

March 12, 2013

**AGENDA**

**REGULAR JOINT MEETING OF THE CITY COUNCIL OF THE  
CITY OF DUARTE, SUCCESSOR AGENCY TO DISSOLVED REDEVELOPMENT  
AGENCY OF THE CITY OF DUARTE, THE DUARTE HOUSING AUTHORITY, AND  
THE DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY**

**TUESDAY, MARCH 12, 2013**

6:00 p.m. – Closed Session  
7:00 p.m. – Regular Session

COUNCIL CHAMBERS, 1600 HUNTINGTON DRIVE, DUARTE, CALIFORNIA 91010

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***MISSION STATEMENT***

*With integrity and transparency, the City of Duarte provides exemplary public services in a caring and fiscally responsible manner with a commitment to our community's future*

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MARGARET FINLAY, MAYOR  
LIZ REILLY, MAYOR PRO TEM  
JOHN FASANA, CITY COUNCILMEMBER  
TZEITEL PARAS-CARACCI, CITY COUNCILMEMBER  
PHIL REYES, CITY COUNCILMEMBER

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*City/Agency/Authority Staff:*

Darrell George, City Manager  
Kristen Petersen, Assistant City Manager and Director of Administrative Services  
Craig Hensley, Community Development Director  
Cesar Monsalve, Director of Parks and Recreation  
Brian Villalobos, Director of Public Safety Services  
Dan Slater, City Attorney & Successor Agency/Housing Authority General Counsel  
Marla Akana, City Clerk

**ADDRESSING THE CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AND FINANCING AUTHORITIES:**

If you wish to address the City Council, Successor Agency, Housing Authority, or Financing Authority on any item on the Agenda, you should fill out a Speaker Card indicating which item or items on the Agenda you wish to speak about, and hand the card to the City Clerk. You will be called to the Podium when that item is heard by the City Council/Successor Agency/Housing Authority/Financing Authority. If you wish to address the City Council, Successor Agency, Housing Authority, or Financing Authority on any item that is not on the Agenda, but that is within the subject matter jurisdiction of the City/Agency/Housing Authority/Financing Authority, you may do so under the "Oral Communications" portion of the Agenda. At the podium, before starting your remarks, please state your name and city of residence for the record.

**ADA ACCESSIBILITY NOTICE:**

In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, you should contact the City Manager's office at (626) 357-7931. Notification no later than 1:00 p.m. on the day preceding the meeting will enable the City to make reasonable arrangements to assist your accessibility to this meeting.

**Note:** Any documents distributed by the City/Agency/Authorities to a majority of the City Council/Successor Agency/Housing Authority/Financing Authority Board less than 72 hours prior to the City Council/Successor Agency/Housing Authority/Financing Authority meeting will be made available for public inspection at City Hall, 1600 Huntington Drive, Duarte, CA 91010, during normal business hours, except such documents that relate to closed session items or which are otherwise exempt from disclosure under applicable law.

**THE FOLLOWING ITEMS WILL BE HEARD AT 6:00 P.M.**

1. CALL TO ORDER OF CITY COUNCIL, SUCCESSOR AGENCY TO DISSOLVED REDEVELOPMENT AGENCY, HOUSING AUTHORITY, AND COMMUNITY FACILITIES FINANCING AUTHORITY, AND NOTATION OF ANY ABSENCES
2. ADOPTION OF THE AGENDA
3. CLOSED SESSION
  - A. Public Input – *Members of the public wishing to speak concerning the closed sessions listed below may do so at this time. Each person may speak once for no more than 3 minutes.*
  - B. Conference with Labor Negotiators – Pursuant to Government Code Section 54957.6; Negotiators: Darrell George, Kristen Petersen; Regarding SEIU Local 721 Management and Professional Employees and General Employee Units
  - C. Conference with Legal Counsel—Existing Litigation, pursuant to Government Code Section 54956.9(d)(1); *City of Duarte, Appellant and Petitioner/Plaintiff, v. City of Azusa, Respondent and Respondent/Defendant; Azusa Rock, Inc., a California corporation; Calmat Co., a Delaware corporation, D.B.A. Vulcan Materials Company, Western Division; Vulcan Materials Company, Western Division, an unknown business entity, Respondents and Real Parties in Interest; Court of Appeal of The State of California, Second Appellate District, Division Four, Case No. B235097*

**THE FOLLOWING ITEMS WILL BE HEARD NOT EARLIER THAN 7:00 P.M.**

4. PLEDGE TO THE FLAG
5. MOMENT OF REFLECTION
6. FITNESS/MENTAL WARM-UP
7. PUBLIC REPORT OF CLOSED SESSION ITEMS
8. SPECIAL ITEMS
  - A. Introduction of Andrea Travis-Miller – San Gabriel Valley Council Of Governments Executive Director
  - B. Recognition – New Jerusalem Missionary Baptist Church – 50<sup>th</sup> Anniversary
9. ANNOUNCEMENTS OF UPCOMING COMMUNITY EVENTS  
*Any person who wishes to make a brief announcement of a future community event that is open to the general public may do so at this time.*
10. ORAL COMMUNICATIONS—ITEMS NOT ON THE AGENDA (30 MINUTES)  
*Any person wishing to speak on any issue that is not on the Agenda, but that is within the subject matter jurisdiction of the City/Agency or Authorities, may do so at this time. The opportunity to speak is on a first come, first serve basis. Each person may speak once for no more than 3 minutes and there is a maximum of 30 minutes for all Oral Communications at this time. Under the Brown Act, members of the City Council/ Successor Agency/Housing Authority/Financing Authority, and staff can respond only with a brief reply to issues raised in Oral Communications, and no action on such matters may take place at this meeting.*
11. ITEMS TO BE ADDED TO THE CONSENT CALENDAR
12. CONSENT CALENDAR – Page 1  
*All matters listed on the Consent Calendar are to be approved with one motion unless a member of the City Council/Successor Agency/Housing Authority/Financing Authority removes an item for separate action. Any consent calendar item for which separate action is requested shall be heard as the next Agenda item. The respective entity's consent items are shown in parentheses at the end of each item as "CC" for City Council, "SA" for Successor Agency, "HA" for Housing Authority, and "FA" for C.F. Financing Authority.*
  - A. Approval of Minutes – February 26, 2013 (CC/HA/SA/FA)
  - B. Approval of Warrants –March 12, 2013 (CC/HA/SA/FA)

- C. Motion to introduce and/or adopt all resolutions and ordinances presented for consideration by title only and waive further reading (CC/HA/SA/FA)
- D. Approval by City Council, as the Code Reviewing Body under Government Code Section 87303, of the conflict of Interest Code of the Duarte Community Facilities Financing Authority as set forth in Resolution No. CFFA-13-02 adopted February 26, 2013 (CC)
- E. Final acceptance and Notice of Completion – Duarte Fitness Center Pool Improvements (Sea Clear Pools, Inc.) (CC)
- F. Proclamation for Americorps Week 2013 (CC)
- G. City Council/City Manager Conference Attendance – Latino and Latina Roundtable of the San Gabriel and Pomona Valley and the Latin American and Labor Council for Latin American Advancement 9<sup>th</sup> Annual César Chávez Breakfast Fundraiser, March 29, 2013, Pomona (CC)

13. ITEMS REMOVED FROM CONSENT CALENDAR

14. BUSINESS ITEMS – Page 12

- A. Presentation of Final Report from Town Center Ad Hoc Advisory Committee, and recognition of Committee Members
- B. Approval of the following Resolutions by the City and the Duarte Community Facilities Financing Authority approving the refinancing of 2001 Certificates of Participation with the 2013 Certificates of Participation and approval in connection therewith of a Site Lease between the City and the Authority; a Lease Agreement between the City and the Authority; a Trust Agreement among U.S. Bank, N.A. as Trustee, the City, and the Authority; an Assignment Agreement between U.S. Bank, N.A. as Trustee and the Authority; and a Purchase Agreement between the City and Compass Mortgage Corporation (as purchaser of the 2013 Certificates of Participation):

(1) Council Bill 13-R-03 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

(2) Authority Bill CFFA-13-03 A RESOLUTION OF THE DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE OFFERING AND SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

15. CONTINUATION OF ORAL COMMUNICATIONS

*Any person who did **not** speak during the initial 30 minute Oral Communications period earlier in the meeting, who wishes to speak on any issue that is not on the Agenda but that is within the subject matter jurisdiction of the City Council/Successor Agency/Housing Authority/Financing Authority, may do so at this time. Each person may speak once for no more than 3 minutes. Under the Brown Act, members of the City Council/Successor Agency/Housing Authority/Financing Authority, and staff can respond only with a brief reply to issues raised in Oral Communications, and no action on such matters may take place at this meeting.*

16. ITEMS FROM CITY COUNCIL/SUCCESSOR AGENCY/HOUSING AUTHORITY/FINANCING AUTHORITY MEMBERS AND CITY MANAGER/EXECUTIVE DIRECTOR (AB 1234 reports on trips, conference attendance, and meetings)

17. ADJOURNMENT – In memory of Kathleen Mead, Fred Conrey, and Leonardo Molina

## MEMORANDUM

**TO:** City Council  
**FROM:** City Manager  
**DATE:** March 7, 2013  
**SUBJECT:** Comments on Agenda Items, Meeting of March 12, 2013

**ITEM 8.A.** The new Executive Director of the San Gabriel Valley Council of Governments (SGVCOG), Andrea Travis-Miller, will be introduced and provide a brief presentation on the current status of the COG, along with some of her goals as the new Executive Director. Ms. Travis-Miller comes from the city of San Bernardino, where she was the Acting City Manager. Prior to that position, she was the City Manager of La Mirada for nearly a decade.

**ITEM 8.B.** The New Jerusalem Missionary Baptist Church, located in the county area of Duarte, is celebrating its 50<sup>th</sup> year anniversary on March 24<sup>th</sup> of this month. In advance of the celebration, Mayor Finlay will be presenting a certificate of appreciation to the long-standing church at our upcoming Council meeting. Pastor Mace Dewayne Doyne is celebrating his first year with the church, and will be in attendance at the meeting. Pastor Doyne replaced the late Pastor C. L. Bennett who led the church for the last 43 years.

**ITEM 12.D (Consent).** At its meeting of February 26, 2013, the Board of the Duarte Community Facilities Financing Authority approved Resolution No. CFFA-13-02, which resolution serves as the Authority's conflict of interest code by incorporating by reference the City's conflict of interest code as the Authority's code. Government Code Section 87303 requires that the Authority's conflict of interest code be approved by the "code reviewing body." In this case, the code reviewing body is the City Council. Therefore, the City Council is being requested to review and approve the Authority's conflict of interest code as set forth in Resolution No. CFFA-13-02.

**ITEM 12.E (Consent).** This item recommends that the City Council accept the project "Duarte Fitness Center Pool Improvements" and authorize the City Clerk to initiate the Notice of Completion. Sea Clear Pools, Inc., has satisfactorily completed the improvement project. The cost for this project was \$110,791.01. The project is funded from the General Fund, and is eligible for equipment rebates from Southern California Edison and the Gas Company. The scope of work consisted of the installation of energy efficiency measures on the two swimming pool pump motors, repair of the associated electrical panel, replacement of seven substandard pool facility light standards, and the replacement of two pool heaters.

**ITEM 14.A.** Members of the Town Center Ad Hoc Advisory Committee will present their Final Report to the City Council. In addition, each of the Committee members will be recognized for all the time and effort they put into making the Committee a success over the past year. The primary goal for the Committee was to consider the potential for the Town Center area, and prepare a recommendation to the City Council about a vision of the area and a plan to implement that vision.

**ITEM 14.B.** This item presents resolutions for the City Council and the Community Facilities Financing Authority to consider approving the form and authorizing the execution of lease financing documents in connection with the sale of Certificates of Participation. The 2001 Series A

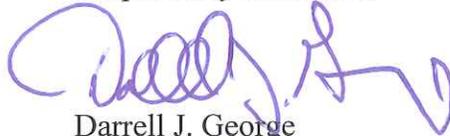
Certificates bear interest at a variable rate. Because the owners of the 2001 Certificates can redeem them at any time on seven days' notice, the City is required to secure repayment of the 2001 Certificates with a letter of credit. The current letter of credit with Union Bank expires in approximately one year, and the confirming letter of credit expires in April 2013. The issuer of the confirming letter of credit has indicated that it will not be renewed due to the size of the transaction.

Non-renewal of the confirming letter of credit requires some action on the part of the City. To refinance the 2001 Certificates at a fixed rate, the City Council and the Board of Directors of the Duarte Community Facilities Financing Authority are presented with these resolutions for consideration. The resolutions approve the forms of the following documents to be executed by the parties:

- Site and Facility Lease between the City and the Authority
- Lease Agreement between the City and the Authority
- Trust Agreement among the Trustee, the City, and the Authority
- Assignment Agreement between the Trustee and the Authority
- Purchase Agreement between the City and Compass Mortgage Corporation

It is recommended that the City Council adopt Resolution No. 13-03, and that the Board of Directors of the Duarte Community Facilities Financing Authority adopt Resolution No. CFFA-13-03, approving the form and authorizing the execution of certain lease financing documents in connection with the sale of Certificates of Participation related thereto, and authorizing and directing certain actions with respect thereto.

Respectfully submitted,



Darrell J. George  
City Manager



California, Second Appellate District, Division Four, Case No. B235097. The fourth closed session was pursuant to Government Code Section 54956.9(d)(1); Conference with Legal Counsel; Existing Litigation, *Metro Gold Line Foothill Extension Construction Authority, a public entity, Plaintiffs, vs. Hydraulic Units, Inc.; City of Duarte, Los Angeles County Flood Control District, Southern California Edison Company, California Water & Telephone Company, Pioneer Electronics (USA), Inc., etc., Defendants*; Los Angeles County Superior Court, Case No. BC 498261. The Closed Sessions concluded at 6:57 p.m. City Council reconvened at 7:08 p.m., with all members present.

PLEDGE TO THE FLAG

Fe Hernandez, David, and Matthew led the Pledge of Allegiance to the Flag.

MOMENT OF REFLECTION

A moment of reflection was observed.

FITNESS/MENTAL WARM-UP

Cesar Monsalve and Finlay provided the warm-up.

PUBLIC REPORT OF CLOSED SESSION

Slater reported that during the first Closed Session, City Council received an update on the status of the item, and authorized the City Attorney to continue pursuing a petition filed with the State Water Board challenging the issuance of the storm water permit. During the second Closed Session, City Council received an update on the status, and authorized the continuance of the City's case against DOF, with the ultimate goal of trying to obtain payment. During the third Closed Session, it was reported that the Court of Appeal denied the City's appeal, it was upheld in favor of the City of Azusa and Vulcan, City Council received an update on options, with no final determinations made, and no reportable action was taken. During the fourth Closed Session, it was reported that research determined that the City of Duarte does not have an easement interest, and City Council authorized the filing of a disclaimer, which will end the City's involvement in the case. Councilmember Fasana did not participate in that discussion, as he is a member of the Metro Gold Line Board.

SPECIAL ITEMS

Proclamation – Fix a Leak Week

Mayor Finlay read and presented a Proclamation for Fix a Leak Week to Brian Barreto, California American Water, who provided information on water saving measures and activities during the week of March 18-24, 2013.

