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**SITE AND FACILITY LEASE AND RIGHT OF ENTRY AGREEMENT**

**Dated as of September 1, 2020**

**by and between the**

**TOWN OF FAIRFAX, as Lessor and Grantor**

**and the**

**FAIRFAX FINANCING AUTHORITY, as Lessee and Grantee**

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Fairfax Financing Authority  
(Marin County, California)  
Taxable Lease Revenue Bonds, Series 2020

## SITE AND FACILITY LEASE AND RIGHT OF ENTRY AGREEMENT

THIS SITE AND FACILITY LEASE AND RIGHT OF ENTRY AGREEMENT (this "Site and Facility Lease and Right of Entry Agreement"), dated as of September 1, 2020, by and between the TOWN OF FAIRFAX, a general law city and municipal corporation organized and existing under and by virtue of the laws of the State of California (the "Town"), as lessor and grantor, and the FAIRFAX FINANCING AUTHORITY, a joint exercise of powers entity organized and existing under and by virtue of the laws of the State of California (the "Authority"), as lessee and grantee;

### WITNESSETH:

WHEREAS, the Authority intends to assist the Town by financing and refinancing certain pension obligations of the Town to the California Public Employees' Retirement System ("CalPERS"), including to refinance the Town's Lease Agreement, dated as of January 1, 2017, by and between the Authority and the Town, assigned to Capital One Public Funding, LLC, executed to fund a portion of the Town's then existing unfunded actuarial liability to CalPERS, and to lease and to provide the right of entry those certain parcels of real property situated in Marin County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility") and those certain streets and roads described in Exhibit C attached hereto and made a part hereof (the "Streets" and, with the Site and the Facility, the "Property"), to be leased back to the Town pursuant to the provisions of a Lease Agreement, dated as of September 1, 2020 (the "Lease Agreement"), and the Town proposes to enter into this Site and Facility Lease and Right of Entry Agreement the Authority as a material consideration for the Authority's agreement to lease the Property to, the Town;

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

*Section 1. Definitions.* Capitalized terms used, but not otherwise defined, in this Site and Facility Lease and Right of Entry Agreement shall have the meanings ascribed to them in the that certain Indenture, dated as of September 1, 2020, by and between the Authority and U.S. Bank National Association, as trustee (the "Indenture").

*Section 2. Lease and Right of Entry.* To the extent it is fee owner thereof, the Town hereby leases to the Authority and the Authority hereby leases from the Town, on the terms and conditions hereinafter set forth, the Property. To the extent it is the owner of a right other than a fee interest, the Town hereby grants to the Authority and the Authority hereby accepts from the Town, on the terms and conditions hereinafter set forth, a right of entry upon the Property.

*Section 3. Term.* The term of this Site and Facility Lease and Right of Entry Agreement shall commence on the date of execution of this Site and Facility Lease and Right of Entry Agreement and shall end on August 1, 2037, unless such term is extended or sooner terminated as hereinafter provided. If on August 1, 2037, the aggregate amount of Lease Payments (as defined in and) payable under the Lease Agreement, shall not have been paid, or provision shall not have been made for their payment, then the term of this Site and Facility Lease and Right of Entry Agreement shall be extended until such Lease Payments shall be fully paid or provision made for such payment. If prior to August 1, 2037, all Lease Payments shall be fully paid or provision made for such payment, the term of this Site and Facility Lease and Right of Entry Agreement shall end ten (10) days thereafter.

*Section 4. Consideration.* The Town acknowledges receipt from the Authority as and for this agreement the sum of one dollar (\$1.00), on or before the date of delivery of this agreement.

*Section 5. Purpose.* The Authority shall use this Site and Facility Lease and Right of Entry Agreement solely for the purpose of providing the basis for leasing the Property to the Town pursuant to the Lease Agreement and for such purposes as may be incidental thereto; provided, that in the event of default by the Town under the Lease Agreement, the Authority and its assigns may exercise the remedies provided in the Lease Agreement including the right of removal.

*Section 6. Town's Rights in Property.* The Town covenants that it is the owner in fee of, has a leasehold estate in, or is the possessor of an easement or right of entry to the Property and it will maintain such right or interest for the term of this Site and Facility Lease and Right of Entry Agreement and, in all cases, has all right to convey a right of entry to the Authority thereon as is provided herein.

*Section 7. Town Representations and Certifications* . The Town hereby certifies and represents, warrants, covenants, agrees and acknowledges as follows:

(a) This Site and Facility Lease and Right of Entry Agreement is in full force and effect, and there have been no amendments, modifications, changes or additions since its execution.

(b) To the best of the Town's knowledge, the Authority is not and will not be, in any respect, in default under the terms and provisions of this Site and Facility Lease and Right of Entry Agreement. Further, to the best of the Town's knowledge, the Town knows of no event which would, currently or with the passage of time or giving of notice, or both, constitute a default under the terms of this Site and Facility Lease and Right of Entry Agreement by either the Authority or the Town.

