, including provision for all amounts required to be transferred to the Rebate Fund pursuant to Section 8.08 hereof, the Trustee shall pay any remaining moneys in the Net Proceeds Fund to the City after payment of any amounts due to the Trustee pursuant to Sections 9.06 and 9.07 hereof and any other Additional Payments due under the Lease.

(b) Title Insurance. Proceeds of any policy of title insurance received by the Trustee with respect to the Leased Premises shall be applied and disbursed by the Trustee upon the written request of the City as follows:

(i) If the City determines that the title defect giving rise to such proceeds has not substantially interfered with its use and occupancy of the Leased Premises and will not result in an abatement of Lease Payments and Additional Payments payable by the City under the Lease (such determination to be certified by the City in writing), such proceeds shall be remitted to the City and used for any lawful purpose thereof; or

(ii) If the City determines that the title defect giving rise to such proceeds has substantially interfered with its use and occupancy of the Leased Premises and will result in an abatement of Lease Payments and Additional Payments payable by the City under the Lease (such determination to be certified by the City Representative in writing), then the Trustee shall immediately deposit such proceeds in the Prepayment Fund and such proceeds shall be applied to the prepayment of Certificates in the manner provided in Section 4.02 hereof.

**Section 7.02 Cooperation.** The Corporation and the Trustee shall cooperate fully with the City at the expense of the City in filing any proof of loss with respect to any insurance policy maintained pursuant to Article V of the Lease and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Premises or any item or portion thereof; provided, however, the Trustee shall not be obligated to take any action hereunder if it is not indemnified to its satisfaction from and against any liability or expense arising therefrom.

## ARTICLE VIII

### MONEYS IN FUNDS; INVESTMENT

**Section 8.01 Held in Trust.** The moneys and investments held by the Trustee under this Trust Agreement, other than in the Rebate Fund, are irrevocably held in trust for the benefit of the respective Owners and, in the case of the Rebate Fund, for payment as required to the United States Treasury, and for the purposes herein specified, and such moneys, and any income or interest earned

thereon, shall be expended only as provided in this Trust Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the Corporation, the Trustee or the City, or any of them.

#### **Section 8.02 Investments Authorized.**

(a) By Trustee. Subject to the further provisions of this Article VIII, moneys held by the Trustee hereunder shall be invested and reinvested on maturity thereof by the Trustee pursuant to Section 8.02(b) hereof. The Trustee will report any such investments to the City on a monthly basis in its regular statements.

(b) Upon Direction of the City. The City Representative shall direct by electronic mail, to the designated trust officer responsible for the administration of this Trust Agreement, followed by oral notification and distribution by U.S. Mail or overnight courier service of such notice, such investment in specific Permitted Investments not less than two (2) Business Days prior to the date that such Permitted Investment is to take effect. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available based among other things, scheduled completion of the various components of the Project. In the event that the City Representative does not so direct the Trustee, the Trustee shall invest in the Permitted Investments described in paragraph (D) of the definition thereof contained in Section 1.01 hereof.

Investments purchased with funds on deposit in the Lease Payment Fund and Prepayment Fund shall mature not later than the Interest Payment Date or prepayment date, as appropriate, immediately succeeding the investment. Investments instructed by the City Representative to be purchased with funds on deposit in the Delivery Cost Fund shall mature not later than the dates upon which such funds shall be needed to be expended for the payment of Delivery Costs. The Trustee may conclusively rely upon the written instructions of the City Representative as to both the suitability and legality of the directed investments.

(c) Registration. Such investments, if registrable, shall be registered in the name of the Trustee for the benefit of the Owners and held by the Trustee or its nominee.

(d) Trustee as Purchaser or Agent. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. The Trustee may act as purchaser or agent in the making or disposing of any investment. The Trustee or any of its affiliates may act as a sponsor of, or as an advisor to any provider of, Permitted Investments hereunder. The City and the Corporation acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City and the Corporation the right to receive brokerage confirmations of security transactions as they occur, the City and the Corporation specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish the City periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

(e) Trustee Standard of Care. Except as otherwise provided in Section 9.05 hereof, the Trustee shall not be responsible or liable for any consequences of any investment of funds or sale of such investment made by it in accordance with this Section or disposition made by it in accordance with Section 8.05(b) hereof.

**Section 8.03 Crediting of Investments.** Except as otherwise provided in this Trust Agreement, any income, profit or loss on the investment of moneys held by the Trustee hereunder shall be credited to the respective fund for which it is held.

**Section 8.04 Accounting.** The Trustee shall furnish to the City, not less than monthly, an accounting (which may be in the form of its regular statements) of all investments made by the Trustee and all funds and amounts held by the Trustee; provided, that the Trustee shall not be obligated to deliver an accounting for any fund or account that (i) has a balance of zero and (ii) has not had any activity since the last reporting date. The Trustee shall keep accurate records of all funds administered by it and of all Certificates paid and discharged.

**Section 8.05 Valuation and Disposition of Investments.**

(a) Valuation. Subject to the provisions of Section 8.08 hereof, for the purpose of determining the amount in any fund, all Permitted Investments (except investment agreements) credited to such fund shall be valued at the lower of the cost or the market price, exclusive of accrued interest. With respect to all funds and accounts, investments shall be valued by the Trustee not less often than annually nor more often than monthly. In making any such valuations, the Trustee may utilize, and conclusively rely upon such valuation services as may be available to the Trustee, including those within its regular accounting system.

(b) Disposition. Subject to the provisions of Section 8.08 hereof, the Trustee shall sell, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited.

**Section 8.06 Commingling of Moneys in Funds.** The Trustee may, and upon the written request of the City Representative shall, commingle any of the funds held by it pursuant to this Trust Agreement into a separate fund or funds for investment purposes only; provided, however, that all funds or accounts held by the Trustee hereunder shall be accounted for separately notwithstanding such commingling by the Trustee. The City shall ensure that any such commingling complies with Section 1.148-4 of the Treasury Regulations, and shall provide direction to the Trustee accordingly. In no event shall the Trustee have any duty or obligation, at any time and in any manner to monitor compliance with any governmental regulations relating to commingling of accounts.

**Section 8.07 Tax Covenants.**

(a) General. The City and the Corporation hereby covenant with the Owners of the Certificates that, notwithstanding any other provisions of this Trust Agreement, they shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest component evidenced by the Certificates under Section 103 of the Code. The City and the Corporation (to the extent that the Corporation may have control over the Project or the proceeds of the Certificates) shall not, directly or indirectly, use or permit the use of proceeds of the Certificates or the Project, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the interest components evidenced by the Certificates.