Redevelopment Dissolution Update

Dan Slater provided an update of the status of the dissolution of the Redevelopment Agency, including the recent approval of the Recognized Obligation Payment Schedule for July-December 2013, and the City's lawsuit filed against the Department of Finance. Fasana asked that the next redevelopment dissolution update include the effects of litigation if we were to prevail.

Public Safety Update

Brian Villalobos presented the monthly Public Safety update, including the Public Safety Year in Review 2012.

Steve Hernandez discussed home burglaries, stated the City has progressed, safety has improved, crime has consistently gone down, and thanked the Public Safety Department.

Mary Ann Ur, Public Safety Commission, stated the major goal is to improve the Neighborhood Watch Program and increase Block Captains, the electronic message board would help promote Nextdoor, and it needs to be repaired.

## ANNOUNCEMENTS

Jan Wight extended condolences to the family of Monty Montgomery, stated she is the new President of the Friends of the Duarte Library, and announced upcoming fundraiser in April.

Joanna Gee, Duarte Library, announced upcoming events and programs in the months of March, April, and May.

Rainbow Yeung, AQMD, announced high school conference on March 13 in Long Beach, and lawn mower exchange program in April. Mayor Finlay suggested the possibility of grants available for deriving power from Fitness Center equipment.

Karen Herrera announced upcoming community events and programs in the months of February through May.

## ORAL COMMUNICATIONS

The following spoke on items not on the Agenda.

Vibe Narang – New residency, crime comparison.

Karen Vance – Door-to-door sales, Vulcan.

Jack Collins – Apartment maintenance, Veteran's event.

Henry Baltazar – School Board, Measure E.

Steve Hernandez – Campaign year, facts.

## ITEMS ADDED TO CONSENT

Reyes moved, Fasana seconded to add attendance at the League of California Cities Legislative Action Day and Reception, April 24, 2013, in Sacramento, to Item 12.H, and carried unanimously.

## CONSENT CALENDAR

Reyes moved, Reilly seconded to approve the Consent Calendar as amended, as follows, and carried unanimously.

Approve Items B, C, F, G.

Remove Items A, E, H.

Receive and File Item D.

## ITEMS REMOVED

Item A – Minutes 2/12/13

Item A – Minutes of February 12, 2013 (Joint and Regular). Paras-Caracci stated she was absent from the meeting and will abstain from voting on the minutes.

Item A – Approved

Fasana moved, Reilly seconded to approve the Minutes of February 12, 2013 (Joint and Regular), and carried with Paras-Caracci abstaining.

Item E – Council Bill 13-R-02  
Grant Application – CalHome

Item E – Council Bill 13-R-02 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND

COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE CALHOME PROGRAM, THE EXECUTION OF A STANDARD AGREEMENT IF SELECTED FOR SUCH FUNDING AND ANY AMENDMENTS THERETO, AND ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE CALHOME PROGRAM

Irma Hernandez, Senior Planner, presented a staff report about the proposed grant application in the amount of one million dollars for a home improvement program in the form of loans, and answered questions from City Councilmembers.

Item E – Approved  
RESOLUTION NO. 13-02

Reilly moved, Fasana seconded to approve Item E and adopt Resolution No. 13-02, and carried unanimously.

Item H – Conference Attendance

Paras-Caracci stated Mayor Finlay will be receiving an award at the YMCA Installation and Awards Dinner, and congratulated her and the other awardees.

Item H – Approved

Paras-Caracci moved, Reilly seconded to approve Item H, and carried unanimously.

ITEMS FROM CITY COUNCIL/  
CITY MANAGER

REYES: Stated Monty Montgomery was a pioneer in our community and had his heart in the right place, he would like to see about getting a restroom on the trail where it would be visible, perhaps a porta-potty under the light, inquired about the status report from the Town Center Ad Hoc Advisory Committee (George stated it would be at the next meeting), stated the Gold Line outreach meeting was not well attended and suggested the next one could possibly start at 7:00 p.m. rather than 6:00 p.m., and asked that the meeting be adjourned in memory of Fidel Hernandez.

PARAS-CARACCI: Stated Monty Montgomery is one of many community members who indirectly helped her and he is a good role model, suggested the Public Safety Commission could look at a process for door-to-door permits, attended the YMCA Youth and Government VIP Day in Sacramento, stated the Youth Summit was very successful, and thanked staff and volunteers.

FASANA: Stated we all looked up to Monty Montgomery and he will be missed, some residents commented on the Nextdoor network that they have had less than satisfactory experiences with dispatchers, attended San Gabriel Valley COG legislative caucus meeting where water quality and transportation information was presented, inquired about the athletic field ad hoc meeting (George stated a date has not yet been secured), and stated although he will not be able to attend the Mayor's State of the City, he knows she will deliver a positive message.

REILLY: Attended the Youth Leadership Summit and provided information on sessions conducted, thanked the Mayor's Youth

Council for helping with the summit and thanked Cal-Am for breakfast, stated the Duarte City News gets better with each issue, and stated she enjoyed the YMCA model legislature event in Sacramento.

FINLAY: Stated since residents of Bradbury and Monrovia also use the trail, we might look at a collaborative effort for a restroom, announced Monty Montgomery services in Costa Mesa and described his public service, and stated Councilmember Paras-Caracci did a wonderful job at the Youth Summit.

ADJOURNMENT

Reilly moved, Fasana seconded to adjourn the meeting at 8:46 p.m., in memory of J. A. "Monty" Montgomery, Justin Carr, and Fidel Hernandez, carried unanimously.

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Mayor Margaret Finlay

ATTEST:

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City Clerk

RESOLUTION NO. CFFA-13-02

**A RESOLUTION OF THE DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY ADOPTING A CONFLICT OF INTEREST CODE AND ESTABLISHING DESIGNATED POSITIONS AND DISCLOSURE CATEGORIES**

WHEREAS, by previous action duly and regularly taken, the City of Duarte ("City") and the Duarte Housing Authority ("Housing Authority") have heretofore executed a Joint Exercise of Powers Agreement, dated February 1, 2013 (the "Agreement"), by and between the City and the Housing Authority, which agreement created and established the Duarte Community Facilities Financing Authority ("Authority"); and

WHEREAS, the Political Reform Act (Gov. Code §87300 *et seq.*) requires the Authority to adopt a conflict of interest code; and

WHEREAS, the Authority is permitted to use the conflict of interest code adopted by the City of Duarte as the Authority's code; and

WHEREAS, the Authority has determined that it is in the best interest of the Authority to adopt and use the City's conflict of interest code as the Authority's code and to comply therewith to insure uniformity in the application of conflict of interest provisions;

NOW, THEREFORE, the Board of the Duarte Community Facilities Financing Authority resolves as follows:

Section 1. The Authority hereby adopts the City of Duarte's conflict of interest code, as set forth in Chapter 2.44 of the Duarte Municipal Code, including, without further action of the Authority, any amendments to said conflict of interest code as the City may adopt from time to time.

Section 2. The designated positions under the Authority's conflict of interest code shall be the following: Authority Board Members, Executive Director, Assistant Executive Director, Authority Treasurer, and Authority Legal Counsel.

Section 3. The disclosure categories applicable to City officials and personnel in their City capacities shall be applicable to those officials and personnel in their Authority capacities.

Section 4. The Authority Secretary shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 26<sup>th</sup> day of February, 2013.

/s/ Margaret Finlay  
Chair Margaret Finlay

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       ) ss.  
CITY OF DUARTE                 )

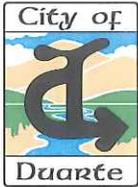
I, Marla Akana, Secretary of the Duarte Community Facilities Financing Authority, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. CCFA-13-02 was adopted by the Duarte Community Facilities Financing Authority at a regular meeting of said Authority held on the 26<sup>th</sup> day of February, 2013, by the following vote:

AYES:        Authority Members: Fasana, Paras-Caracci, Reilly, Reyes, Finlay

NOES:        Authority Members: None

ABSENT:     Authority Members: None

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/s/ Marla Akana  
Secretary Marla Akana



## MEMORANDUM

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**To:** Mayor and City Council

**From:** Rafael Casillas, P.E., Public Works Manager *RC*

**Date:** March 12, 2012

**Subject:** City Council Acceptance – Duarte Fitness Center Pool Improvements, City Project # 12-4

### RECOMMENDED ACTION

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Staff recommends that the City Council accept the project “Duarte Fitness Center Pool Improvements” and authorize the City Clerk to initiate the Notice of Completion.

Sea Clear Pools Inc., has satisfactorily completed the above project. The cost for this project is \$110,791.01. The project is funded from the General Fund and eligible for equipment rebates from Southern California Edison and the Gas Company.

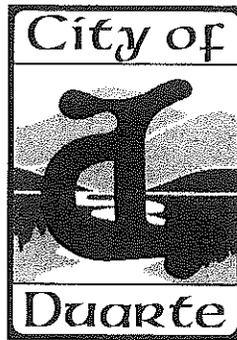
### BACKGROUND

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On August 29, 2012, the City Clerk’s Office publicly open bids for the above project. The scope of work consisted of the installation of energy efficiency measures on the two swimming pool pump motors, repair the associated electrical panel, replace seven substandard pool facility light standards and the replacement of two pool heaters. The project is eligible for an equipment reimbursement of material cost from a Southern California Edison’s Energy Grant of \$13,500. Due to unforeseen conditions, a change order was issued to Sea Clear Pools Inc. to remove and replace the pool heaters. The new energy efficient pool heaters are eligible for a Southern California Gas Company rebate of \$5,000.

This project is fully funded by the General Fund and eligible for equipment rebates from utility companies. The City anticipates a reimbursement of approximately \$18,500 from utility companies and an annual energy saving over \$16,600.

**DISTRIBUTION:** Community Development Director  
City Clerk  
Staff



## Proclamation

### AMERICORPS WEEK

**WHEREAS**, service to others is a hallmark of the American character, and throughout our history, citizens have stepped up to meet our challenges by volunteering in their communities; and

**WHEREAS**, the AmeriCorps national service program, locally Duarte's Promise: The Alliance for Youth, has proven to be a highly effective way to engage Americans in meeting national and community needs; and

**WHEREAS**, the Corporation for National Service has declared the week of March 9-17, 2013, as National AmeriCorps Week, and Duarte's Promise: The Alliance for Youth will be recognized and honored by City of Duarte Councilmembers for their hard work, and dedication year-round to this community. Duarte's VIPS will also attend a celebratory luncheon during this week, to unite partner sites and congratulate each members' positive change within the community. Following National AmeriCorps Week, Duarte's Promise will be conducting the 9<sup>th</sup> Annual César Chávez Community Volunteer Project on March 23 from 9:00 a.m. to 1:00 p.m., consisting of a series of beautification projects that will take place at Westminster Gardens; and

**WHEREAS**, each year AmeriCorps provides opportunities for more than 80,000 citizens across the nation, including seven in the Duarte area serving at the Duarte City Hall, Public Safety Office, Duarte Senior Center, Duarte Parks and Recreation, Santa Anita Family YMCA, and Foothill Unity Center, to give back in an intensive way to our communities, our state, and our country; and

**WHEREAS**, more than 706,000 men and women, including seven members from Duarte, have taken the AmeriCorps pledge to "get things done for America" since 1994, and have served more than 860 million hours nationwide, including 11,090 hours served by AmeriCorps members from Duarte, helping to improve the lives of our state's most vulnerable citizens, respond to disasters, strengthen education, expand economic opportunities, provide health services, and support veterans and military families; and

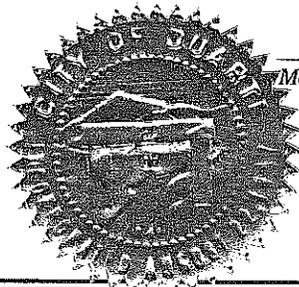
**WHEREAS**, AmeriCorps members of Duarte have earned more than \$100,000 in Segal AmeriCorps Education Awards over the last ten years to help pay for college or pay back student loans, and AmeriCorps Week is an opportune time for the people of Duarte to salute AmeriCorps members and alums for their service, thank AmeriCorps' community partners, and bring more Americans into service.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Duarte hereby proclaims March 9-17, 2013, as AMERICORPS WEEK IN DUARTE, and urges citizens to thank AmeriCorps members and alumni for their service, and to find ways to give back to their communities.

ATTEST:

City Clerk Marla Akana  
Duarte, California

March 12, 2013



\_\_\_\_\_  
Mayor Margaret Finlay

**MEMORANDUM**

**TO:** Mayor and Councilmembers  
**FROM:** Darrell J. George, City Manager  
**DATE:** March 7, 2013  
**SUBJECT:** Conference Attendance – City Council Meeting of March 12, 2013

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Latino and Latina Roundtable of the San Gabriel and Pomona Valley and  
Latin American and Labor Council for Latin American Advancement  
9<sup>th</sup> Annual César Chávez Breakfast Fundraiser  
March 29, 2013  
Pomona  
\$40 per person



Latino and Latina Roundtable of the San Gabriel and Pomona Valley & the Latin American and Labor Council for Latin American Advancement

Present

9th Annual CÉSAR E. CHÁVEZ

# Breakfast Fundraiser



Join us in honoring leaders who have demonstrated a commitment to service and values highlighted by César Chávez.

**FRIDAY, MARCH 29<sup>th</sup> 2013**  
**From 8:00 am to 10:00 am.**  
7:15-8:00 am check-in

**JOSEFINA FLORES**

Organizer and activist with the UFW since the 1960s

**ROBERTA PERLMAN**

Pomona Unified School District Board of Education President

**DELFINO SEGOVIA**

Teacher, mentor and community activist

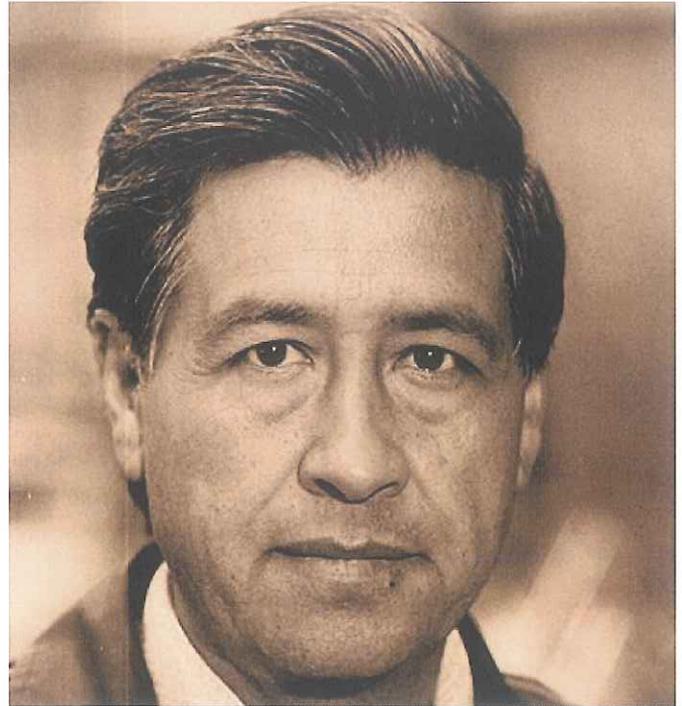
**FRANCISCO SOLA**

Community leader on voter registration and immigration reform

**WAREHOUSE WORKERS UNITED**

Organizing for dignity, respect and justice for workers

**Social Justice Scholarship Recipient will be announced**



**LOCATION**

The Avalon at the Fairplex  
1101 West McKinnely Ave., Pomona, CA 91767  
Enter Pomona Fairplex at Gate 1

Please R.S.V.P. by March 16<sup>th</sup> with [Rose Calderon, calderon.rose@gmail.com](mailto:calderon.rose@gmail.com) (909) 599-8193

Name of Individual: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_

E-Mail Address: \_\_\_\_\_

How many seats would you like to purchase \_\_\_\_\_ x \$40 = \_\_\_\_\_  
Please list the names of the people in your party (including you)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

How many tables would you like to purchase \_\_\_\_\_ x \$400 = \_\_\_\_\_  
Each table seats ten people.