(c) The Town has not currently encumbered its fee interest in the Property to any lender or financial institution, whether by way of mortgage, deed of trust or other security instruments, except for this Site and Facility Lease and Right of Entry Agreement which is being recorded concurrently herewith and Permitted Encumbrances (as defined in the Indenture).

(d) The Town acknowledges and hereby consents to the Lease Agreement.

(e) Upon the Event of Default under the Lease Agreement, the Town will standstill and allow the Authority or the Assignee to pursue any and all remedies available to the Authority or Assignee under either this Site and Facility Lease and Right of Entry Agreement or the Lease Agreement.

(f) Except for the consideration referenced in Section 4, no additional rent is or will be due under this Site and Facility Lease and Right of Entry Agreement by the Authority through the term of this Site and Facility Lease and Right of Entry Agreement and the Authority has satisfied all of its obligations under this Site and Facility Lease and Right of Entry Agreement.

(g) During the term of this Site and Facility Lease and Right of Entry Agreement, the Town will not consent to any amendment, modification or termination of this Site and Facility Lease and Right of Entry Agreement without the prior written consent of the Purchaser (as defined in the Indenture).

(h) During the term of this Site and Facility Lease and Right of Entry Agreement, the Town will not encumber its interest in the Site without the prior written consent of the Purchaser.

(i) The Town acknowledges that this Site and Facility Lease and Right of Entry Agreement cannot be terminated by the Town for any reason, except according to Section 3.

(j) Notwithstanding any Site and Facility Lease and Right of Entry Agreement provisions to the contrary, policies of fire, casualty, and extended coverage insurance shall be carried and maintained by the Town in accordance with the terms of the Lease Agreement covering the building or buildings constructed on the Site, with a loss payable clause to Purchaser.

*Section 8. Assignments and Subleases.* Unless the Town shall be in default under the Lease Agreement, the Authority may not assign its rights under this Site and Facility Lease and Right of Entry Agreement except as provided in the Lease Agreement, without the written consent of the Town.

*Section 9. Termination.* The Authority agrees, upon the termination of this Site and Facility Lease and Right of Entry Agreement to surrender its rights hereunder.

*Section 10. Default.* In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site and Facility Lease and Right of Entry Agreement, which default continues for thirty (30) days following notice and demand for correction thereof to the Authority, the Town may exercise any and all remedies granted by law, except that no merger of this Site and Facility Lease and Right of Entry Agreement and of the Lease Agreement shall be deemed to occur as a result thereof; provided, however, that so long as any of the Bonds (as defined in the Indenture) are outstanding and unpaid in accordance with the terms thereof, the Lease Payments assigned by the Authority to the trustee under the Indenture shall continue to be due and payable and paid to said trustee.

*Section 11. Waiver of Personal Liability.* All liabilities under this Site and Facility Lease and Right of Entry Agreement on the part of the Town are solely liabilities of the Town and the Town hereby releases each and every, member, director, officer, employee and agent of the Authority of and from any personal or individual liability under this Lease and Right of Entry Agreement. No member, director, officer, employee or agent of the Authority shall at any time or under any circumstances be individually or personally liable under this Site and Facility Lease and Right of Entry Agreement for anything done or omitted to be done by the Town hereunder.

*Section 12. Taxes.* All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Property or the Authority's interest in the Property created by this Site and Facility Lease (including both land and improvements) will be paid by the Town in accordance with the Lease Agreement.

*Section 13. Eminent Domain.* In the event the whole or any part of the Property is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid principal component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Authority or its assignee, and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the Town. The Town hereby waives, to the extent permitted by law, any and all rights that it has or may hereafter have to acquire the interest of the Authority in and to

the Property through the eminent domain powers of the Town. However, the Town hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the Town with respect to the Property shall be in an amount not less than the total unpaid principal component of Lease Payments, the interest component of Lease Payments accrued to the date of payment of all Lease Payments and any premium due with respect to the prepayment of Lease Payments under the Lease Agreement.

Section 14. Use of the Proceeds. The Town and the Authority hereby agree that the lease to the Authority of the Town's right and interest in the Property pursuant to Section 2 serves the public purposes of the Town.

Section 15. Attorneys' Fees, Costs and Expenses. In any civil action or proceeding arising from or relating to this Site and Facility Lease or a party's performance under this Site and Facility Lease, the prevailing party shall be awarded its reasonable attorneys' fees, costs and expenses, including the reasonable attorneys' fees, costs and expenses incurred in collecting or executing upon any judgment, order or award.

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

Section 17. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, and, if to the Town, addressed to the Town in care of the Town Manager, Town of Fairfax, 142 Bolinas Road, Fairfax, CA 94930, or if to the Authority, addressed to the Authority in care of the Executive Director, the Fairfax Financing Authority, 142 Bolinas Road, Fairfax, CA 94930, or to such other addresses as the respective parties may from time to time designate by notice in writing.

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

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

Section 20. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site and Facility Lease and Right of Entry Agreement .