(b) Use of Proceeds. The City and the Corporation (to the extent that the Corporation may have control over the Project or the proceeds of the Certificates) shall not take any action, or fail to take any action, if any such action or failure to take action would cause the Lease Payments evidenced by the Certificates to be “private activity bonds” within the meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the Certificates or the Project, or any portion thereof, or any other funds of the City, that would cause the Lease Payments evidenced by the Certificates to be “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any Certificates evidencing Lease Payments are outstanding, the City and the Corporation, with respect to such proceeds and the Project, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Code, to the extent such requirements are, at the time, applicable and in effect. The City shall establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of the Lease Payments evidenced by the Certificates as “governmental bonds.”

(c) Arbitrage. The City and the Corporation (to the extent that the Corporation may have control over the Project or the proceeds of the Certificates) shall not, directly or indirectly, use or permit the use of any proceeds of any Certificates, or of the Project, or other funds of the City, or take or omit to take any action, that would cause the Lease Payments evidenced by the Certificates to be “arbitrage bonds” within the meaning of Section 148 of the Code. To that end, the City and the Corporation shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Lease Payments evidenced by the Certificates.

(d) Federal Guarantee. The City and the Corporation (to the extent that the Corporation may have control over the proceeds of the Certificates) shall not make any use of the proceeds of the Certificates or any other funds of the City, or take or omit to take any other action, that would cause the Lease Payments evidenced by the Certificates to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(e) Compliance with Tax Certificate. In furtherance of the foregoing tax covenants of this Section, the City covenants that it will comply with the provisions of the Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or defeasance of the Certificates.

#### **Section 8.08 Rebate Fund.**

(a) General. The Trustee shall establish a special fund designated the “City of Cupertino (2020 Certificates) Rebate Fund” (the “Rebate Fund”). Absent an opinion of Special Counsel that the exclusion from gross income for federal income tax purposes of the interest component evidenced by the Certificates will not be adversely affected, the City shall cause to be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to this Section and the Tax Certificate. All amounts at any time on deposit in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the requirement to make rebate payments to the United States of America (the “Rebate Requirement”) pursuant to Section 148 of the Code and the Treasury Regulations promulgated thereunder (the “Treasury Regulations”). Such amounts shall be free and clear of any lien under this Trust Agreement and shall be governed by this Section and Section 8.07 hereof and by the Tax Certificate executed by the City. The Trustee shall be deemed conclusively to have complied with the Rebate Requirement and the Tax Certificate if it follows the

directions of the City, and shall have no independent responsibility to, or liability resulting from its failure to, enforce compliance by the City with the Rebate Requirement. The Trustee shall have no responsibility to independently make any calculation or determination or to review the City's calculations.

(b) Deposits.

(i) Within forty-five (45) days after the end of the fifth (5th) Certificate Year and each fifth (5th) Certificate Year thereafter, (1) the City shall calculate or cause to be calculated with respect to the Certificates the amount that would be considered the "rebate amount" within the meaning of Section 1.148-3 of the Treasury Regulations, and (2) the City shall transfer to the Trustee for deposit in the Rebate Fund, if and to the extent required, amounts sufficient to cause the balance in the Rebate Fund to be equal to the "rebate amount" so calculated.

(ii) The City shall not be required to deposit any amount to the Rebate Fund in accordance with preceding sentence if the amount on deposit in the Rebate Fund prior to the deposit required to be made under this subsection (b) equals or exceeds the "rebate amount" calculated in accordance with the preceding sentence. Such excess may be withdrawn from the Rebate Fund to the extent permitted under subsection (g) of this Section 8.08.

(iii) The City shall not be required to calculate the "rebate amount," and shall not be required to deposit any amount to the Rebate Fund in accordance with this subsection (b), with respect to all or a portion of the proceeds of the Certificates (including amounts treated as proceeds of the Certificates) (1) to the extent such proceeds satisfy the expenditure requirements of Section 148(f)(4)(B) or Section 148(f)(4)(C) of the Code or Section 1.148-7(d) of the Treasury Regulations, whichever is applicable, and otherwise qualify for the exception to the Rebate Requirement pursuant to whichever of said sections is applicable, (2) to the extent such proceeds are subject to an election by the City under Section 148(f)(4)(C)(vii) of the Code to pay a one and one-half percent (1½%) penalty in lieu of arbitrage rebate in the event any of the percentage expenditure requirements of Section 148(f)(4)(C) are not satisfied, or (3) to the extent such proceeds qualify for the exception to arbitrage rebate under Section 148(f)(4)(A)(ii) of the Code for amounts in a "bona fide debt service fund."

(c) Withdrawal Following Payment of Certificates. Any funds remaining in the Rebate Fund after the payment or prepayment of all the Certificates and any amounts described in paragraph (ii) of subsection (d) of this Section 8.08, or provision made therefor satisfactory to the Trustee, including accrued interest and payment of any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

(d) Withdrawal for Payment of Rebate. Upon the City's written direction, but subject to the exceptions contained in subsection (b) of this Section 8.08 to the requirement to calculate the "rebate amount" and make deposits to the Rebate Fund, the Trustee shall pay to the United States of America, from amounts on deposit in the Rebate Fund,

(i) not later than sixty (60) days after the end of (1) the fifth (5th) Certificate Year, and (2) each fifth (5th) Certificate Year thereafter, an amount that, together with all previous rebate payments, is equal to at least ninety percent (90%) of the "rebate amount" calculated as of the end of such Certificate Year in accordance with Section 1.148-3 of the Treasury Regulations; and

(ii) not later than sixty (60) days after the payment of all Certificates, an amount equal to one hundred percent (100%) of the “rebate amount” calculated as of the date of such payment (and any income attributable to the “rebate amount” determined to be due and payable) in accordance with Section 1.148-3 of the Treasury Regulations.

(e) Rebate Payments. Each payment required to be made pursuant to subsection (d) of this Section 8.08 shall be made to the Internal Revenue Service Center, Ogden, Utah 84201, on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be completed by the arbitrage rebate consultant for execution by the City and provided to the Trustee.

(f) Deficiencies in the Rebate Fund. In the event that, prior to the time any payment is required to be made from the Rebate Fund, the amount in the Rebate Fund is not sufficient to make such payment when such payment is due, the City shall calculate the amount of such deficiency and direct the Trustee to deposit an amount received from the City equal to such deficiency into the Rebate Fund prior to the time such payment is due.

(g) Withdrawals of Excess Amounts. In the event that immediately following the calculation required by subsection (b) of this Section 8.08, but prior to any deposit made under said subsection, the amount on deposit in the Rebate Fund exceeds the “rebate amount” calculated in accordance with said subsection, upon written instructions from the City, the Trustee shall withdraw the excess from the Rebate Fund and credit such excess to the Lease Payment Fund.

(h) Record Keeping. The City shall retain records of all determinations made hereunder until six (6) years after the complete retirement of the Certificates.