Please detach and mail this form along with your check to the following address: Latina/o Roundtable  
c/o Rose Calderon  
613 N. Northcape Ave.  
San Dimas, CA 91773  
\* Please make check payable to the Latina/o Roundtable

Levels of Support	
Golden Table \$600	Special Recognition 1/2 Page Ad in Event Program
Silver Table \$500	Special Recognition 1/4 Page Ad in Event Program
Bronze Table \$400	Special Recognition Name listed on Program



# MEMORANDUM

**TO:** Mayor and City Council  
**FROM:** Craig Hensley, Community Development Director *CH*  
**DATE:** March 12, 2013  
**SUBJECT:** Final Report from Town Center Ad Hoc Committee

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Attached is the final report of the Town Center Ad Hoc Committee. Over the past 12 months, this Committee has put a lot of time and effort into this comprehensive study of the Town Center area. The process has been extremely productive and with a unanimous vote the Committee presents this report.

At the meeting, the Committee will present the final report to the City Council. Committee members and City Staff will be available for questions.

Final Report

# Duarte Town Center

Ad Hoc Committee



## Committee Members

*Chair, Nick Zigic*

*Vice-Chair, Tony Molina*

*Henry Baltazar*

*Adrian Barajas*

*Tina Carey*

*Steve Hernandez*

*Nathan Kirschenbaum*

*Lisa Magno*

*Lino Paras*

*Manoj Patel*

*Nadine Reyes-Schmidt*

*Thomas Reynoso*

*Sister Mary Ignatius, OCD*

*Elvira Still*

*Lindy Ysassi*

## City Staff

*Craig Hensley, AICP, Community Development Director*

*Irma Hernandez, Senior Planner*

## Committee Background

In March 2012, the City Council adopted a Resolution to establish the Town Center Ad Hoc Committee. The Committee included the seven members of the City's Economic Development Commission (EDC) and two citizen appointments from each of the five Councilmembers. The Committee met on the first Wednesday of each month and was organized so that the chairperson and vice-chair person of the EDC held the same role for the Committee.

The mix of EDC and citizen involvement was an important element of the Committee. The EDC is regularly tasked with addressing the City's economic development plan and in July 2011, the City Council adopted an Economic Development Strategy to guide the City's economic development goals for the next several years. One of the main goals of that plan was to "Implement Smart Land Use." Included in that goal was a task to address the Town Center area and to develop a plan for a mixed use development approach to the area.

Citizen involvement that came from the appointed members of the committee was also vitally important. For several years, the community has desired new development in the Town Center area. The Ad Hoc committee provided a great advantage having a good cross section of the community involved in studying the Town Center issue. The Committee and its work ensured that voice of the entire community was being heard.

## Committee Goals

The primary goal for the Town Center Ad Hoc Committee was to consider the potential for the Town Center area and prepare a recommendation to the City Council on a vision of the area and a plan to implement that vision.

The Committee set out to accomplish the following:

- Establish a study area on which to focus.
- Conduct an in depth study of the study area.
- Consider the feasibility and scope of a Duarte Town Center specific plan or other zoning document to allow more dense development in portions of the study area.

- Consider past activity and community studies of the area.
- Investigate existing property, use, ownership and maintenance.
- Consider development potential, short term and long term.
- Receive input from real estate professionals.
- Include the public in the process by holding a community workshop on the topic.

In general, the Committee felt that Duarte lacks a community gathering place, a place where pedestrians can shop, dine, walk, be entertained and enjoy; a place that helps define Duarte. The Committee understands that implementing this vision may take many years, but that the path to success is a unified community vision that the entire city can embrace. So the main goal of the Committee was to recommend to the City Council a path that will lead our City in the right direction.

## Setting of the Area

Duarte has never had a traditional downtown or city center area. Commercial development in Duarte has centered around strip center development along Huntington Drive and freeway oriented development. As Duarte developed, location of local important places such as City Hall, Community Center, Senior Center, School District Offices, Teen center and the Los Angeles County Library in the same area brought an increased focus on a specific area as the city's center.

The Town Center area has been developed over a period of years. There is a mix of older and newer development as well as a variety of property conditions. Some of the older and poorly maintained properties are impediments to a strong Town Center. There are many absentee landlords that own property in the study area and in too many cases these owners have done little to maintain and strengthen the properties that they own. Two of the prime examples of the negative impact of the negligence of absentee ownership, the Mike's Foods center and the Big Lot's center are located at the prime intersection in the study area, Huntington Drive and Buena Vista Street.

While the area has its share of negative influences, there are positives. The Andres Duarte Terrace senior apartments, the Ralph's shopping center and Andres Duarte Plaza are all newer and well maintained examples. This Town Center area has great potential for a variety of reasons. It is easily accessible from the 210 Freeway with access on Buena Vista Street; there are several underutilized properties that allow reasonable opportunities for redevelopment; the many civic buildings provide a strong community focus for the area; and there are many important local places nearby such as Duarte High School, Northview Middle School, the Performing Art Center and Santa Teresita.

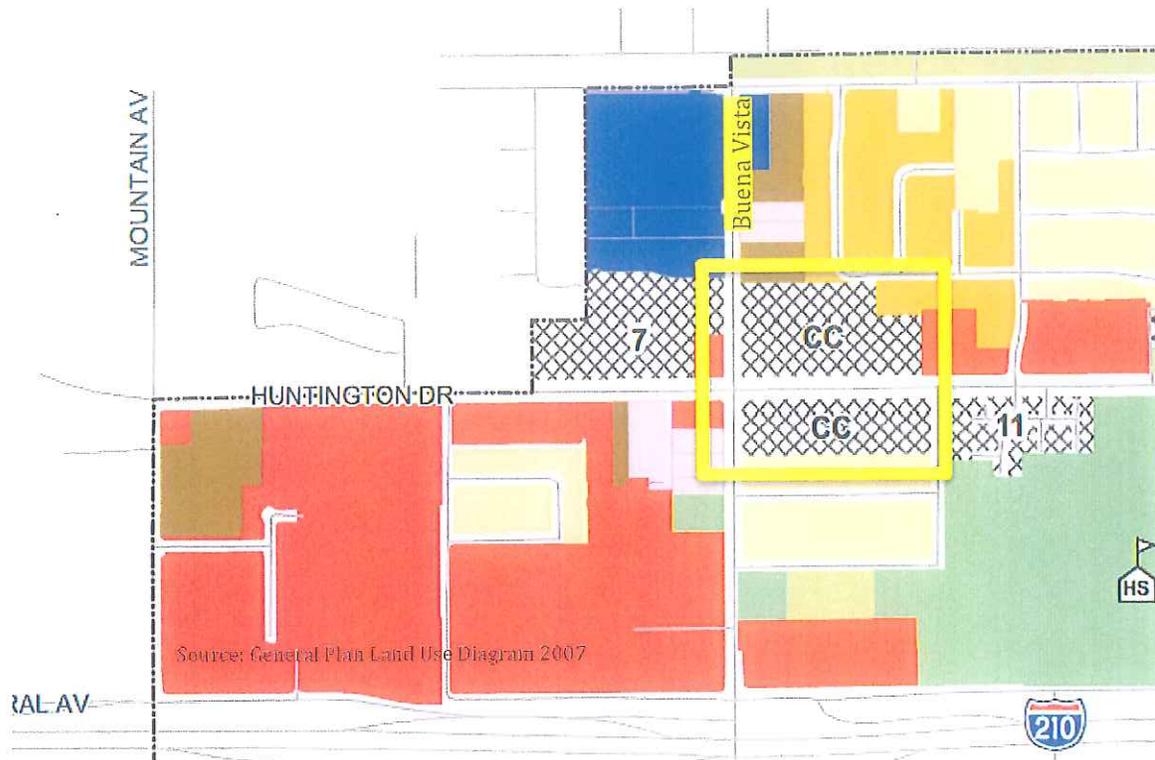
## Data and Studies Reviewed

To assist forming its recommendation, the Committee reviewed past information that was generated about the Town Center area and the community in general. As a part of its initial research the Committee reviewed the following documents:

**2003 Town Center Concept Plan** - Adopted by City Council in 2003, the Town Center Concept plan was a vision for Duarte's future that addressed the same general area that this Committee is addressing. The document was the work of a consultant, Moore Iacofano, Goltsman, Inc (MIG) and a task force appointed by the City Council at that time. The plan called for mixes of uses combining retail and housing, office and housing or office and retail. It encourages infill development over time, a pedestrian friendly environment and streetscape improvements.

**Duarte General Plan** - The General Plan is considered the City's blueprint for the future. It lays out the vision for how the City is to be developed over the next 10 to 20 years and beyond. The plan contains many goals designed to help City officials and the community to preserve the community while building a future that enhances the quality of life for Duarte residents. It was adopted by City Council in 2007.

The Land Use Element outlines the goals for the "City Center" area. This area was generally defined as the Big Lots Center, Romo Automotive and the Burger King site. This was a smaller area than the area outlined in the 2003 Town Center Concept Plan.



**Duarte Economic Development Strategy** - The Economic Development Strategy provides an overview of Duarte’s demographic and economic characteristics, retail sales, housing stock, employment and industry overview, and strategies for economic. It was adopted by City Council in 2011.

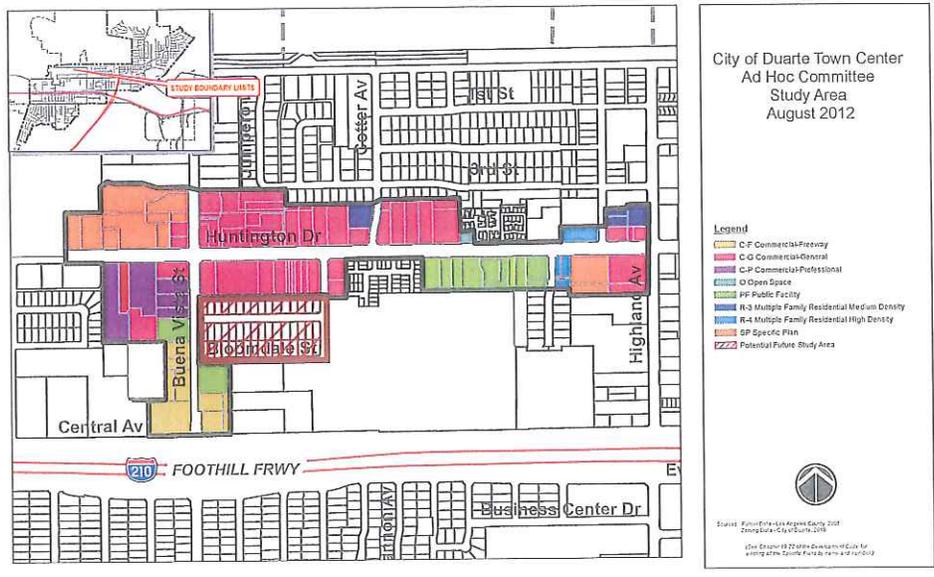
**Duarte Development Code** - The Duarte Development Code (DDC) promotes the public health, safety and general welfare and implements the policies of the General Plan. The DDC establishes land use districts (zones) designated to promote the orderly growth of the community. In addition to regulating use of property, the DDC also provides standards such as building setbacks, height of structures and lot area.

The Committee also reviewed, demographic data, the City’s zoning map and detailed aerial photographs of the study area as part of its in depth analysis.

## Defining Study Area/Study Area Boundaries

The Ad Hoc Committee agrees with the general boundaries of the 2003 Town Center concept plan. Starting from this point, the Ad Hoc Committee selected the boundaries indicated in the map below.

Creating a Town Center that would have the chance to grow and change over time was important to the Committee and the Committee felt that a focus on both Huntington Drive and Buena Vista Street was essential.



## Underutilized Properties

At its June 2012 meeting, the Committee selected properties that it felt were underutilized or that it felt warranted major aesthetic improvement in the coming years. The Committee used the following definition to generate the underutilized properties list: *An under utilized property is, generally, a property that can be developed with more density including additional square footage, more stories, increased lot coverage and has buildings that may be in a good or a deteriorated state. It may also be a property where the aesthetic qualities of the buildings are not at a standard acceptable to the community.* This exercise was meant to build consensus on how much change was appropriate in the future. This discussion included understanding property zoning, so the current plan for maximum build out was understood. Table 1, beginning on the next page, is a listing of the properties that the Committee felt were underutilized.

List of Underutilized Properties		Table 1
Address	Description/Comments	
1434 Buena Vista St.	Performance Nissan. Corner parcel should be developed, balance of property car sales.	
1427 Buena Vista St.	Old Spaghetti Factory. Parking north of building should be assembled with east frontage Car Max parking area and developed.	
1131 Central Avenue	Car Max, east frontage parking area (1319 Buena Vista St.) see above row.	
1235 Buena Vista St.	Office. Underutilized property. Should be assembled to create larger development piece.	
1227 Buena Vista St.	Office. Underutilized property. Should be assembled to create larger development piece.	
1219 Buena Vista St.	Office. Underutilized property. Should be assembled to create larger development piece.	
1200 Huntington Dr.	Duarte Inn. Hotel. Underutilized, poorly maintained. Should be assembled to create larger development piece.	
1202-1210 Huntington Dr.	Commercial Center. Underutilized, poorly maintained. Should be assembled to create larger development piece.	
1212 Huntington Dr.	El Pollo Loco. Underutilized, poorly maintained. Should be assembled to create larger development piece.	
1214 Huntington Dr.	Apartments. Should be assembled to create larger development piece.	
1220 Huntington Dr.	Monrovia Convalescent Hospital. Underutilized, poorly maintained. Should be assembled to create larger development piece.	
1230 Huntington Dr.	Office. Underutilized property. Should be assembled to create larger development piece.	
1302-1420 Huntington Dr.	Mike's Food Center and Carl's. Underutilized, poorly maintained. In need of complete renovation or redevelopment.	
1303 Huntington Dr.	Liquor Store. Underutilized, poorly maintained. Should be removed for more appropriate development with positive corner focus.	
1307-1355 Huntington Dr.	Big Lot's Center. Underutilized, poorly maintained. In need of complete renovation or redevelopment.	
1409 Huntington Dr.	Romo Automotive. Underutilized property. Should be assembled to create larger development piece.	
1423-1437 Huntington Dr.	Vacant. Underutilized property. Should be assembled to create larger development piece.	
1475 Huntington Dr.	One West Bank. Building in good shape, could be developed at higher density.	
1430-1440 Huntington Dr.	Bank of America and Offices. Underutilized. Could be developed at higher density or with more up to date building.	
1501 Huntington Dr.	Ranchero. Underutilized. Could be developed at higher density or with more up to date building.	
1515 Huntington Dr.	Rancho Inn Motel. Underutilized, poorly maintained. In need of complete renovation or redevelopment. Could be assembled to create larger development piece.	
1521 Huntington Dr.	Village Restaurant. Underutilized, poorly maintained. In need of complete renovation or redevelopment. Could be assembled to create larger development piece.	
1533 Huntington Dr.	Days Inn. Underutilized. Could be developed at higher density or with more up to date building.	
1701-1723 Huntington Dr.	Auto repair and Sushi restaurant. Underutilized and poorly maintained. Property in need of redevelopment and should be developed at higher density or with more up to date building.	
1735-1745 Huntington Dr.	Commercial Center. Underutilized and poorly maintained. Property in need of redevelopment	

	and should be developed at higher density or with more up to date building.
1118-1122 Oak Ave.	Multi-family. Underutilized, poorly maintained. In need of complete redevelopment. Could be developed with adjacent Huntington Dr. pieces at higher density.
1755 Huntington Dr.	Office building. Underutilized. Could be developed at higher density or with more up to date building.
1115-1139 Highland Ave.	Apartments. Not poorly maintained, but could be assembled with Huntington Dr. and Oak Ave. properties for higher density development.
1750-1764 Huntington Dr.	Office building. Underutilized. Could be developed at higher density or with more up to date building.