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

Section 22. No Merger. Neither this Site and Facility Lease and Right of Entry Agreement, the Lease Agreement nor any provisions hereof or thereof shall be construed to effect a merger of the title of the Town to the Property under this Site and Facility Lease and

Right of Entry Agreement and the Town's leasehold interest therein under the Lease Agreement.

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

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

TOWN OF FAIRFAX, as Lessor and Grantor

By \_\_\_\_\_  
Town Manager

Attest:

\_\_\_\_\_  
Town Clerk

FAIRFAX FINANCING AUTHORITY, as Lessee and Grantee

By \_\_\_\_\_  
Executive Director

Attest:

\_\_\_\_\_  
Secretary

## **EXHIBIT A**

### **SITE DESCRIPTION**

All that certain real property situated in Marin County, State of California, described as follows:

Lots 28 and 38 through 56, inclusive, as shown upon that certain Map entitled "Frustuck & Wreden Subdivision of Fairfax Park, 1913", filed for record January 8, 1914 in Volume 4 of Maps, at Page 64, Marin County Records.

APN: 002-102-01, 02, 03, 06, 11 & 12; 002-103-01, 02 & 03 & 002-114-01

## EXHIBIT B

### FACILITY DESCRIPTION

The Facility consists of the following:

**Town Hall**, located at 142 Bolinas Road, Fairfax, CA. Town Hall was built in the 1920's with the Police Annex added in the 1960's. Combined, the facilities have approximately 3,600 square feet of useable space. Both facilities have been renovated over the years with the last major renovation occurring in 2006. Town Hall is occupied by the Town's administrative staff including the Town Manager and Town Clerk and the Planning and Building Services Department. The Town Hall also has the primary conference room used by staff and Town committees for meetings. The Police Annex houses the entire operation of the Police Department, including the dispatch center which also provides services for the Town of Ross and College of Marin. The Police Annex is two stories with a second story walkway connecting the Town Hall to the Fire Station which houses the Town's Emergency Operations Center. The 2016 insured value of the Town Hall/Police Department is \$831,981, excluding land value.

**Corporation Yard**, located at 142 Bolinas Road, Fairfax, CA. The Corporation Yard is located behind Town Hall. The Corporation Yard contains a two-story metal building built in the 1960's which houses the Public Works Department in approximately 4,000 square feet. Public Works maintenance crews also operate out of this facility. The Corporation Yard is where all Public Works materials/equipment/supplies, heavy equipment (e.g., backhoe), and vehicles (e.g., street sweeper, pick-up trucks, dump trucks) are stored. In addition, the Police Department also stores equipment/materials in the Corporation Yard. The Corporation Yard shares a parking lot with Town Hall and Police for employee parking as well as parking for all the Town-owned vehicles, including police and administration. The 2016 insured value of the Corporation Yard is \$271,840, excluding land value.

**Pavilion**, located at 142 Bolinas Road, Fairfax, CA. The Fairfax Pavilion was built in the 1920's and is approximately 9,600 square feet. It is the largest Town-owned facility and represents the largest indoor, private or public recreational/community facility in Town. The facility has an indoor gym, a separate kitchen area and houses the Town's recreation staff office as well as the studio for the Town's Artist-in-Residence. The Town rents the facility for private events (e.g., children's birthday parties, banquets) and youth activities (e.g., CYO basketball), holds community events in the facility (e.g., holiday craft fair, Fairfax Civic Theater), and conducts most of its recreational programming in the facility (e.g., gymnastics, futsal). In addition, it is the only Town-owned facility located above the floodplain and large enough to serve as a safe haven or shelter in event of a disaster. The Pavilion is also designated as the Town's volunteer center in the event of an emergency. The 2016 insured value of the Pavilion is \$1,805,604, excluding land value.

**Fire Station**, located at 10 Park Road, Fairfax, CA. The Fire Station was built in the 1960's and has approximately 6,000 sq. ft. of useable space. The building is two stories with living quarters located upstairs and office/storage located downstairs. The building has three bays for the fire vehicles. The second story also has a large conference room which doubles as the Emergency Operation Center for the Town. The 2016 insured value of the Fire Station is \$1,684,088, excluding land value.



**EXHIBIT C**

**STREETS DESCRIPTION**

<u>Street</u>	<u>From</u>	<u>To</u>	<u>Length (Ft.)</u>	<u>Improvement Valuation (\$)</u>	<u>ROW Valuation (\$)</u>	<u>Total Worth (\$)</u>

1. "Improvement Valuation" is based on a typical residential street with 30 feet of pavement with curbs on both sides.
2. Curbs are valued at \$\_/linear curb ft or \$\_/linear foot of street (2x\$\_)
3. Pavement is valued at \$\_/sq ft or \$\_/linear foot of street (30x\$\_)
4. Total "Improvement Valuation" is \$\_/linear foot of street (\$\_+\$\_)
5. "ROW Valuation" is based on a typical residential street with a dedicated right-of-way of 40 feet. Unimproved land is valued at \$\_/sq ft
6. Total "ROW Valuation" is \$\_/linear foot of street (40x\$\_)