(i) Survival after Defeasance. Notwithstanding anything in this Trust Agreement to the contrary, the Rebate Requirement shall survive the payment in full or defeasance of the Certificates.

## ARTICLE IX

### THE TRUSTEE

#### Section 9.01 Appointment of Trustee.

(a) Appointment. The Bank of New York Mellon Trust Company, N.A., a national banking association organized under the laws of the United States of America, is hereby appointed Trustee by the Corporation and the City.

(b) Qualifications. The Corporation and the City agree that they will maintain a Trustee having a corporate trust office in New York, New York, San Francisco, California, Santa Ana, California, or Los Angeles, California capable of exercising trust powers in the State of California, with a combined capital (exclusive of borrowed capital) and a surplus of at least Seventy-Five Million Dollars (\$75,000,000), or be a member of a bank holding company system, which shall have a combined capital and surplus of at least Seventy-Five Million Dollars (\$75,000,000), and subject to supervision or examination by federal or state authority, so long as any Certificates are Outstanding. If such bank, corporation or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above

referred to then for the purpose of this Section the combined capital and surplus of such bank, corporation or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(c) Removal. So long as there is no Event of Default, the City may remove the Trustee initially appointed, and any successor thereto, and may appoint a successor or successors thereto.

(d) Resignation. The Trustee may, upon written notice to the City and the Corporation, resign; provided that such resignation shall not take effect until the successor Trustee is appointed as provided in this Section. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee. In the event the City does not name a successor Trustee within thirty (30) days after receipt of notice of the Trustee's resignation, then the Trustee may petition a federal or state court to seek the immediate appointment of a successor Trustee and be reimbursed by the City for all costs incurred in connection therewith.

(e) Successor. Any successor Trustee shall be a bank, corporation or trust company meeting the qualifications as set forth in subsection (b) of this Section 9.01. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the successor Trustee shall mail notice thereof to the Owners at their respective addresses set forth on the Certificate registration books maintained pursuant to Section 2.08.

**Section 9.02 Merger or Consolidation.** Any company or banking association into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 9.01 hereof, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

### **Section 9.03 Protection of the Trustee.**

(a) Reliance Upon Papers or Documents. The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, facsimile, request, consent, direction, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Trust Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may, in the absence of bad faith on its part, accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. In the event the Trustee shall make any investigation into the content of any such certifications, the Trustee shall not thereby be deemed to have expanded the scope of its duties.

(b) Reliance Upon Opinions of Counsel. The Trustee may consult with its counsel or counsel to the City with regard to legal questions and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith. Before being required to take any action, the



Trustee may require an opinion of Independent Counsel acceptable to the Trustee which opinion shall be made available to the other parties hereto upon request, which counsel may be counsel to any of the parties hereto, or a verified certificate of any party hereto, or both, concerning the proposed action and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken by the Trustee in reliance thereon and the City shall promptly reimburse the Trustee for such costs.

(c) Reliance Upon Requested Certificates. Whenever in the administration of its duties under this Trust Agreement, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed), in the absence of bad faith on its part, shall be deemed to be conclusively proved and established by the certificate of the City Representative or the Corporation Representative and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this Trust Agreement in reliance thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable, provided however that the duties and obligations of the Trustee shall not be deemed expanded thereby.

#### **Section 9.04 Rights of the Trustee.**

(a) Ownership of Certificates. The Trustee may become an Owner with the same rights it would have if it were not Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the City with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners, whether or not such committee shall represent the Owners of the majority in principal amount of the Certificates then Outstanding.

(b) Attorneys, Agents, Receivers. The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, shall not be responsible for the actions or omissions of such attorneys, agents or receivers if appointed by it with reasonable care, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder.

(c) Funds and Accounts. In addition to the funds and accounts established or required to be established pursuant to this Trust Agreement, the Trustee may establish such additional funds and accounts as it deems necessary or appropriate to perform its duties hereunder, and shall have the right to close such accounts in its discretion.

**Section 9.05 Standard of Care.** The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee shall only perform those duties specifically set forth herein and no implied duties, covenants or obligations whatsoever shall be read into this Trust Agreement. In the event of and during the continuance of an Event of Default, the Trustee shall exercise such care in performing its duties hereunder as a prudent person would exercise under the circumstances in the conduct of its own affairs. No action by the Trustee shall be construed or deemed to expand the limitations on the scope of the Trustee's duties. The Trustee shall not be considered in breach of or in default in its obligations hereunder in the event of a delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited

to, acts of God or of the public enemy or terrorists, acts of government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Leased Premises, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

**Section 9.06 Compensation of the Trustee.** As an Additional Payment under Section 4.11 of the Lease, the City shall, from time to time, pay such amounts as are specified in any written agreement with the City and, on demand, pay to the Trustee to the extent not covered by such agreement reasonable compensation for its services and the services of any accountants, consultants, attorneys and other experts as may be engaged by the Trustee to provide services under this Trust Agreement pursuant to a written agreement between the City and the Trustee. Further, in the event of a default hereunder, the City agrees that the Trustee's fees and costs shall be deemed to be a substantial contribution to the trust and bankruptcy estate, if applicable. The City's obligation hereunder shall remain valid and binding notwithstanding maturity and payment of the Certificates or resignation and removal of the Trustee.

**Section 9.07 Indemnification of Trustee.** The City shall, to the extent permitted by law, indemnify and save the Trustee and its officers, directors, agents, and employees harmless from and against (whether or not litigated) all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on, the Leased Premises by the City, (ii) any breach or default on the part of the City in the performance of any of its obligations under this Trust Agreement and any other agreement made and entered into for purposes of the Leased Premises, (iii) any act of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Premises, (iv) any act of any assignee of, or purchaser from, the City or of any of its or their agents, contractors, servants, employees or licensees with respect to the Leased Premises, (v) the exercise and performance by the Trustee of its powers and duties hereunder or any related document, (vi) the sale of the Certificates and the carrying out of any of the transactions contemplated by the Certificates or this Trust Agreement, or (vii) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made in light of the circumstances in which they were made, not misleading in any official statement or other disclosure document utilized in connection with the sale of the Certificates. The indemnification set forth in this Section shall extend to the Trustee's officers, agents, employees, successors and assigns. No indemnification will be made under this Section or elsewhere in this Trust Agreement or other agreements for willful misconduct or negligence by the Trustee, its officers, agents, employees, successors or assigns. The City's obligations hereunder shall remain valid and binding notwithstanding maturity and payment of the Certificates, or the resignation or removal of the Trustee.

In accepting the trust hereby created, the Trustee acts solely as Trustee for the Owners and not in its individual capacity, and all persons, including, without limitation, the Owners, Corporation and the City, having any claim against the Trustee arising from the Trust Agreement shall look only to the funds and accounts held by the Trustee hereunder for payment, except as otherwise provided herein or where the Trustee has breached its standard of care as described in Section 9.05 hereof.

Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Certificates.

No provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder or in the exercise of any of its rights or powers.

The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Certificates at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or in the exercise of any right hereunder. In the event of conflicting instructions hereunder, the Trustee shall have the right to decide the appropriate course of action and be protected in so doing.

The Trustee is authorized and directed to execute, in its capacity as Trustee, the Assignment Agreement.

Every provision of this Trust Agreement, the Lease, the Site Lease and the Assignment Agreement relating to the conduct or liability of the Trustee shall be subject to the provisions of this Trust Agreement, including without limitation, this Article IX.

The Trustee shall have no responsibility or liability with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed in any respect relating to the Certificates.

The Trustee shall not to be deemed to have knowledge of any Event of Default hereunder or under the Lease unless it has actual knowledge thereof at its Principal Office.

Before taking any action under Article XIII or this Article at the request of the Owners, the Trustee may require that a satisfactory indemnity bond be furnished by the Owners for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

**Section 9.08 Trustee's Disclaimer of Warranties.** THE TRUSTEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PREMISES, OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CITY IS LEASING THE LEASED PREMISES AS IS. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages, in connection with or arising out of the Lease, the Site Lease, the Assignment Agreement or this Trust Agreement for the existence, furnishing, functioning or the City's use and possession of the Leased Premises.

## ARTICLE X

### MODIFICATION OR AMENDMENT OF AGREEMENTS

#### Section 10.01 Amendments Permitted.

(a) With Consent. This Trust Agreement and the rights and obligations of the Owners, and the Lease and the rights and obligations of the parties thereto, may be modified or amended at any time, with notice to any rating agency then rating the Certificates by a Supplemental Agreement or amendment thereto which shall become effective when the written consents of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, exclusive of Certificates disqualified as provided in Section 10.03 hereof, shall have been filed with the Trustee. No such modification or amendment shall:

(i) extend or have the effect of extending the maturity of any Certificate or reducing the fixed interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon the prepayment thereof, without the express consent of the Owner of such Certificates being affected, or

(ii) reduce or have the effect of reducing the percentage of Certificates required for the affirmative vote or written consent to an amendment or modification of the Lease, or

(iii) modify any of the rights or obligations of the Trustee without its written assent thereto, or

(iv) amend this Section without the prior written consent of the Owners of all Certificates then outstanding.

The Trustee shall have the right to require such opinions of counsel as it deems necessary concerning (i) the lack of material adverse effect of the amendment on Owners and (ii) the fact that the amendment will not affect the tax status of interest with respect to the Certificates or any Additional Certificates. Any such Supplemental Agreement or amendments thereto shall become effective as provided in Section 10.02 hereof.

(b) Without Consent. This Trust Agreement and the rights and obligations of the Owners, and the Lease and the rights and obligations of the parties thereto, may be modified or amended at any time by a Supplemental Agreement or amendments thereto, without the consent of any such Owners, but only to the extent permitted by law and only:

(i) to add to the covenants and agreements of the City hereunder,

(ii) to cure, correct or supplement any ambiguous or defective provision contained herein or therein,

(iii) in regard to matters arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable (which may be based upon opinions as provided in Section 9.03(b) hereof), shall not materially adversely affect the interest of the Owners,

(iv) to substitute the Leased Premises, or release or substitute a portion of the Leased Premises, in accordance with Section 7.11 of the Lease,

(v) to make such additions, deletions or modifications as may be necessary or appropriate to assure the exclusion from gross income for federal income tax purposes of the interest component of Lease Payments and the interest payable with respect to the Certificates,

(vi) to add to the rights of the Trustee,

(vii) to provide for the execution and delivery of Additional Certificates in accordance with the provisions of Section 2.11 hereof.

No such modification or amendment, however, shall modify any of the rights or obligations of the Trustee without its written assent thereto. Any such Supplemental Agreement shall become effective upon execution and delivery by the parties hereto or thereto as the case may be.

The Trustee shall have the right to require such opinions of counsel as it deems necessary concerning (i) the lack of material adverse effect of the amendment on Owners and (ii) the fact that the amendment will not affect the tax status of interest with respect to the Certificates or any Additional Certificates. Any such Supplemental Agreement or amendments thereto shall become effective as provided in Section 10.02 hereof.

**Section 10.02 Procedure for Amendment with Written Consent of the Owners.** This Trust Agreement or the Lease may be amended by Supplemental Agreement as provided in this Section in the event the consent of the Owners is required pursuant to Section 10.01(a) hereof. A copy of the form of such Supplemental Agreement, together with a request to the Owners for their consent thereto, shall be mailed by the Trustee to each Owner of a Certificate at its address as set forth in the Certificate registration books maintained pursuant to Section 2.08 hereof, but failure to receive copies of such Supplemental Agreement and request so mailed shall not affect the validity of the Supplemental Agreement when assented to as in this Section provided.

Such Supplemental Agreement shall not become effective unless there shall be filed with the Trustee the written consent of the Owners of at least a majority in aggregate principal amount of the Certificates then Outstanding (exclusive of Certificates disqualified as provided in Section 10.03 hereof) and notices shall have been mailed as hereinafter in this Section provided. Any such consent shall be binding upon the Owner of the Certificate giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Certificates shall have filed their consent to such Supplemental Agreement, the Trustee shall mail a notice to the Owners of the Certificates in the manner hereinbefore provided in this Section for the mailing of such Supplemental Agreement, stating in substance that such Supplemental Agreement has been consented to by the Owners of the required percentage of Certificates and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of such Supplemental Agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be proof of the matters therein stated until the contrary is proved. The Trustee may obtain and conclusively rely on an opinion of counsel with regard to such matters.

**Section 10.03 Disqualified Certificates.** Certificates owned or held by or for the account of the City or the Corporation or by any person directly or indirectly controlled or controlled by, or

under direct or indirect common control with the City or the Corporation (except any Certificates held in any pension or retirement fund) shall not be deemed Outstanding for the purpose of any vote, consent, waiver or other action or any calculation of Outstanding Certificates provided for in this Trust Agreement, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Trust Agreement.

The City or the Trustee may adopt appropriate regulations to require each Owner, before its consent provided for in this Article X shall be deemed effective, to reveal if the Certificates as to which such consent is given are disqualified as provided in this Section. Upon request of the Trustee, the City and the Corporation shall specify to the Trustee those Certificates disqualified pursuant to this Section and the Trustee may conclusively rely on such certificate.

**Section 10.04 Effect of Supplemental Agreement.** From and after the time any Supplemental Agreement becomes effective pursuant to this Article X, this Trust Agreement or the Lease, as the case may be, shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Certificates Outstanding, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Agreement shall be deemed to be part of the terms and conditions of this Trust Agreement or the Lease, as the case may be, for any and all purposes.