## Community Meeting

On Wednesday, October 3, 2012, the Town Center Ad Hoc Committee held a Community Workshop to discuss the Town Center area. To announce the community workshop invitations were posted at various locations throughout the City, such as City Hall, Los Angeles County Library, the Senior Center and Starbucks. An invitation was also placed on the City's website and flyers, in English and Spanish, were provided to every elementary school student in all local public schools.

Approximately 15 people attended the community workshop and provided comments on a variety of issues that included: Appropriateness of the Study Area Boundaries; What Type of Development Would You Like in the Town Center area; and Strengths and Weaknesses of the Area.

The following are comments that were received:

### Input on study area boundaries

Big Lots and Mikes Food Centers are unattractive;  
 Mike's Food parking lot needs repair;  
 Create gathering place in vacant areas, gathering place qualities: nice and upscale, with cafe tables, fountains, comfortable;  
 some desire no housing;  
 desire for a town center at Goldline stop;  
 place to attract fashion retail stores;  
 comment made to expand into northerly residential area;  
 established boundary heart of the city but not coherent, need right set of stores;  
 group stores into shopping centers;  
 put in more youth friendly developments.

What type of development would be desired within the project area?

Picturesque gathering area with trees, sitting area, fountain; provides youth activities, food options, cafes, and opportunities for upscale bars;  
restaurants with outdoor seating;  
capitalize on Route 66 theme, draw visitors from City of Hope, segment and connect types;  
bring a variety of retail stores; build on strengths of our successful businesses;  
safety; warm and fuzzy feeling;  
mixed use in certain areas;  
consideration for parking (enough for residents);  
bring entertainment uses;  
encourage themed architecture, multi-level developments;  
consider views and keep feeling of small town;  
move library into the town center area;  
set up community services building; transparency in the projects for the community.

What are the strengths and weaknesses of the project area?

*Strengths –*

ordinances are in place to keep up the maintenance of shopping centers but need enforcement of ordinances that are in place;  
ability to build on cultural and demographic mix of the City;  
local city operated transit;  
City of Hope;  
current landscaping on lots (trees);  
small town/quiet/rural community;  
bike/horse trail path.

*Weaknesses –*

multiple ownerships in certain centers;  
aesthetics of the Mike's Food and Big Lots shopping Centers; marketability,  
too few pedestrian friendly businesses;  
Not all businesses people friendly;  
lack of aesthetics cohesiveness;  
lack of higher end stores;  
lack of City of Hope traffic to area;  
no plan to implement downtown center;  
bring businesses that attract customers from out of the area;  
need for more youth and young adult related establishments.

## Progress Over in the Past 10 Years

The Committee believes that the 2003 Town Center Concept Plan was a step in the right direction. Many good things have happened in the study area over the past 10 years, such as:

Huntington and Pops Road (SCPH Phase 1) – July 2004, City acquired the property for an 80 senior housing project. Construction of 80-unit senior housing project completed in May 2006.

SWC Huntington and Pops Road – In January 2005, City acquired Evergreen Motel site. The site was cleared is now vacant land.

1565-1605 Huntington Drive – 17-unit residential project completed in 2008. A market study indicated that mixed-use would not work on that site for the following reasons: mid-block location, size and depth of the property, surrounding land uses (per the June 2004 minutes). Options studied included mixed use (including retail, restaurant, and residential) and two that included retail and restaurant with outdoor patio and access to Third Street. Direction was given to incorporate a public plaza into a portion of the development (see Duarte Plaza).

Duarte Plaza – A 9,100 s.f. public plaza located across from City Hall completed in January 2009.

1551 Huntington – Grace Fellowship Church – Remodel and expansion completed in 2011.

Huntington and Pops Road (SCPH Phase II) - The Andres Duarte Specific Plan was amended 2011, to facilitate the construction of a 43-unit senior housing project. Construction is anticipated in mid-2013.

The Committee also believes that the outlook of the area is positive. At the November 7, 2012 Ad Hoc Committee meeting, the Charles Company gave a presentation regarding development in the study area. The proposed development would include a complete renovation of the Big Lot's Center, a new commercial development on the Huntington Drive/Buena Vista Street intersection and a new high density apartment project on the vacant lots between One West Bank and the Big Lots Center. While there are many details still to work out, the proposal is motivated by the 2003 Town Center vision. The Committee unanimously supported the conceptual idea presented by the Charles Company.

## Town Center Vision

The Town Center Ad Hoc Committee believes that the framework of the 2003 Town Center Concept Plan will provide a path to move the city forward and that its work is an extension of that vision. The City has had the vision for a Town Center for some time and although many good things have happened in the area, the vision needs to be restated. Therefore, the Committee recommends the following vision statement:

Duarte's Town Center is an attractive mixed-use activity center that offers a "sense of place" or focal point for the community. The mix of uses includes retail stores, restaurants, housing, civic buildings and central public plazas with open space. These central spaces and the uses around them serve as Duarte's civic and cultural hub – an active, dynamic social gathering space for the entire city. The Town Center is one of many districts that compromise the city, linking other activity areas throughout the community.

Duarte's Town Center is family-oriented and pedestrian friendly, inviting people to stroll along storefronts, dine outdoors at a café, relax with friends on a lawn or bench, enjoy public art and come together for community events. This Town Center provides amenities for people of all ethnicities, ages, orientations and income levels, reflecting and celebrating the diversity of our city's residents.

Duarte's Town Center is economically strong and diverse. It preserves and enhances the City's existing locally owned businesses while attracting some larger, more regionally oriented anchor commercial uses. New stores and services in the Town Center improve the City's retail tax base while complimenting, rather than competing with, established businesses in other parts of town and neighboring cities. Duarte's economic position is also bolstered by its proximity to major transportation corridors, including Huntington Drive/Route 66, I-210, I-605 and the Gold Line.

Duarte's Town Center has a distinctive design that draws upon the City's history while looking forward to modern architectural styles. Influential themes such as Route 66 imagery help to create a truly unique, innovative and vibrant Town Center for residents to enjoy long into the future.

## Final Recommendation to City Council for Action

To fully implement the Town Center vision, the Town Center Ad Hoc Committee recommends the following to the City Council:

- 1) That the Town Center Study Area be established as proposed by the Ad Hoc Committee and shown in Exhibit A.
  
- 2) Provide budgeted funding to develop a Specific Plan that follows the development principles set forth in the 2003 Town Center Concept Plan. The focus of this Specific Plan will be to: implement the Town Center Vision; encourage and promote mixed-use development in the area; and to set forth a plan for streetscape improvements in the area.

The Committee further recommends that the City Council extend the timeframe for the Town Center As Hoc Committee and utilize the Committee as an “on-call” committee to advise in the development of the zoning document.

## Report Attachments

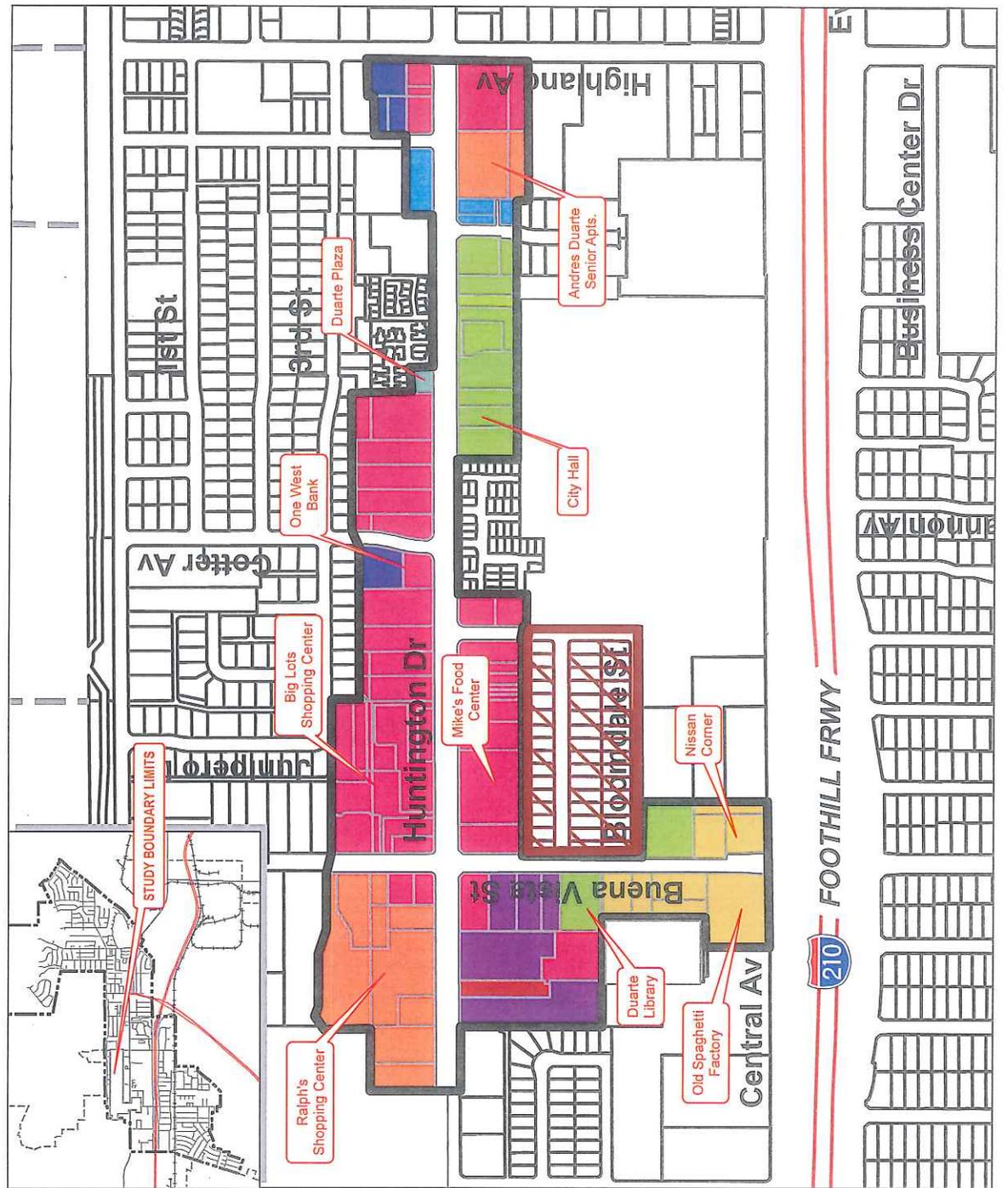
- |           |  |
|-----------|--|
| Exhibit A | Town Center Study Area Map                 |
| Exhibit B | Town Center – Underutilized property map   |
| Exhibit C | Community Workshop Flyer (English Version) |

City of Duarte Town Center  
 Ad Hoc Committee  
 Study Area  
 August 2012

- Legend**
- C-F Commercial-Freeway
  - C-G Commercial-General
  - C-P Commercial-Professional
  - O Open Space
  - PF Public Facility
  - R-3 Multiple Family Residential Medium Density
  - R-4 Multiple Family Residential High Density
  - SP Specific Plan
  - Potential Future Study Area



Sources: Parcel Data - Los Angeles County, 2007.  
 Zoning Data - City of Duarte, 2010.  
 (See Chapter 19.22 of the Development Code for a listing of the Specific Plans by name and number.)



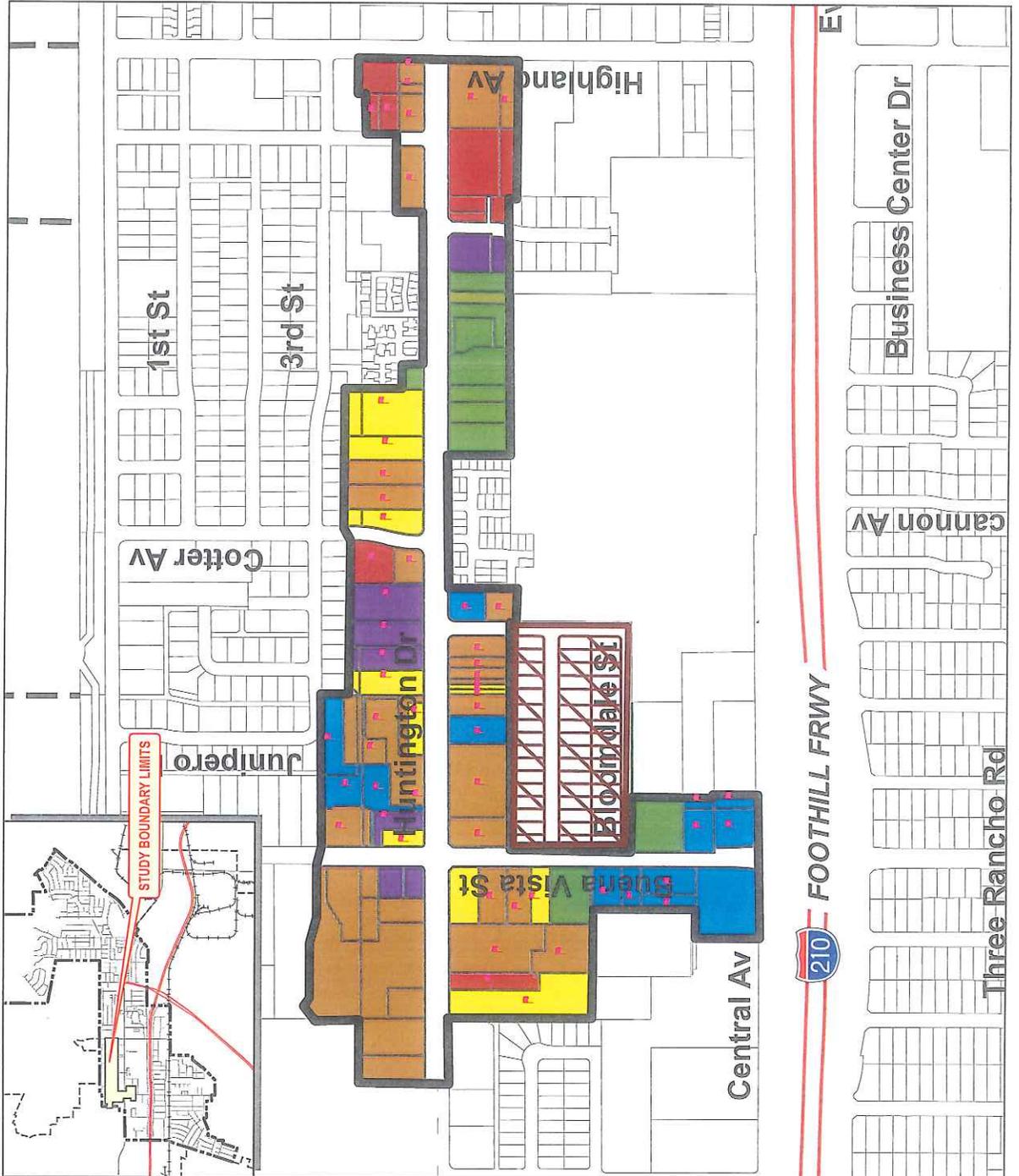
City of Duarte Town Center  
Ad Hoc Committee  
Study Area by  
Ownership

Legend

-  Government Building
-  Residential Multi-Family
-  Commercial/Office Tenant Owned (Owner Operated)
-  Corporate
-  Government Vacant
-  Commercial/Office Investor Owned (Absentee Owner)
-  Underutilized
-  Potential Future Study Area

Sources: Parcel Data - Los Angeles County, 2007.  
Zoning Data - City of Duarte, 2010.