**Section 10.05 Endorsement or Replacement of Certificates Delivered After Amendments.** The Trustee may determine that Certificates delivered after the effective date of any action taken as provided in this Article X shall bear a notation, by endorsement, in form approved by the Trustee, as to such action. In that case, upon demand of the Owner of any Outstanding Certificate at such effective date and presentation of its Certificate for such purpose at the Principal Office, a suitable notation shall be made on such Certificate. The Trustee may determine that new Certificates, so modified as in the opinion of the Trustee is necessary to conform to such Owner's action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Certificate then Outstanding, such new Certificate shall be exchanged in the Principal Office without cost to such Owner, for a Certificate of the same character then Outstanding, upon surrender of such Certificate.

**Section 10.06 Amendatory Endorsement of Certificates.** Subject to Section 10.01 hereof, the provisions of this Article X shall not prevent an Owner from accepting any amendment as to the particular Certificates held by him, provided that due notification thereof is made on such Certificates.

**Section 10.07 Copies of Amendments Delivered to Rating Agencies.** Copies of any modifications or amendments to this Trust Agreement, the Lease, the Site Lease or the Assignment Agreement shall be delivered by the City to any rating agency then rating the Certificates at least ten (10) days prior to the effective date thereof.

## **ARTICLE XI**

### **COVENANTS; NOTICES**

**Section 11.01 Compliance With and Enforcement of the Lease.** The City covenants and agrees with the Owners to perform all obligations and duties imposed on it under the Lease. The

Corporation covenants and agrees with the Owners to perform all obligations and duties imposed on it under the Lease.

The City will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of the Lease by the Corporation thereunder. The Corporation and the City, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting their respective estates, or either of them, in the Leased Premises, which may or can in any manner affect such estate of the City, will deliver the same, or a copy thereof, to the Trustee.

**Section 11.02 Payment of Taxes.** The City shall pay all taxes as provided in Section 7.7(b) of the Lease.

**Section 11.03 Observance of Laws and Regulations.** The City will well and truly keep, observe and perform 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 by the City, including its 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 11.04 Prosecution and Defense of Suits.** The City shall promptly, and also upon request of the Trustee or any Owner, from time to time take such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Leased Premises, whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose.

**Section 11.05 City Budgets.** In accordance with Section 4.7 of the Lease, the City Representative shall certify to the Trustee on or before August 1 of each year that the City has included in its annual budget all Lease Payments (other than Lease Payments of advance rental) and Additional Payments (to the extent the amounts of such Additional Payments are known to the City at the time its annual budget is proposed) due under the Lease in the Fiscal Year covered by its annual budget, and the amount so included. If the City fails to certify that it has included all such Lease Payments and Additional Payments in such annual budget, the Trustee shall promptly provide the City written notice specifying that the City has failed to observe and perform its covenant and agreement in such Section 4.7 and requesting that such failure be remedied within thirty (30) days, or such failure shall constitute an Event of Default under Section 9.1(b) of the Lease. The Trustee shall forward a copy of such notice to the Corporation. Upon receipt of such notice, the City shall notify the Trustee in writing of the proceedings proposed to be taken by the City, and shall keep the Trustee advised in writing of all proceedings thereafter taken by the City.

**Section 11.06 Further Assurances.** The Corporation and the City will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Trust Agreement, and for the better assuring and confirming unto the Owners the rights and benefits provided herein.

**Section 11.07 Continuing Disclosure.** The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Trust Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default hereunder; however, any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section and the Continuing Disclosure Certificate.

## ARTICLE XII

### LIMITATION OF LIABILITY

**Section 12.01 Limited Liability of the City.** Except for the payment of Lease Payments, Additional Payments and Prepayments when due in accordance with the Lease and the performance of the other covenants and agreements of the City contained herein and in the Lease, the City shall have no obligation or liability to any of the other parties hereto or to the Owners with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Lease Payments to the Owners by the Trustee.

**Section 12.02 No Liability of the City or Corporation for Trustee Performance.** Except as expressly provided herein, neither the City nor the Corporation shall have any obligation or liability to any other parties hereto or to the Owners with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

(a) No Investment Advice. The Trustee shall have no obligation or responsibility for providing information to the Owners concerning the investment character of the Certificates.

(b) Sufficiency of this Trust Agreement or Lease Payments. The Trustee makes no representations as to the validity or sufficiency of the Certificates, shall incur no responsibility or liability in respect thereof, other than in connection with the duties or obligations herein or in the Certificates assigned to or imposed upon it. The Trustee shall not be responsible or liable for the sufficiency or enforceability of the Lease, the Site Lease or the Assignment Agreement. The Trustee shall not be liable for the sufficiency or collection of any Lease Payments or other moneys required to be paid to it under the Lease (except as provided in this Trust Agreement), its right to receive moneys pursuant to said Lease, or the value of or title to the Leased Premises.

(c) Actions of Corporation and City. The Trustee shall have no obligation or liability to any of the other parties or the Owners with respect to this Trust Agreement or failure or refusal of any other party to perform any covenant or agreement made by any of them under this Trust Agreement or the Lease, but shall be responsible solely for the performance of the duties and obligations expressly imposed upon it hereunder as provided in Section 9.05 hereof.

(d) Recitals and Agreements of Corporation and City. The recitals of facts, covenants and agreements herein and in the Certificates contained shall be taken as statements, covenants and agreements of the City or the Corporation (as the case may be), and the Trustee assumes no responsibility for the correctness of the same.

**Section 12.03 Limitation of Rights to Parties and Certificate Owners.** Nothing in this Trust Agreement or in the Certificates expressed or implied is intended or shall be construed to give



any person other than the City, the Corporation, the Trustee and the Owners, any legal or equitable right, remedy or claim under or in respect of this Trust Agreement or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the City, the Corporation, the Trustee and the Owners.

**Section 12.04 No Liability of Corporation to the Owners.** Except as expressly provided herein, the Corporation shall not have any obligation or liability to the Owners with respect to the payment when due of the Lease Payments by the City or with respect to the observance or performance by the City of the other agreements, conditions, and covenant imposed upon the City by the Lease or by this Trust Agreement.

## ARTICLE XIII

### EVENTS OF DEFAULT AND REMEDIES OF CERTIFICATE OWNERS

**Section 13.01 Assignment of Rights.** The parties hereto acknowledge that pursuant to the Assignment Agreement the Corporation has transferred, assigned and set over to the Trustee for the benefit of the Owners, certain of the Corporation's rights under the Lease.

#### **Section 13.02 Events of Default.**

(a) Remedies. If an Event of Default shall happen, then, and in each and every such case during the continuance of such Event of Default, the Trustee may exercise any and all remedies available pursuant to law or granted pursuant to the Lease; provided, however, that notwithstanding anything herein or in the Lease to the contrary, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE MATURITIES OF THE CERTIFICATES OR OTHERWISE TO DECLARE ANY LEASE PAYMENTS NOT THEN IN DEFAULT TO BE IMMEDIATELY DUE AND PAYABLE. Section 9.2 of the Lease is hereby incorporated by reference.

(b) Actual Knowledge. The Trustee shall not be deemed to have knowledge of any Event of Default unless and until the trust officer responsible for the administration of this Trust Agreement shall have actual knowledge thereof, or shall have received written notice thereof at the Principal Office.

**Section 13.03 Application of Funds.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article XIII or of Article IX of the Lease, shall be deposited into the Lease Payment Fund and be applied by the Trustee after payment of all amounts due and payable under Sections 9.06 and 9.07 hereof and Section 4.11 of the Lease in the following order upon presentation of the Certificates, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid -

First, Costs and Expenses: to the payment of the costs, fees and expenses of the Trustee in declaring such Event of Default and in performing its duties and obligations hereunder, including reasonable compensation to its agents, attorneys and counsel and then to any such amounts incurred by the Owners;

Second, Interest: to the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installment, and, if the amount available shall

not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Third, *Principal*: to the payment to the persons entitled thereto of the unpaid principal with respect to any Certificates which shall have become due, whether at maturity or by call for prepayment, in the order of their due dates, with interest on the overdue principal and interest at a rate equal to the rate paid with respect to the Certificates and, if the amount available shall not be sufficient to pay in full all the amounts due with respect to the Certificates on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference.

**Section 13.04 Institution of Legal Proceedings.** If one or more Events of Default shall happen and be continuing, the Trustee may, and upon the written request of the Owners of a majority in principal amount of the Certificates then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Owners by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein or in the Lease, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights or duties hereunder; provided that such written request shall not be otherwise than in accordance with provisions of law and this Trust Agreement and that the Trustee shall have the right to decline to follow any such written request if the Trustee shall be advised by counsel that the action or proceeding so requested may not be taken lawfully or if the Trustee in good faith shall determine that the action or proceeding so requested would be unjustly prejudicial to the Certificate Owners not a party to such written request or expose the Trustee to liability. In no event shall counsel to the Trustee be deemed counsel to the Owners, and any communications between the Trustee and its counsel shall be deemed confidential and privileged.

**Section 13.05 Non-Waiver.** Nothing in this Article XIII or in any other provision of this Trust Agreement or in the Certificates shall affect or impair the obligation of the City to pay or prepay the Lease Payments as provided in the Lease. No delay or omission of the Trustee or of any Owner of any of the Certificates to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article XIII to the Trustee or to the Owners may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Owners.

**Section 13.06 Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

**Section 13.07 Power of Trustee to Control Proceedings.** In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Certificates then Outstanding, it shall have full power, in the exercise of its discretion for the best interest of the Owners of the Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of

such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of at least a majority in principal amount of the Outstanding Certificates hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

**Section 13.08 Limitation on Certificate Owners' Right to Sue.** No Owner of any Certificate executed hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Trust Agreement, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default under the Lease; (b) the Owners of a majority in aggregate principal amount of all the Certificates then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) there shall have been a default in the payment of such Owner's proportionate interest in the Lease Payments as the same become due.

Such notification, request, tender of indemnity, refusal or omission, and default are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners shall have any right in any manner whatever by its or their action to enforce any right under this Trust Agreement, except in the manner herein provided and for the equal benefit of all Owners of the Outstanding Certificates.

The right of any Owner of any Certificate to receive payment of said Owner's proportionate interest in the Lease Payments as the same become due, or to institute suit for the enforcement of such payment, shall not be impaired or affected without the consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Trust Agreement.

## **ARTICLE XIV**

### **MISCELLANEOUS**

#### **Section 14.01 Defeasance.**

(a) Methods. If and when any Outstanding Certificates shall be paid and discharged in any one or more of the following ways:

(i) Payment or Prepayment: by well and truly paying or causing to be paid the principal, interest and prepayment premiums (if any) with respect to such Certificates Outstanding, as and when the same become due and payable;

(ii) Cash: if prior to maturity by depositing with the Trustee, in trust, concurrent with the giving of such notice, an amount of cash which (together with cash then on deposit in the Lease Payment Fund together with the interest to accrue thereon, in the event of payment or provision for payment of all Outstanding Certificates) is sufficient to pay such Certificates Outstanding, including all principal and interest and premium, if any; or

(iii) Government Obligations: by irrevocably depositing with the Trustee, in trust, Government Obligations together with cash, if required, in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon (and, in the event of payment or provision for payment of all Outstanding Certificates, moneys then on deposit in the Lease Payment Fund together with the interest to accrue thereon), be fully sufficient to pay and discharge such Certificates (including all principal and interest represented thereby and prepayment premiums if any) at or before their maturity or prepayment date;

and all other amounts due hereunder have been paid in full, then, notwithstanding that any Certificates shall not have been surrendered for payment, all obligations of the Corporation, the Trustee and the City with respect to such Certificates shall cease and terminate, except only the obligation of the City and the Corporation to comply with the provisions of Sections 8.07 and 8.08 hereof and the obligation of the Trustee to pay or cause to be paid, from Lease Payments paid by or on behalf of the City from funds deposited pursuant to paragraphs (ii) and (iii) of this subsection (a), to the Owners of the Certificates not so surrendered and paid all sums due with respect thereto, and in the event of deposits pursuant to paragraphs (ii) and (iii) of this subsection (a), the Certificates shall continue to represent direct and proportionate interests of the Owners thereof in applicable Lease Payments under the Lease.

(b) Surplus Moneys. Any funds held by the Trustee, at the time of payment or provision for payment of all Outstanding Certificates pursuant to one of the procedures described in paragraphs (a)(i) through (a)(iii) of this Section 14.01, which are not required for the payment to be made to the Owners, shall be paid over to the City, after the payment of any amounts due to the Trustee pursuant to Sections 9.06 and 9.07 hereof and any other Additional Payments due under the Lease.

(c) Surviving Provisions. Notwithstanding the satisfaction and discharge hereof, the Trustee shall retain such rights, powers and privileges hereunder as may be necessary or convenient for the payment of the principal, interest and prepayment premium, if any, on the Certificates and for the registration, transfer and exchange of the Certificates.