(See Chapter 19.22 of the Development Code for a listing of the Specific Plans by name and number.)



# Join Us For a Community Workshop to Discuss Ideas For Duarte Town Center

Wednesday, October 3, 2012 at 6:30 p.m.  
Duarte Community Center  
1600 Huntington Drive

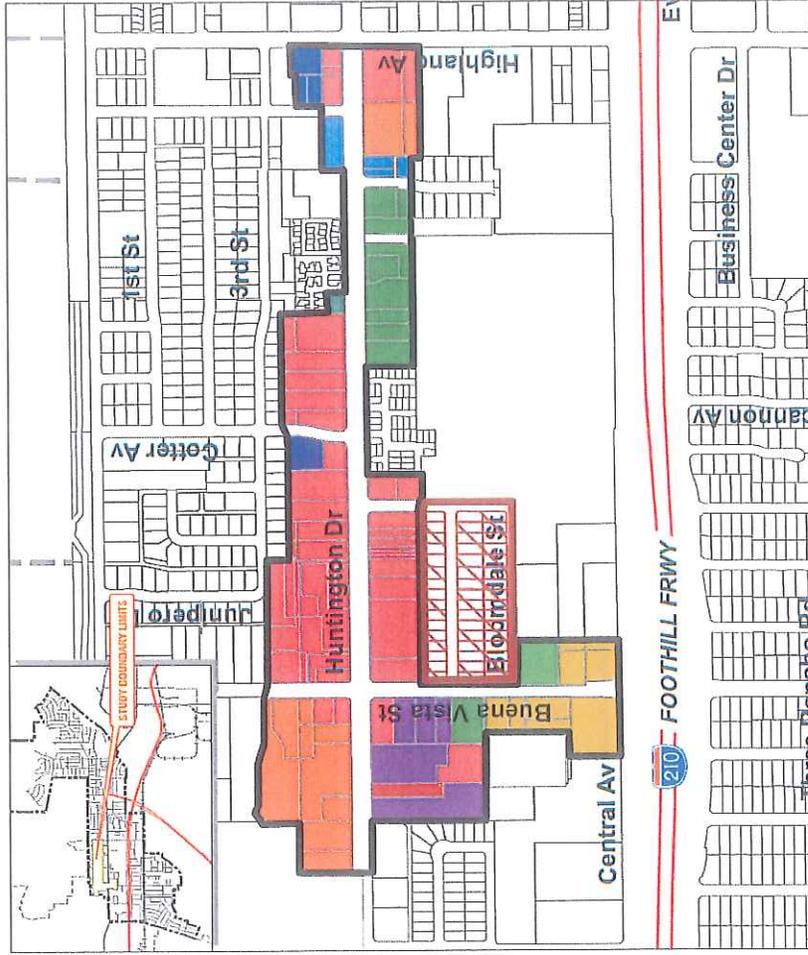
Hosted by the Town Center Ad Hoc Committee

Join us for a community workshop to discuss ideas for the Duarte Town Center area. In March, the City Council appointed a 17 member ad hoc committee to study the feasibility, scope and vision of a potential town center for Duarte. The committee has been meeting monthly since April discussing the Town Center topic. Part of the City Council direction to the Town Center Ad Hoc Committee was to hold a public workshop to consider the ideas and opinions of residents and local businesses. The workshop will be an opportunity to share your opinions on the potential future development of a town center area in Duarte. The Town Center Ad Hoc Committee will consider this input when forming its recommendation to the City Council.

The town center is, generally, defined as an area that includes properties along Huntington Drive between Highland Avenue and 1000 feet west of Buena Vista Avenue and along Buena Vista Avenue from the 210 Freeway to Huntington Drive. (See map to the right)

The Workshop will be held on Wednesday, October 3, 2012 at 6:30 p.m. in the Community Center at 1600 Huntington Drive.

For more information, you may contact the Community Development Department at 626-357-7931.

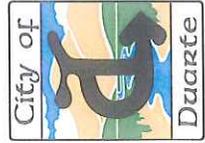


City of Duarte Town Center  
Ad Hoc Committee  
Study Area  
August 2012

**Legend**

- C-F Commercial-Flexibility
- C-G Commercial-General
- C-P Commercial-Professional
- Open Space
- PF Public Facility
- R-3 Multiple Family Residential Medium Density
- R-4 Multiple Family Residential High Density
- SP Specific Plan
- Potential Future Study Area

Source: Planning Department, City of Duarte, CA  
City of Duarte is a City of the Development Center for the Los Angeles Area  
Along with the City of Duarte, CA



# MEMORANDUM

**TO:** Darrell J George, City Manager and Financing Authority Executive Director

**FROM:** Kristen Petersen, Assistant City Manager

**DATE:** March 12, 2013

**SUBJECT: REFINANCING 2001 CERTIFICATES OF PARTICIPATION**

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## Background

In 2001, the City of Duarte issued its Variable Rate Refunding Certificates of Participation in two series. The 2001 Series A Certificates refinanced debt issued in 1992 to build the senior center and the community center. The 2001 Series B Certificates refinanced debt issued in 1992 that was originally issued to pay for the cable system acquisition. The 2001 Series B Certificates have been paid in full, and only the 2001 Series A Certificates are outstanding in the amount of \$1,245,000. The 2001 Series A Bonds mature in 2022.

The 2001 Series A Certificates bear interest at a variable rate. Because the owners of the 2001 Certificates can redeem them at any time on 7 days' notice (which allows the 2001 Certificates to carry such a low interest rate), the City is required to secure repayment of the 2001 Certificates with a letter of credit. The current letter of credit with Union Bank expires in approximately one year, and the confirming letter of credit (which allowed the 2001 Certificates to trade like AAA-rated bonds) expires in April 2013. The issuer of the confirming letter of credit has indicated that it will not be renewed due to the size of the transaction.

Non-renewal of the confirming letter of credit requires some action on the part of the City. The City could either remarket the 2001 Certificates with the Union Bank letter of credit only, or the City could convert the 2001 Certificates to a fixed rate. Staff analyzed the cost of each option and concluded that the conversion of the 2001 Certificates to a fixed rate was more cost-effective and required no out-of-pocket costs – that is, all costs could be paid from proceeds of Refunding Certificates issued to refinance the 2001 Certificates at a fixed rate. Further, it removes the interest rate risk associated with variable rate debt, and eliminates the periodic renewal of the letter of credit and renegotiation of fees with a letter of credit bank.

Due to the small size of the issue, staff is recommending that the Refunding Certificates be sold through a direct purchase to one owner. The City's financial advisor recommended Piper Jaffray & Co. act as placement agent for the Refunding Certificates (taking the place of the traditional underwriter role in selling securities). The placement agent received bids from 3 banks. The lowest fixed rate bid was from BBVA Compass Bank, at 2.01%.

**Darrell J. George, City Manager and Financing Authority Executive Director**

**March 12, 2013**

**Page 2**

In order to refinance the 2001 Certificates at a fixed rate, the City Council and the Board of Directors of the Duarte Community Facilities Financing Authority have been presented with resolutions for their consideration. The resolutions approve the forms of the following documents to be executed by the parties thereto:

- Site and Facility Lease between the City and the Authority
- Lease Agreement between the City and the Authority
- Trust Agreement among the Trustee, the City and the Authority
- Assignment Agreement between the Trustee and the Authority
- Purchase Agreement between the City and Compass Mortgage Corporation

The resolutions also approve the execution of the various documents in connection with the refinancing by the Mayor, the City Manager, Assistant City Manager and City Clerk and by the Chair, the Executive Director, Assistant Executive Director, Treasurer and Secretary. The resolutions limit the amount of the Refunding Certificates to a par amount not to exceed \$1,500,000 and the interest rate not to exceed 2.5%.

#### **Fiscal Impact**

The City's total annual payments with respect to the 2001 Certificates are comprised of principal payments, interest at a variable rate (currently 2.0%), remarketing fees of 0.125%, letter of credit fees of slightly more than 1%. In total, the financing rate is currently over 3.2% when all the annual costs are added to the interest rate.

The City also expects that sometime over the remaining 9 years, the variable interest rate will increase slightly, and that the letter of credit fees will increase when the Union Bank letter of credit is renewed in April 2014, since the outstanding balance of the 2001 Certificates continues to decline as it is paid off. The projected annual debt service on the 2001 Certificates ranges from \$142,000 to \$156,000 over the remaining 9 years.

The fixed rate Certificates of Participation are to be issued in the estimated amount of \$1,335,000. This amount will be used to prepay the 2001 Certificates (\$1,245,000) and pay costs of issuance (\$90,000). However, the interest rate will be a fixed 2.01%. The annual fixed payments will be average \$151,000.

#### **Recommendation**

It is recommended that the City Council adopt Resolution No. 13-03 approving the form and authorizing the execution of certain lease financing documents in connection with the sale of certificates of participation related thereto, and authorizing and directing certain actions with respect thereto.

**Darrell J. George, City Manager and Financing Authority Executive Director**  
**March 12, 2013**  
**Page 3**

It is recommended that the Board of Directors of the Duarte Community Facilities Financing Authority adopt Resolution No. CFFA-13-03 approving the form and authorizing the execution of certain lease financing documents in connection with the sale of certificates of participation related thereto, and authorizing and directing certain actions with respect thereto.

**RESOLUTION NO.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

WHEREAS, the City of Duarte (“City”) and the Duarte Public Financing Authority (the “Public Financing Authority”), a joint exercise of powers authority duly organized and existing under the laws of the State of California, have heretofore entered into a Lease Agreement, dated as of April 1, 2001 (the “2001 Lease Agreement”) pursuant to which the Public Financing Authority agreed to lease to the City certain real property and improvements located thereon; and

WHEREAS, the City and the Public Financing Authority have previously entered into certain agreements with respect to the execution and delivery of the City of Duarte 2001 Variable Rate Refunding Certificates of Participation, \$2,090,000 Series A (the “2001 Series A Certificates”) and \$3,910,000 Series B (the “2001 Series B Certificates”), which 2001 Series A Certificates and 2001 Series B Certificates evidenced undivided proportionate interests in base rental payments made pursuant to the terms the 2001 Lease Agreement; and

WHEREAS, the City has previously prepaid a portion of the base rental payments sufficient for the Public Financing Authority to prepay the 2001 Series B Certificates; and

WHEREAS, the City desires to prepay the remaining amounts due pursuant to the 2001 Lease Agreement and to defease and refinance the 2001 Series A Certificates; and

WHEREAS, the City wishes to enter into certain leases and other agreements and authorize the sale of 2013 Certificates of Participation (2001 Refunding) (the “Certificates”) under the Trust Agreement described below in order to refinance the 2001 Lease Agreement; and

WHEREAS, the City, in order to facilitate the execution and delivery of the Certificates, intends to lease to the Duarte Community Facilities Financing Authority (the “Authority”), a joint exercise of powers authority duly organized and existing under the laws of the State of California, the real property and improvements located thereon, consisting generally of the City Hall, Community Center and Senior Center (the “Property”), as set forth in Exhibit A to the Site Lease (as defined below) and to lease the Property back from the Authority pursuant to the Lease Agreement (as defined below);

NOW, THEREFORE, the City Council of the City of Duarte resolves, declares, determines, and orders as follows:

Section 1. Authorization of Certificates. The City Council hereby expresses its intention of refinancing the 2001 Lease Agreement through the preparation, sale and delivery of Certificates in an amount not to exceed \$1,500,000.

Section 2. Lease Agreement. The form of the Lease Agreement between the City and the Authority (the "Lease"), presented to the City Council concurrent with this Resolution and on file with the City Clerk (the "Clerk"), is hereby approved. Each of the Mayor of the City (the "Mayor"), the Mayor Pro-Tem of the City ("Mayor Pro-Tem"), the City Manager of the City (the "City Manager"), and the Assistant City Manager of the City (the "Assistant City Manager"), or their designees (collectively, the "Authorized Officers"), is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority the Lease Agreement in substantially said form, with such changes therein as the Authorized Officer or Officers executing the Lease Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the Authorized Officers.

Section 3. Appointment. U.S. Bank National Association is appointed trustee (the "Trustee") under the Trust Agreement (defined below).

Section 4. Trust Agreement. The form of the Trust Agreement (the "Trust Agreement") among the City, the Authority, and the Trustee, presented to the City Council concurrently with this Resolution and on file with the City Clerk, is hereby approved. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority and the Trustee the Trust Agreement in substantially said form, with such changes therein as the Authorized Officer or Officers executing the Trust Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the Authorized Officers.

Section 5. Approval of Private Placement Agreement. The form of the Certificate Purchase Agreement (the "Purchase Agreement") by and among the City, the Authority, and Compass Bank presented to this meeting and on file with the City Clerk is hereby approved. Each of the Authorized Officers is hereby authorized and directed for and on behalf of the City to execute and deliver the Purchase Agreement to Compass Bank in substantially said form, with such changes therein as the Authorized Officer or Officers executing the Purchase Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof by any one of the Authorized Officers.

Section 6. The Assistant City Manager and City Manager to Establish Final Terms of Issuance. The Assistant City Manager, the City Manager, and their designees are each authorized, on behalf of the City, to establish and determine (i) the final principal amount of the Certificates, not to exceed \$1,500,000; and (ii) the final interest rates on various maturities of the Certificates, not to exceed a total interest cost of 2.5% per annum for the Certificates as a whole.