(d) Opinions and Reports. Prior to any defeasance becoming effective under this Section, the City shall cause to be delivered (i) unless the defeasance is to be accomplished solely through a cash deposit, an executed copy of a report, addressed to the Trustee, the City, in form and substance acceptable to the City of a nationally recognized firm of certified public accountants, verifying that the Government Obligations and cash, if any, satisfy the requirements of subsection (a) of this Section 14.01, (ii) a copy of the escrow deposit agreement entered into or refunding instructions executed by the City in connection with such defeasance, and (iii) a copy of an opinion of Special Counsel, dated the date of such defeasance and addressed to the Trustee and the City, in form and substance acceptable to the City, to the effect that such Certificates are no longer Outstanding under the Trust Agreement.

**Section 14.02 Non-Presentment of Certificates.** In the event any Certificate shall not be presented for payment when the principal with respect thereto becomes due, either at maturity, or at the date fixed for prepayment thereof, if moneys sufficient to pay such Certificate shall have been deposited in the Prepayment Fund or Lease Payment Fund, as applicable, all liability of the City and the Trustee to the Owner thereof for payment of such Certificate shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, without liability for interest thereon, for the benefit of the Owner of such Certificate who shall

thereafter be restricted exclusively to such moneys, for any claim of whatever nature on its part under this Trust Agreement or on, or with respect to, said Certificate.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Certificates within two (2) years after the date on which the same shall have become due shall be paid by the Trustee to the City, free from the trusts created by this Trust Agreement. Prior to forwarding any such moneys to the City, the Trustee may publish notice of its intention to transfer such funds in The Bond Buyer or another financial newspaper of general circulation in New York, New York. In addition, Trustee shall be indemnified from and against any and all liabilities to third parties resulting from its actions under this Section. Thereafter, Owners shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid by the Trustee. The City shall not be liable for any interest on the sums paid to it pursuant to this Section and shall not be regarded as a trustee or trustees of such money.

**Section 14.03 Acquisition of Certificates by City.** All Certificates acquired by the City, whether by purchase, gift or otherwise, shall be surrendered by the City to the Trustee for cancellation.

**Section 14.04 Records.** The Trustee shall keep complete and accurate records of all moneys received and disbursed by it under this Trust Agreement until four years after no Certificate is Outstanding (or such longer period as required by the Trustee's policies and procedures, or by applicable law), which shall be available for inspection by the City, the Corporation and any Owner, or the agent of any of them, at any time during regular business hours upon reasonable prior notice.

**Section 14.05 Notices.** Except as specifically provided otherwise in this Trust Agreement, all written notices to be given under this Trust Agreement shall be given by mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be deemed to have been received upon the earlier of actual receipt or five (5) Business Days after deposit in the United States mail, in certified form, postage prepaid or, in the case of personal delivery, upon delivery to the address set forth below:

If to the City:                      City of Cupertino  
   10300 Torre Avenue  
   Cupertino, California 95014  
   Attention: City Manager

If to the Corporation:              Cupertino Public Facilities Corporation  
   10300 Torre Avenue  
   Cupertino, California 95014  
   Attention: [Treasurer]

If to the Trustee:                      The Bank of New York Mellon Trust Company, N.A.  
   400 South Hope Street, Suite 500  
   Los Angeles, California 90071  
   Attention: Corporate Trust Department  
   Ref: City of Cupertino 2020A Certificates of Participation

If to S&P: S&P Global Ratings  
55 Water Street  
New York, New York 10004  
Attention: Public Finance Department

**Section 14.06 Governing Law.** This Trust Agreement shall be construed and governed in accordance with the laws of the State.

**Section 14.07 Binding Effect: Successors.** This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Trust Agreement either the Corporation, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Trust Agreement contained by or on behalf of the Corporation, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 14.08 Execution in Counterparts.** This Trust 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 agreement.

**Section 14.09 Headings.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Trust Agreement. All references herein to “Articles”, “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

**Section 14.10 Waiver of Notice.** Whenever in this Trust Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**Section 14.11 Separability of Invalid Provisions.** In case any one or more of the provisions contained in this Trust Agreement or in the Certificates shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Trust Agreement, and this Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Trust Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Certificates pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Trust Agreement may be held illegal, invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Trust Agreement as of the date and year first above written.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Officer

CUPERTINO PUBLIC FACILITIES  
CORPORATION

By: \_\_\_\_\_  
Steven Scharf,  
President

ATTEST:

\_\_\_\_\_  
Secretary

CITY OF CUPERTINO

By: \_\_\_\_\_  
Steven Scharf,  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**EXHIBIT A**

**FORM OF 2020A CERTIFICATE**

R-\_\_\_\_

\$\_\_\_\_\_

*UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE TRUST AGREEMENT) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.*

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**CITY OF CUPERTINO  
2020A CERTIFICATE OF PARTICIPATION**

**Evidencing the Fractional Interest of the Owner Hereof  
In Lease Payments to be Made by the  
CITY OF CUPERTINO  
As Rental for Certain Leased Premises  
Pursuant to a Lease Agreement with the  
CUPERTINO PUBLIC FACILITIES CORPORATION**

<b>INTEREST RATE</b>	<b>MATURITY DATE</b>	<b>DELIVERY DATE</b>	<b>CUSIP</b>
_____%	_____	October __, 2020	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ AND NO/100 DOLLARS

THIS IS TO CERTIFY THAT the registered owner named above, or registered assigns, as the Registered Owner of this Certificate of Participation (the "Certificate") is the owner of a fractional and undivided interest in the right to receive certain Lease Payments thereof under and as defined in that certain Lease Agreement dated as of October 1, 2020 (the "Lease"), by and between the Cupertino Public Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation") and the City of Cupertino, a municipal corporation and a general law city organized and existing under and by virtue of the laws and Constitution of the State of California (the "City"), which Lease Payments and certain other



rights and interests under the Lease have been assigned to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee").

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Lease, on the maturity date specified above, the principal amount specified above, representing a portion of the Lease Payments designated as principal coming due during the preceding twelve months, and to receive on June 1 and December 1 of each year (the "Payment Dates") until payment in full of said portion of principal, the Registered Owner's portion of the Lease Payments designated as interest coming due during the six months immediately preceding each of the Payment Dates provided that interest with respect hereto shall be payable from the Payment Date next preceding the date of execution of this Certificate unless (i) this Certificate is executed during the period from the day after the fifteenth day of the month preceding a Payment Date (the "Record Date") to and including such Payment Date, in which event interest shall be payable from such Payment Date, or (ii) unless this Certificate is executed on or prior to November 15, 2020, in which event interest shall be payable from the Delivery Date hereof. The portion of the Lease Payments designated as interest is computed on the basis of a 360-day year of twelve 30-day months and is the result of the multiplication of the aforesaid portion of the Lease Payments designated as principal by the rate per annum identified above. Said amounts are payable in lawful money of the United States of America. The amount representing principal payable at maturity or upon prepayment in whole or in part is payable to the Registered Owner upon presentation and surrender of this Certificate at the Principal Office. The amounts representing interest are payable by check mailed by the Trustee by first class mail to the Registered Owner hereof as of the Record Date preceding the Payment Date at its address as it appears on the registration books of the Trustee. Interest with respect to any Certificates may, at the option of any Owner of Certificates in an aggregate principal amount of \$1,000,000 or more evidenced by the written request of such Owner to the Trustee, be paid to such Owner by wire transfer to the bank and account number on file with the Trustee as of the Record Date.