Section 7. Site Lease. The form of the Site and Facility Lease (the “Site Lease”), between the Authority and the City, presented to the City Council concurrent with this Resolution and on file with the City Clerk, is hereby approved. Each of the Authorized Officers is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority the Site Lease in substantially said form, with such changes therein as the Authorized Officer or Officers executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 8. Attestations. The City Clerk or persons as may have been designated by the City Manager are hereby authorized and directed to attest the signature of the Authorized Officers designated herein to execute any documents described herein, and to affix and attest the seal of the City, as may be required or appropriate in connection with the execution and delivery of the Private Placement Agreement, the Lease Agreement, the Trust Agreement and the Site Lease.

Section 9. Professional Services. Rutan & Tucker LLP is designated to act as Bond Counsel to the City pursuant to its existing agreement with the City. The Assistant City Manager and the City Manager are each authorized to execute contracts with Harrell & Company Advisors, LLC to act as Financial Advisor and Piper Jaffray & Co. to act as Placement Agent, which contracts shall be in substantially the form on file with the City Clerk, together with such changes as may be approved by the Assistant City Manager and the City Manager, or their designee, which changes shall be deemed approved by the execution and delivery of such contracts by any one of such officers.

Section 10. Other Actions. The Authorized Officers are each hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which each may deem necessary or advisable (including the execution and delivery of instruments terminating the leases and assignments pertaining to the 2001 Certificates and acquiring title insurance or other insurance required by the Lease Agreement or the Purchase Agreement and to pay associated costs of issuance, including legal costs of the purchaser of the Certificates) in order to consummate the sale, execution and delivery of the Certificates, the prepayment of the 2001 Series A Certificates and the 2001 Lease Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Certificates, the Lease Agreement, the Trust Agreement, the Site Lease, and the Purchase Agreement. Such actions heretofore taken by such officers or designees are hereby ratified, confirmed and approved. In the event that it is determined by the City Manager, the Assistant City Manager, or their designees, that there are limitations or restrictions on the ability of the City to lease any portion of the Site as contemplated by the Site Lease and the Lease Agreement, the Assistant City Manager, the City Manager, and their designees, may designate other real property of the City to be leased pursuant to the Site Lease and the Lease Agreement with such designation to be conclusively evidenced by the execution and delivery of the Site Lease and the Lease Agreement by one or more of the Authorized Officers.

Section 11. The Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Administrative Services, the City Clerk and all other appropriate officials of the City are hereby authorized and directed to execute such other Agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the financing herein authorized.

This Resolution shall take effect upon its adoption by this Board.

PASSED, APPROVED, AND ADOPTED this 12th day of March, 2013.

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Mayor Margaret Finlay

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       ) ss.  
CITY OF DUARTE                 )

I, Marla Akana, City Clerk of the City of Duarte, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. 13-03 was adopted by the City Council of said City of Duarte at a regular meeting of said Council held on the 12th day of March, 2013, by the following vote:

AYES:       Councilmembers:

NOES:       Councilmembers:

ABSENT:     Councilmembers:

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City Clerk Marla Akana  
City of Duarte, California

**RESOLUTION NO.****A RESOLUTION OF THE DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS IN CONNECTION WITH THE OFFERING AND SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

WHEREAS, the Duarte Community Facilities Financing Authority is a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority") with the authority to assist in the financing of the acquisition, construction, installation and equipping of certain capital improvements on behalf of the City of Duarte (the "City"); and

WHEREAS, the City and the Duarte Public Financing Authority (the "Public Financing Authority") have heretofore entered into a Lease Agreement, dated as of April 1, 2001 (the "2001 Lease Agreement") pursuant to which the Public Financing Authority agreed to lease to the City certain real property and improvements located thereon; and

WHEREAS, the City and the Public Financing Authority have previously entered into certain agreements with respect to the execution and delivery of the City of Duarte 2001 Variable Rate Refunding Certificates of Participation, \$2,090,000 Series A (the "2001 Series A Certificates") and \$3,910,000 Series B (the "2001 Series B Certificates"), which 2001 Series A Certificates and 2001 Series B Certificates evidenced undivided proportionate interests in base rental payments made pursuant to the terms the 2001 Lease Agreement; and

WHEREAS, the City has previously prepaid a portion of the base rental payments sufficient for the Public Financing Authority to prepay the 2001 Series B Certificates; and

WHEREAS, in order to prepay the 2001 Lease Agreement and refinance and defease the 2001 Series A Certificates, the City and the Authority have determined that it would be in the best interests of the Authority, the City and residents of the City to authorize the preparation, sale and delivery of the 2013 Certificates of Participation (2001 Refunding) in an aggregate principal amount not to exceed \$1,500,000 (the "Certificates"), which Certificates evidence fractional interests in certain lease payments to be made pursuant to the Lease Agreement (as defined below); and

WHEREAS, in order to facilitate the execution and delivery of the Certificates, the City and the Authority desire to enter into a certificate purchase agreement by and among the Authority, the City, and Compass Bank (the "Purchase Agreement"), a Site and Facility Lease between the City and the Authority (the "Site Lease"), and a Lease Agreement between the City and the Authority (the "Lease Agreement"), the forms of which have been presented to the Authority Board of Directors at the meeting at which this Resolution is being adopted and

pursuant to which the City will under the Site Lease lease the certain real property and improvements located thereon, as set forth in Exhibit A to the Site Lease (the "Property"), to the Authority and under the Lease Agreement will lease the Property back from the Authority and pay certain Lease Payments (as defined in the Lease Agreement), which have been pledged to the owners of the Certificates by the Authority pursuant to a Trust Agreement among U.S. Bank National Association (the "Trustee"), the City and the Authority (the "Trust Agreement"), the form of which has been presented to this Board of Directors at the meeting at which this Resolution is being adopted; and

WHEREAS, the Authority desires to assign its right to receive such Lease Payments from the City to the Trustee pursuant to an Assignment Agreement between the Authority and the Trustee (the "Assignment Agreement"), the form of which has been presented to the Authority Board of Directors at the meeting at which this Resolution is being adopted; and

WHEREAS, the documents below specified shall be filed with the Authority and the members of the Board of Directors, with the aid of its staff, shall review said documents.

NOW, THEREFORE, the Duarte Community Facilities Financing Authority does resolve, declare, determine, and order as follows:

Section 1. Certificates. The Authority Board of Directors hereby authorizes the preparation, sale and delivery of the Certificates in an aggregate principal amount not to exceed \$1,500,000 in accordance with the terms and provisions of the Trust Agreement. The purposes for which the proceeds of the sale of the Certificates shall be expended are to refinance the 2001 Lease Agreement, and to pay the costs of the sale and delivery of the Certificates.

Section 2. Certificate Documents. The Site Lease, the Lease Agreement, the Trust Agreement, the Purchase Agreement, and the Assignment Agreement (collectively, the "Agreements") presented at this meeting are approved. Each of the Chair, Vice Chair, Executive Director, Assistant Executive Director, Treasurer, and Secretary of the Authority, or their designee, are authorized and directed to execute and deliver the Agreements and to negotiate the terms of the Purchase Agreement. The Agreements shall be executed in substantially the forms hereby approved, with such additions thereto and changes therein as are recommended or approved by counsel to the Authority and approved by one or more of the foregoing officers of the Authority authorized to execute the documents, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the officers listed above. The Purchase Agreement shall be approved by one or more of the foregoing officers of the Authority authorized to negotiate its terms, such approval to be conclusively evidenced by the execution and delivery thereof by one or more of the officers listed above.

Section 3. Establishment of Final Terms of Issuance. The Assistant City Manager of the City, the City Manager of the City, or their designees, acting on behalf of the City and the Authority, are each authorized to establish and determine (i) the final principal amount of the Certificates, not to exceed \$1,500,000; and (ii) the final interest rates on various maturities of the Certificates, not to exceed a total interest cost of 2.5% per annum for the Certificates as a whole.

Section 4. Other Actions. The Chair, Vice Chair, Executive Director, Assistant Executive Director, Treasurer, Secretary, and other officers of the Authority are authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the sale and delivery of the Certificates, and the execution of the Agreements and otherwise effectuate the purposes of this Resolution (including, but not limited to, terminating or entering into any amendments to the agreements entered into in connection with the 2001 Certificates), and such actions previously taken by such officers are hereby ratified and confirmed.

Section 5. The Chair, the Executive Director, any Assistant Executive Director, the Treasurer, the Secretary and other officials of the Authority are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to affect the purposes of this resolution and the lease financing herein authorized.

Section 6. This Resolution shall take effect upon its adoption by the Board of Directors.

PASSED, APPROVED, AND ADOPTED this 12th day of March, 2013.

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Chair Margaret Finlay

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss.  
CITY OF DUARTE                )

I, Marla Akana, Secretary of the Duarte Community Facilities Financing Authority, County of Los Angeles, State of California, hereby attest to the above signature and certify that Resolution No. CFFA-13-03 was adopted by the Duarte Community Facilities Financing Authority at a regular meeting of said Authority held on the 12th day of March, 2013, by the following vote:

AYES:        Authority Members:

NOES:        Authority Members:

ABSENT:     Authority Members:

---

Secretary Marla Akana

AFTER RECORDATION PLEASE RETURN TO:

Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626  
Attn: Kevin Brazil, Esq.

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

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**SITE LEASE**

**Dated as of March 1, 2013**

**by and between the**

**CITY OF DUARTE, as Lessor**

**and the**

**DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY, as Lessee**

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**\$ \_\_\_\_\_**  
**2013 CERTIFICATES OF PARTICIPATION**  
**(2001 Refunding)**

**SITE LEASE**

THIS SITE LEASE (this "Site Lease"), dated as of March 1, 2013, is by and between the CITY OF DUARTE, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of California (the "City"), as lessor, and the DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY, a joint powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), as lessee;

WITNESSETH:

WHEREAS, the Authority intends to assist the City in undertaking the (a) finance of the City's obligations with respect to the \$\_\_\_\_\_ City of Duarte 2013 Certificates of Participation (2001 Refunding) (the "2013 Certificates"), by leasing certain land and improvements to the City pursuant to a Lease Agreement, dated as of March 1, 2013, a memorandum of which is recorded concurrently herewith (the "Lease Agreement"); and

WHEREAS, the City proposes to enter into this Site Lease with the Authority as a material consideration for the Authority's agreement to lease such land and improvements to the City;

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

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

Section 2. Site Lease. The City hereby leases to the Authority and the Authority hereby leases from the City, on the terms and conditions hereinafter set forth, those certain parcels of real property situated in Los Angeles County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements on the Site more particularly described in Exhibit B attached hereto and made a part hereof (collectively, the "Facility").

Section 3. Term. The term of this Site Lease shall commence on the date of recordation of this Site Lease in the Office of the City Recorder of Los Angeles County, State of California, and shall end on August 1, 2022, unless such term is extended or sooner terminated as hereinafter provided. If, on August 1, 2022, the aggregate amount of Lease Payments (as defined in and as 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 Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment. If, prior to August 1, 2022, all Lease Payments shall be fully paid or provision made for such payment in accordance with Section 4.4 or 10.1 of the Lease Agreement, the term of this Site Lease shall end ten (10) days thereafter.

Section 4. Advance Rental Payment. The City agrees to lease the Site and the Facility to the Authority in consideration of the payment by the Authority of an advance rental payment of \_\_\_\_\_ million \_\_\_\_\_ hundred \_\_\_\_\_ thousand dollars (\$\_\_\_\_\_). The City and the Authority agree that by reason of the sale of the Certificates and deposit of proceeds pursuant to the provisions of the Trust Agreement, dated as of March 1, 2013, by and among the

City, the Authority and U.S. Bank National Association, as trustee thereunder (the "Trust Agreement"), the advance rental payment referenced in the preceding sentence shall be deemed to have been paid.

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

Section 6. City's Interest in the Site and the Facility. The City covenants that it is the owner in fee of the Site and the Facility.

Section 7. Assignments and Subleases. Unless the City shall be in default under the Lease Agreement, the Authority may not assign its rights under this Site Lease or sublet the Site or the Facility, except as provided in the Lease Agreement, without the written consent of the City.

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

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

Section 10. Default. In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease Agreement shall be deemed to occur as a result thereof and the City shall have no right to terminate this Site Lease as a remedy for such default; *provided, however*, that so long as any Certificates are Outstanding and unpaid in accordance with the terms thereof, the Lease Payments assigned by the Authority to the Trustee under the Assignment Agreement shall continue to be paid to the Trustee.

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

Section 12. Waiver of Personal Liability. All liabilities under this Site Lease on the part of the Authority are solely liabilities of the Authority and the City hereby releases each and every, member, director, officer, employee and agent of the Authority of and from any personal or individual liability under this Site Lease. 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 Lease for anything done or omitted to be done by the Authority hereunder.

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

Section 14. Eminent Domain. In the event the whole or any part of the Site or the Facility thereon 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 Certificates including the unpaid principal and interest with respect to any then outstanding such Certificates and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the City.

Section 15. Use of the Proceeds. The City and the Authority hereby agree that the lease to the Authority of the City's right and interest in the Site and the Facility pursuant to Section 1 serves the public purposes of the City by providing funds to enable the City to issue the 2013 Certificates.

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

Section 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 City, addressed to the City in care of the City Clerk, 1600 Huntington Drive, Duarte, California 91010, or if to the Authority, addressed to the Authority in care of the Secretary of the Authority, 1600 Huntington Drive, Duarte, CA 91010, 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 Lease shall inure to the benefit of and shall be binding upon the City and the Authority and their respective successors and assigns.

Section 19. Amendment. This Site Lease may not be amended except as permitted under Section 10.1 of the Trust 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 Lease.

Section 21. Applicable Law. This Site Lease shall be governed by and construed in accordance with the internal laws of the State of California.