This Certificate is one of the \$\_\_\_\_\_ aggregate principal amount of 2020A Certificates of Participation (the "Certificates") which have been executed and delivered by the Trustee pursuant to the terms of a Trust Agreement dated as of October 1, 2020 (the "Trust Agreement"), by and among the Trustee, the Corporation and the City. The City is authorized to enter into the Lease and the Trust Agreement under the Constitution and laws of the State of California. Reference is hereby made to the Lease and the Trust Agreement (copies of which are on file at the Principal Office) for a description of the terms on which the Certificates are delivered, the rights thereunder of the Registered Owners of the Certificates, the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Lease, to all of the provisions of which Lease and Trust Agreement the Registered Owner of this Certificate, by acceptance hereof, assents and agrees.

The City is obligated to pay Lease Payments from any source of legally available funds, and the City has covenanted in the Lease to make the necessary annual appropriations therefor. The obligation of the City to pay the Lease Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Lease Payments does not constitute a debt of the City, the State of California or any of its political subdivisions within the meaning of any Constitutional or statutory debt limitation or restriction. The City's obligation to pay Lease Payments may be completely or partially abated during any period in which, by reason of material damage, destruction, title defect, or taking by eminent domain or condemnation there is substantial interference with the use and right of possession by the City of the Leased Premises. Failure of the

City to pay Lease Payments during any such period shall not constitute a default under the Lease, the Trust Agreement or this Certificate.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the Registered Owners of at least a majority in aggregate principal amount of the Certificates then Outstanding, and may be amended, without such consent of the Registered Owners under certain circumstances. No such modification or amendment shall (i) extend or have the effect of extending the maturity of any Certificate or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon the prepayment thereof, without the express consent of the Registered Owner of such Certificate being affected, or (ii) reduce or have the effect of reducing the percentage of Certificates required for the affirmative vote or written consent to an amendment or modification of the Lease, (iii) modify any of the rights or obligations of the Trustee without its written assent thereto, or (iv) amend the section of the Trust Agreement dealing with permitted amendments thereof without the prior written consent of the owners of all Certificates.

This Certificate is transferable by the Registered Owner hereof, in person or by its duly authorized attorney, at the Principal Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such transfer a new Certificate or Certificates, of an authorized denomination or denominations, for the same aggregate principal amount, maturity and interest rate, will be delivered to the transferee. This Certificate also may be exchanged for a like aggregate principal amount of Certificates of other authorized denominations as prescribed in the Trust Agreement. The City, the Corporation, and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes whether or not this Certificate shall be overdue, and the City, the Corporation and the Trustee shall not be affected by any notice to the contrary.

The Trustee shall not be required to transfer any Certificate selected for prepayment or be required to transfer any Certificate during the period in which the Trustee is selecting Certificates for prepayment or after notice of prepayment has been given in accordance with the Trust Agreement.

The Certificates are subject to prepayment, on any date, in whole or in part, from Net Proceeds deposited by the Trustee in the Prepayment Fund established under the Trust Agreement at least forty-five (45) days prior to the date fixed for prepayment, at a prepayment price equal to the principal amount thereof together with accrued interest to the date fixed for prepayment, without premium.

In the event that Net Proceeds are to be applied to the prepayment of Certificates when Certificates and Additional Certificates, if any, are Outstanding, the Net Proceeds will be applied to prepay a proportionate amount of Certificates and Additional Certificates based on the Outstanding principal amount and by lot within any maturity.

The Certificates are not subject to optional or mandatory prepayment prior to maturity.

As provided in the Trust Agreement, notice of prepayment shall be mailed, not less than 20 nor more than 60 days before the prepayment date, to the Registered Owner of this Certificate, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for prepayment. If this Certificate is called for prepayment and payment is duly

provided therefor as specified in the Trust Agreement, interest shall cease to accrue with respect hereto from and after the date fixed for prepayment.

The City has certified that all acts, conditions and things required by the statutes of the State of California and the Trust Agreement to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Certificate do exist, have happened and have been performed in regular and due time, form and manner as required by law, and that the Trustee is duly authorized to execute and deliver this Certificate, and that the amount of this Certificate, together with all other Certificates executed and delivered under the Trust Agreement, is not in excess of the amount of Certificates authorized to be executed and delivered thereunder.

Terms used herein which are not otherwise defined shall have the respective meanings assigned thereto in the Trust Agreement.

The Trustee has no obligation or liability to the Registered Owners to make payments of principal or interest with respect to this Certificate except from Lease Payments paid to the Trustee and from the various funds and accounts established under the Trust Agreement. The Trust Agreement provides that the recitals of facts, covenants and agreements in this Certificate shall be taken as statements, covenants and agreements of the City, and the Trustee assumes no responsibility for the correctness of the same. The Trustee has executed this Certificate solely in its capacity as Trustee under the Trust Agreement and not in its individual or personal capacity.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

Date of Execution: \_\_\_\_\_

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Officer

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

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(print or typewrite name, address, including postal zip code, and social security or other identifying number of Transferee)

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed

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NOTICE: Signature(s) guarantee should be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or such other guarantee program acceptable to the Trustee.

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NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Certificate in every particular, without alteration or enlargement or any change whatever.

**EXHIBIT B**

**FORM OF DELIVERY COST REQUISITION**

The Bank of New York Mellon Trust Company, N.A., as Trustee

RE: Disbursement from the Delivery Cost Fund pursuant to Section 3.02 of the Trust Agreement related to the City of Cupertino 2020A Certificates of Participation, dated as of October 1, 2020 (the "Agreement"), by and among you, as trustee, the Cupertino Public Facilities Corporation and the City of Cupertino (the "City")

REQUISITION NO. \_\_\_\_\_

You are hereby instructed to pay to the City, or to \_\_\_\_\_ at \_\_\_\_\_ \$\_\_\_\_\_ as a Delivery Cost from the Delivery Cost Fund as provided in Section 3.02 of the Agreement. This Delivery Cost has been properly incurred, is a proper charge against the Delivery Cost Fund and has not been the basis of any previous disbursements.

The amount remaining in the Delivery Cost Fund, together with interest earnings on the Delivery Cost Fund plus investment earnings on other funds that will be transferred into the Delivery Cost Fund, will, after payment of the amount set forth in this requisition, be sufficient to pay all remaining Delivery Costs as presently estimated.

Very truly yours,

\_\_\_\_\_  
City Representative