Section 22. Execution in Counterparts. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

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

CITY OF DUARTE

By: \_\_\_\_\_  
Its: City Manager

DUARTE COMMUNITY FACILITIES  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Its: Executive Director

**CERTIFICATE OF ACCEPTANCE OF SITE LEASE**

This is to certify that the interest in real property conveyed by the Site Lease, dated as of March 1, 2013, by and between City of Duarte (the "City"), as lessor, and the Duarte Community Facilities Financing Authority (the "Authority"), as lessee, is hereby accepted by the undersigned officer on behalf of the Authority pursuant to authority conferred by a resolution of the governing board of the Authority, adopted on March 12, 2013, and the Authority consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 2013

DUARTE COMMUNITY FACILITIES  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Its: Executive Director

**EXHIBIT A**  
**DESCRIPTION OF THE SITE**

**EXHIBIT B**  
**DESCRIPTION OF THE FACILITY**

**LEASE AGREEMENT**

**Dated as of March 1, 2013**

**by and between the**

**DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY**

**and the**

**CITY OF DUARTE**

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

**2013 CERTIFICATES OF PARTICIPATION**

**(2001 Refunding)**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement"), dated for convenience as of March 1, 2013, by and between the DUARTE COMMUNITY FACILITIES FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF DUARTE, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of California, as lessee (the "City");

### WITNESSETH:

WHEREAS, the City and the Duarte Public Financing Authority have heretofore entered into a Lease Agreement, dated as of April 1, 2001 (the "2001 Lease Agreement"), pursuant to which the Duarte Public Financing Authority agreed to lease to the City certain real property and improvements located thereon; and

WHEREAS, the City has previously executed and delivered its \$2,090,000 City of Duarte 2001 Variable Rate Refunding Certificates of Participation, Series A (the "2001 Series A Certificates") and \$3,910,000 Series B (the "2001 Series B Certificates"), which 2001 Series A Certificates and 2001 Series B Certificates were secured by base rental payments under and pursuant to the terms the 2001 Lease Agreement; and

WHEREAS, the City has previously prepaid a portion of the base rental payments sufficient for the Duarte Public Financing Authority to prepay the 2001 Series B Certificates; and

WHEREAS, the City and the Authority desire to prepay the 2001 Lease Agreement and to defease and refinance the 2001 Series A Certificates by entering into this Lease Agreement (this "Lease") and authorizing and directing the execution and delivery of the City of Duarte 2013 Certificates of Participation, (2001 Refunding) (the "Certificates"), evidencing fractional interests in Lease Payments (as defined in the Trust Agreement) to be made by the City under this Lease (the "Project"); and

WHEREAS, the City has entered into a Site Lease of even date herewith (the "Site Lease") with the Authority under which the City has agreed to lease the property described in Exhibit B hereto (the "Property") to the Authority, and which Site Lease provides that at the expiration of the Site Lease the title to the Property shall vest in the City; and

WHEREAS, in consideration of the Lease Payments to be paid by the City to the Authority hereunder, the Authority will lease to the City the Property and will cause the defeasance and refinancing of the 2001 Series A Certificates;

WHEREAS, the proceeds of the Certificates, together with other available moneys, will be applied by the City to (a) prepay the remaining base rental payments and prepay the 2001 Series A Certificates and (b) pay delivery costs incurred in connection with the execution, delivery and sale of the Certificates;

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

**ARTICLE I**  
**DEFINITIONS AND EXHIBITS**

1.1 Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease Agreement shall have the respective meanings specified in Section 1.01 of the Trust Agreement, dated as of March 1, 2013, by and among the City, the Authority and the Trustee.

1.2 Exhibits. The following exhibits are attached to, and by this reference made a part of, this Lease Agreement:

Exhibit A: The description of the Site.

Exhibit B: The description of the Facility.

Exhibit C: The schedule of Lease Payments to be paid by the City hereunder with respect to the Property, showing the Lease Payment Date and amount of each such Lease Payment.

**ARTICLE II**  
**REPRESENTATIONS, COVENANTS AND WARRANTIES**

2.1 Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Authority as follows:

(a) Due Organization and Existence. The City is a municipal corporation, duly organized and existing under and by virtue of the laws of the State.

(b) Authorization. The laws of the State authorize the City to enter into the Site and Facility Lease, this Lease Agreement and the Trust Agreement and to enter into the transactions contemplated by and to carry out the City's obligations under all of the aforesaid agreements, the City has duly authorized and executed all of the aforesaid agreements and such agreements constitute the legal, valid and binding agreements of the City, enforceable against the City in accordance with their respective terms.

(c) No Violations. Neither the execution and delivery of the Site and Facility Lease, this Lease Agreement or the Trust Agreement, the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the City is now a party or by which the City is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the City, or upon the Property, except Permitted Encumbrances.

(d) Execution and Delivery. The City has duly authorized and executed this Lease Agreement in accordance with all applicable laws.

(e) Small Issuer Exemption from Bank Nondeductibility Restriction. [to be completed].

2.2 Representations, Covenants and Warranties of Authority. The Authority represents, covenants and warrants to the City as follows:

(a) Due Organization and Existence. The Authority is a joint powers authority, organized and existing under and by virtue of the laws of the State; has power to enter into the Site Lease, this Lease Agreement, the Assignment Agreement and the Trust Agreement; is possessed of full power to own and hold, improve and equip real and personal property and to lease and sell the same; has duly authorized the execution and delivery of all of the aforesaid agreements and such agreements constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.

(b) No Encumbrances. The Authority will not pledge the Lease Payments or other amounts derived from the Property and from its other rights under this Lease Agreement and will not mortgage or encumber the Property, except as provided under the terms of this Lease Agreement and the Trust Agreement.

(c) No Violations. Neither the execution and delivery of the Site Lease, this Lease Agreement, the Assignment Agreement or the Trust Agreement, the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Authority, or upon the Property, except Permitted Encumbrances.

(d) No Assignments. Except as provided herein, the Authority will not assign this Lease Agreement, its right to receive Lease Payments from the City or its duties and obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.2.

(e) Execution and Delivery. The Authority has duly authorized and executed this Lease Agreement in accordance with all applicable laws.

### **ARTICLE III** **DEPOSIT OF MONEYS**

3.1 Deposit of Moneys. On the Closing Date, the Authority shall cause to be deposited with the Trustee the net proceeds of sale of the Certificates. Amounts estimated to be

required to pay Delivery Costs shall be deposited in the Delivery Costs Fund and an amount shall be deposited in the Escrow Fund to pay the costs of refinancing the 2001 Series A Certificates.

3.2 Payment of Delivery Costs. Payment of Delivery Costs shall be made from the moneys deposited in the Delivery Costs Fund, which moneys shall be disbursed for such purpose in accordance and upon compliance with Section 3.4 of the Trust Agreement.

**ARTICLE IV**  
**AGREEMENT TO LEASE; TERM OF THIS**  
**LEASE AGREEMENT; LEASE PAYMENTS**

4.1 Lease.

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

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

4.2 Term of Agreement. The Term of the Lease Agreement shall commence on the Closing Date, and shall end on August 1, 20\_\_\_, unless such term is extended as hereinafter provided. If, on August 1, 20\_\_\_, the Trust Agreement shall not be discharged by its terms or if the Lease Payments payable hereunder shall have been abated at any time and for any reason, then the Term of the Lease Agreement shall be extended without the need to execute any amendment to this Section 4.2 until there has been deposited with the Trustee an amount sufficient to pay all obligations due under the Lease Agreement, but in no event shall the Term of the Lease Agreement extend beyond August 1, 20\_\_\_. If, prior to August 1, 20\_\_\_, the Trust Agreement shall be discharged by its terms, the Term of the Lease Agreement shall thereupon end. The Trustee shall notify the Authority of the termination of this Lease Agreement pursuant to Section 14.3 of the Trust Agreement.

4.3 Possession. The City hereby agrees to accept and take possession of the Property on or prior to the date of recordation of this Lease Agreement. The first Lease Payment shall be due on August 1, 2013.

4.4 Lease Payments.

(a) Obligation to Pay. Subject to the provisions of Articles VI and X hereof, the City agrees to pay to the Authority, its successors and assigns, as rental for the use and occupancy of the Property during each Rental Period, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Exhibit C hereto, to be due and payable on the respective Lease Payment Dates specified in Exhibit C hereto. Any amount held in the Lease Payment Fund on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole pursuant to Article X hereof and other than amounts required for payment of Certificates not yet surrendered) shall be credited towards the Lease Payment then due and payable; and no Lease Payment need be

made on any Lease Payment Date if the amounts then held in the Lease Payment Fund are at least equal to the Lease Payment then required to be paid. The Lease Payments for the Property payable in any Rental Period shall be for the use of the Property for such Rental Period.

(b) Effect of Prepayment. In the event that the City prepays all remaining Lease Payments and all Additional Payments due under Section 4.7 hereof in full pursuant to Article X hereof, the City's obligations under this Lease Agreement shall thereupon cease and terminate including, but not limited to, the City's obligation to pay Lease Payments under this Section 4.4; subject however, to the provisions of Section 10.1 hereof in the case of prepayment by application of a security deposit. In the event that the City prepays the Lease Payments in part but not in whole pursuant to Section 10.3 hereof as a result of any insurance or condemnation award with respect to any portion of the Property, such prepayment shall be credited entirely towards the prepayment of the Lease Payments as follows: (i) the principal components of each remaining such Lease Payments shall be reduced in such order as shall be selected by the City in integral multiples of \$5,000; and (ii) the interest component of each remaining Lease Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Certificates thereby redeemed pursuant to Section 4.1(a) or (b), as the case may be, of the Trust Agreement.

(c) Rate on Overdue Payments. In the event the City should fail to make any of the payments required in this Section 4.4, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date of default to the date of payment at the rate per annum payable with respect to the Certificates. Such interest, if received, shall be deposited in the Lease Payment Fund.

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

(e) Source of Payments; Budget and Appropriation. Lease Payments shall be payable from any source of available funds of the City, subject to the provisions of Articles VI and X hereof.

The City covenants to take such action as may be necessary to include all Lease Payments due hereunder in each of its budgets during the Term of the Lease Agreement and to make the necessary annual appropriations for all such Lease Payments and for Additional Payments due under Section 4.7 hereof. To that end, the City Council shall direct budgetary staff to include in each annual budget proposal to the City Council an appropriation sufficient to pay Lease Payments and Additional Payments. The City hereby expresses its present intent to appropriate Lease Payments and Additional Payments due under Section 4.7 hereof during the Term of the Lease Agreement. The covenants on the part of the City herein contained shall be

deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the Authority.

(f) Assignment. The City understands and agrees that all Lease Payments have been assigned by the Authority to the Trustee in trust, pursuant to the Assignment Agreement, for the benefit of the Owners of the Certificates, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees to pay to the Trustee at the Principal Corporate Trust Office, all payments payable by the City pursuant to this Section 4.4 and all amounts payable by the City pursuant to Article X hereof.

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

4.6 Title. During the Term of the Lease Agreement, the Authority shall hold leasehold title to the Property and shall hold fee title to those portions of the Property which are newly acquired or constructed and any and all additions which comprise fixtures, repairs, replacements or modifications to the Property, except for those fixtures, repairs, replacements or modifications which are added to the Property by the City at its own expense and which may be removed without damaging the Property and except for any items added to the Property by the City pursuant to Section 5.9 hereof.

If the City prepays the Lease Payments in full pursuant to Article X hereof or makes the security deposit permitted by Section 10.1 hereof, or pays all Lease Payments during the Term of the Lease Agreement as the same become due and payable, all right, title and interest of the Authority in and to the Property shall be terminated. The Authority agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

4.7 Additional Payments.

In addition to the Lease Payments, the City shall pay when due the following Additional Payments:

(a) Any fees and expenses incurred by the City in connection with or by reason of its leasehold estate in the Property as and when the same become due and payable;

(b) Any amounts due to the Trustee pursuant to the Trust Agreement for all services rendered under the Trust Agreement and for all reasonable expenses, charges, costs,

liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Trust Agreement;

(c) Any reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the City, the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease Agreement or the Trust Agreement;

(d) Any reasonable out-of-pocket expenses of the City in connection with the execution and delivery of this Lease Agreement or the Trust Agreement, or in connection with the execution and delivery of the Certificates, including any and all expenses incurred in connection with the authorization, execution, sale and delivery of the Certificates, or incurred by the Authority in connection with any litigation which may at any time be instituted involving this Lease Agreement, the Trust Agreement, the Certificates or any of the other documents contemplated or thereby, or incurred by the Authority in connection with the Continuing Disclosure Certificate, or otherwise incurred in connection with the administration thereof.

**ARTICLE V**  
**MAINTENANCE; TAXES; INSURANCE;**  
**USE LIMITATIONS; AND OTHER MATTERS**

5.1 Maintenance, Utilities, Taxes and Assessments. Throughout the Term of the Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City and the City shall pay, or otherwise arrange, for the payment of all utility services supplied to the Property which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the City under the terms of this Lease Agreement.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of the Lease Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property or any part thereof will be subject to loss

or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority. The City shall provide the Authority with written notice of any such contest and shall provide such updates on the contest as the Authority may reasonably request.

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

5.3 Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the Term of the Lease Agreement, insurance policies, including a standard comprehensive general insurance policy or policies in protection of the Authority, the City and the Trustee and their respective members, officers, agents and employees. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City, and may be maintained through a nonprofit, public benefit corporation created for such purpose or in the form of self-insurance by the City. Said policy or policies shall provide for indemnification of said parties against direct or consequential loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$100,000 (subject to a deductible clause of not to exceed \$5,000) for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City and may be maintained in the form of insurance maintained through a nonprofit, public benefit corporation created for such purpose or in the form of self-insurance by the City. The Net Proceeds of such

liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

5.4 Fire and Extended Coverage Insurance; No Earthquake Insurance. The City shall maintain, or cause to be maintained throughout the Term of the Lease Agreement, insurance against loss or damage to any part of the Property constituting structures, if any, by fire and lightning, with extended coverage and vandalism and malicious mischief insurance; provided, however, that the City shall not be required to maintain earthquake insurance with respect to the Property. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to one hundred percent (100%) of the replacement cost of such portion of the Property, if any. Such insurance may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried by the City and may be maintained in whole or in part in the form of insurance maintained through a nonprofit, public benefit corporation or joint powers authority created for such purpose. The Net Proceeds of such insurance shall be applied as provided in Section 6.2(a) hereof. The City may not satisfy the requirements of this Section 5.4 for fire and extended coverage insurance with self-insurance.

5.5 Rental Interruption Insurance. The City shall maintain, or cause to be maintained, throughout the Term of the Lease Agreement rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any part of the Property during the Term of the Lease Agreement as a result of any of the hazards covered in the insurance required by Section 5.4 hereof, if any, in an amount at least equal to two times maximum annual Lease Payments. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Lease Payment Fund and shall be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable. Such insurance may be maintained as part of or in conjunction with any other insurance carried by the City and may be maintained in whole or in part in the form of insurance maintained through a nonprofit, public benefit corporation created for such purpose. The City may not satisfy the requirements of this Section 5.5 for rental interruption insurance with self-insurance.

5.6 Title Insurance.

(a) The City shall provide, from moneys in the Delivery Costs Fund or at its own expense, on the Closing Date, an CLTA title insurance policy in the amount of not less than the principal amount of the Certificates, insuring the City's leasehold estate in the Property, subject only to Permitted Encumbrances.

(b) The Net Proceeds of such title insurance shall be applied as provided in Section 6.2(c) hereof.

5.7 Insurance Net Proceeds; Form of Policies. Each policy or other evidence of insurance required by Sections 5.3, 5.4, 5.5 and 5.6 hereof shall provide that all proceeds thereunder shall be payable to the Trustee as and to the extent required hereunder, shall name the Trustee as an additional insured and shall be applied as provided in Section 6.2 hereof. Insurance

must be provided by an insurer rated "A" or better by S&P or A.M. Best Company. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease Agreement. The Trustee shall not be responsible for the sufficiency of any insurance herein required, including any forms of self-insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. The City shall cause to be delivered annually on or before each August 1 to the Trustee a certification, signed by a City Representative, stating compliance with the provisions of Section 5.3 through 5.7 of this Lease Agreement. The Trustee shall be entitled to rely on such certification without independent investigation. The City shall have the adequacy of any insurance reserves maintained by the City or by a nonprofit, public benefit corporation, if applicable, for purposes of the insurance required by Section 5.3 and 5.4 hereof reviewed at least annually, on or before each February 1, by an independent insurance consultant and shall maintain reserves in accordance with the recommendations of such consultant to the extent moneys are available for such purpose and not otherwise appropriated.

5.8 Advances. If the City shall fail to perform any of its obligations under this Article V, the Authority or the Trustee may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at a rate equal to the rate then payable with respect to the Certificates from the date of the advance to the date of repayment.

5.9 Installation of City's Equipment. The City may, at any time and from time to time in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon any portion of the Property. All such items shall remain the sole property of the City in which neither the Authority nor the Trustee shall have any interest and may be modified or removed by the City at any time provided that the City shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement shall prevent the City from purchasing or leasing items to be installed pursuant to this Section 5.9 under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

5.10 Liens. The City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than the respective rights of the Authority and the City as provided herein and Permitted Encumbrances. Except as expressly provided in this Article V, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City shall reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

5.11 Private Activity Bond Limitation. The City shall assure that proceeds of the Certificates are not so used as to cause the Certificates or the Lease Agreement to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

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

5.13 Rebate Requirement. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Certificates and the Lease Agreement.

5.14 No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Certificates which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Certificates or the Lease Agreement to be “arbitrage bonds” within the meaning of section 148 of the Code.

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

5.16 No Condemnation. The City hereby covenants and agrees, to the extent it may lawfully do so, that so long as any of the Certificates remain outstanding and unpaid, the City will not exercise the power of condemnation with respect to the Property. The City further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the City should fall or refuse to abide by such covenant and condemns the Property, the appraised value of the Property shall not be less than the greater of (i) if the Certificates are then subject to redemption, the principal and interest components of the Certificates Outstanding through the date of their redemption, or (ii) if the Certificates are not then subject to redemption, the amount necessary to defease the Certificates to the first available redemption date in accordance with the Trust Agreement.

## **ARTICLE VI**

### **DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS**

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

Property, except to the extent of special funds, such as amounts in the Reserve Fund available for the payment of Lease Payments.

## 6.2 Application of Net Proceeds.

(a) From Insurance Award. The Net Proceeds of any insurance award resulting from any damage to or destruction of any portion of the Property constituting structures, if any, by fire or other casualty shall be paid by the City to the Trustee, as assignee of the Authority under the Assignment Agreement, deposited in the Insurance and Condemnation Fund held by the Trustee and applied as set forth in Section 7.1 of the Trust Agreement.

(b) From Eminent Domain Award. The Net Proceeds of any eminent domain award resulting from any event described in Section 6.1 hereof shall be paid by the City to the Trustee, as assignee of the Authority under the Assignment Agreement, deposited in the Insurance and Condemnation Fund and applied as set forth in Section 7.2 of the Trust Agreement.

(c) From Title Insurance. The Net Proceeds of any title insurance award shall be paid to the Trustee, as assignee of the Authority under the Assignment Agreement, deposited in the Insurance and Condemnation Fund and applied as set forth in Section 7.3 of the Trust Agreement.

6.3 Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the City of the Property or any portion thereof (other than any portions of the Property described in Section 5.2 hereof) to the extent to be agreed upon by the City and the Authority and communicated by a City Representative to the Trustee. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit D, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed (giving due consideration to the factors identified in the last sentence of Section 4.4(d)), based upon the opinion of an appraiser with expertise in valuing such properties, or other appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as communicated by a City Representative to the Trustee. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Reserve Fund, if cash funded, and/or the Insurance and Condemnation Fund and/or the Lease Payment Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

**ARTICLE VII**  
**DISCLAIMER OF WARRANTIES; ACCESS; INDEMNIFICATION**

7.1 Disclaimer of Warranties. THE AUTHORITY 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 PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. IN NO EVENT SHALL THE AUTHORITY OR ITS ASSIGNS BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SITE AND FACILITY LEASE, THIS LEASE AGREEMENT OR THE TRUST AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE PROPERTY.

7.2 Access to the Property. The City agrees that the Authority and any Authority Representative, and the Authority's successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Property. The City further agrees that the Authority, any Authority Representative, and the Authority's successors or assigns shall have such rights of access to the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of failure by the City to perform its obligations hereunder.

7.3 Release and Indemnification Covenants. The City shall and hereby agrees to indemnify and save the Authority and the Trustee and their officers, agents, directors, employees, successors and assigns harmless from and against all claims, losses 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 Property by the City, (ii) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement or the Trust Agreement, (iii) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (iv) any act or omission of any sublessee of the City with respect to the Property, or (v) the authorization of payment of the Delivery Costs. Such indemnification shall include the costs and expenses of defending any claim or liability arising under this Lease Agreement or the Trust Agreement and the transactions contemplated thereby. No indemnification is made under this Section 7.3 or elsewhere in this Lease Agreement for willful misconduct, negligence or breach of duty under this Lease Agreement by the Authority, its officers, agents, directors, employees, successors or assigns.

**ARTICLE VIII**  
**ASSIGNMENT, SUBLEASING AND AMENDMENT**

8.1 Assignment by the Authority. The Authority's rights under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the City under this Lease Agreement, have been assigned to the Trustee pursuant to the Assignment Agreement.

8.2 Assignment and Subleasing by the City. This Lease Agreement may not be assigned by the City. The City may sublease the Property or any portion thereof, but only with the written consent of the Authority and subject to, and delivery to the Authority of a certificate as to, all of the following conditions:

(a) This Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City;

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

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

(d) The City shall furnish the Authority and the Trustee with a written opinion of Special Counsel, which shall be an Independent Counsel, stating that such sublease does not cause the interest components of the Lease Payments to become subject to federal income taxes or State personal income taxes.

8.3 Amendment of Lease Agreement.

(a) Substitution of Site or Facility. The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to substitute other land (a "Substitute Site") and/or a substitute facility (a "Substitute Facility") for the Site (the "Former Site"), or a portion thereof, and/or the Facility (the "Former Facility"), or a portion thereof, provided that the City shall satisfy all of the following requirements (to the extent applicable) which are hereby declared to be conditions precedent to such substitution:

(i) If a substitution of the Site, the City shall file with the Authority and the Trustee an amended Exhibit A to the Site and Facility Lease which adds thereto a description of such Substitute Site and deletes therefrom the description of the Former Site;

(ii) If a substitution of the Site, the City shall file with the Authority and the Trustee an amended Exhibit A to this Lease Agreement which adds thereto a description of such Substitute Site and deletes therefrom the description of the Former Site;

(iii) If a substitution of the Facility, the City shall file with the Authority and the Trustee an amended Exhibit B to the Site and Facility Lease which adds thereto a description of such Substitute Facility and deletes therefrom the description of the Former Facility;

(iv) If a substitution of the Facility, the City shall file with the Authority and the Trustee an amended Exhibit B to this Lease Agreement which adds thereto a description of such Substitute Facility and deletes therefrom the description of the Former Facility;

(v) The City shall certify in writing to the Authority and the Trustee that such Substitute Site and/or Substitute Facility serve the purposes of the City, constitutes property that is unencumbered, subject to Permitted Encumbrances, and constitutes property which the City is permitted to lease under the laws of the State;

(vi) The City delivers to the Trustee and the Authority evidence that the value of the Property following such substitution is equal to or greater than the Outstanding principal amount of the Certificates;

(vii) The Substitute Site and/or Substitute Facility shall not cause the City to violate any of its covenants, representations and warranties made herein and in the Trust Agreement;

(viii) The City shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which adds thereto a description of the Substitute Site and deletes therefrom the description of the Former Site;

(ix) The City shall certify that the Substitute Site and/or the Substitute Facility is of the same or greater essentiality to the City as was the Former Site and/or the Former Facility;

(x) The City shall provide notice of the substitution to any rating agency then rating the Certificates which rating was provided at the request of the City or the Authority; and

(xi) The City shall furnish the Authority and the Trustee with a written opinion of Bond Counsel, which shall be an Independent Counsel, stating that such substitution does not cause the interest components of the Lease Payments to become subject to federal income taxes or State personal income taxes.

(b) Release of Site. The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to release any portion of the Site, provided that the City shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such release:

(i) The City shall file with the Authority and the Trustee an amended Exhibit A to the Site Lease which describes the Site, as revised by such release;

(ii) The City delivers to the Trustee and the Authority evidence that the value of the Site, as revised by such release, is equal to or greater than the Outstanding principal amount of the Certificates and confirms in writing to the Trustee and the Authority that the indemnification provided pursuant to Section 12.3 of the Trust Agreement applies with respect to the Site, as revised by such release;

(iii) Such release shall not cause the City to violate any of its covenants, representations and warranties made herein and in the Trust Agreement;

(iv) The City shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which describes the Site, as revised by such release; and

(v) The Trustee shall receive the Owner's prior written consent to such substitution or release (which consent may be delivered in the Owner's sole discretion).

(c) Generally. The Authority and the City may at any time amend or modify any of the provisions of this Lease Agreement, but only (a) with the prior written consent of the Owners of a majority in aggregate principal amount of the Outstanding Certificates, or (b) without the consent of any of the Owners, but only if such amendment or modification is for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City contained in this Lease Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;

(ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments will not materially adversely affect the interests of the Owners; or

(iii) to amend any provision thereof relating to the Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest with respect to the Certificates under the Code, in the opinion of Bond Counsel.

## **ARTICLE IX**

### **EVENTS OF DEFAULT AND REMEDIES**

9.1 Events of Default Defined. The following shall be "events of default" under this Lease Agreement and the terms "Events of Default" and "Default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease Agreement (including failure to request appropriation pursuant to Section 4.4(e) hereof) or under the Trust Agreement, other than as referred to in clause (a) of this Section 9.1, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority, the Trustee or the Owners of not less than five percent (5%) in aggregate principal amount of Certificates then outstanding; provided, however, if the failure stated in the notice can

be corrected, but not within the applicable period, the Authority, the Trustee and such Owners shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

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

(d) Any statement, representation or warranty made by the City in or pursuant to this Lease Agreement or its execution, delivery or performance shall have been false, incorrect, misleading or breached in any material respect on the date when made.

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

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

9.2 Remedies on Default. The Trustee shall have the right to re-enter and re-let the Property and to terminate this Lease Agreement.

Whenever any Event of Default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement; provided, however, that notwithstanding anything herein or in the Trust Agreement to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof, the Authority may exercise any and all rights of entry and re-entry upon the Property, and also, at its option, with or without such entry, may terminate this Lease Agreement; provided, that no such termination shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Authority, the City shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Lease Agreement and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to the Authority at the time and in the manner as herein provided, to wit:

(a) In the event the Authority does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the releasing of the Property, or, in the event the Authority is unable to re-lease the Property,

then for the full amount of all Lease Payments to the end of the Term of the Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Property in the event of default by the City in the performance of any covenants herein contained to be performed by the City and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place within Los Angeles County, for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Property as herein provided and all claims for damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the City that may be in or upon the Property. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease Agreement shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in paragraph (b) hereof.

(b) In an Event of Default hereunder, the Authority at its option may terminate this Lease Agreement and re-lease all or any portion of the Property. In the event of the termination of this Lease Agreement by the Authority at its option and in the manner hereinafter provided on account of default by the City (and notwithstanding any re-entry upon the Property by the Authority in any manner whatsoever or the re-leasing of the Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. Any surplus received by the Authority from such re-leasing shall be credited towards the Lease Payments next coming due and payable. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Property and/or of the remainder of the Term of the Lease Agreement or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

9.3 No Remedy Exclusive. No remedy herein is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article IX it shall not be necessary to give any notice, other than such notice as may be required in this Article IX or by law.

9.4 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease Agreement should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party; provided, however, that the Trustee shall not be required to expend its own funds for any payment described in this Section 9.4.

9.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

9.6 Application of Proceeds. All net proceeds received from the re-lease or other disposition of the Property under this Article IX, and all other amounts derived by the Authority or the Trustee as a result of an Event of Default hereunder, shall be transferred to the Trustee promptly upon receipt thereof and after payment of all fees and expenses of the Trustee, including indemnifications and attorneys fees, shall be deposited by the Trustee in the Lease Payment Fund to be applied to the Lease Payments in order of payment date.

9.7 Trustee and Certificate Owners to Exercise Rights. Such rights and remedies as are given to the Authority under this Article IX have been assigned by the Authority to the Trustee under the Assignment Agreement, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Certificates as provided in the Trust Agreement and herein.

9.8 No Right to Terminate for Authority Default. The City shall not have the right to terminate this Lease Agreement as a remedy for a default by the Authority in the performance of its obligations hereunder.

## **ARTICLE X**

### **PREPAYMENT OF LEASE PAYMENTS**

10.1 Security Deposit. Notwithstanding any other provision of this Lease Agreement, the City may, on any date, secure the payment of all or a portion of the Lease Payments remaining due by an irrevocable deposit with the Trustee or an escrow holder under an escrow deposit and trust agreement as referenced in Section 14.1(b) of the Trust Agreement, of: (a) in

the case of a security deposit relating to all Lease Payments, either (i) cash in an amount which, together with amounts on deposit in the Lease Payment Fund, the Insurance and Condemnation Fund and the Reserve Fund, is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit D, as the City instructs at the time of deposit, or (ii) Defeasance Obligations in such amount as will, in the written opinion of an independent certified public accountant or other firm of recognized experts in such matters, together with interest to accrue thereon and, if required, all or a portion of moneys or Defeasance Obligations or cash then on deposit and interest earnings thereon in the Lease Payment Fund and the Insurance and Condemnation Fund, be fully sufficient to pay all unpaid Lease Payments on their respective Lease Payment Dates, as the City instructs at the time of said deposit; or (b) in the case of a security deposit relating to a portion of the Lease Payments, a certificate executed by a City Representative designating the portion of the Lease Payments to which the deposit pertains, and either (i) cash in an amount which is sufficient to pay the portion of the Lease Payments designated in such City Representative's certificate, including the principal and interest components thereof, or (ii) Defeasance Obligations in such amount as will, together with interest to be received thereon, if any, in the written opinion of an independent certified public accountant or other firm of recognized experts in such matters, be fully sufficient to pay the portion of the Lease Payments designated in the aforesaid City Representative's certificate.

In the event of a deposit pursuant to this Section 10.1 as to all Lease Payments and the payment of all fees, expenses and indemnifications owed to the Trustee, all obligations of the City under this Lease Agreement shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all payments from the deposit made by the City pursuant to this Section 10.1 and the obligations of the City pursuant to Section 5.13 hereof and title to the Property shall vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said deposit and interest earnings thereon shall be deemed to be and shall constitute a special fund for the payments provided for by this Section 10.1 and said obligation shall thereafter be deemed to be and shall constitute the installment purchase obligation of the City for the Property. Upon said deposit, the Authority will execute or cause to be executed any and all documents as may be necessary to confirm title to the Property in accordance with the provisions hereof. In addition, the Authority hereby appoints the City as its agent to prepare, execute and file or record, in appropriate offices, such documents as may be necessary to place record title to the Property in the City.

10.2 Mandatory Prepayment From Net Proceeds of Insurance, Title Insurance or Eminent Domain. The City shall be obligated to prepay the Lease Payments, in whole on any date or in part on any Lease Payment Date, from and to the extent of any Net Proceeds of an insurance, title insurance or condemnation award with respect to the Property theretofore deposited in the Lease Payment Fund for such purpose pursuant to Article VI hereof and Article VII of the Trust Agreement. The City and the Authority hereby agree that such Net Proceeds shall be applied first to the payment of any delinquent Lease Payments, and thereafter shall be credited towards the City's obligations under this Section 10.2. Lease Payments due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the City to the Trustee and which shall represent an adjustment to the schedule set forth in Exhibit C attached hereto taking into account said partial prepayment.