

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # B-10

Urgent  Routine

AGENDA DATE July 24, 2012

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of a Resolution to Refinance the Series A of 1998 Certificates of Participation through a Private Placement Financing with the Bank of the West; and Related Actions

STAFF RECOMMENDATIONS:

1. Approve a resolution to refinance the Series A of 1998 Certificates of Participation through a private placement financing with the Bank of the West, which includes:
  - a) the form of the Amended and Restated Facilities Lease/Purchase Agreement between the City-County Capital Improvements Financing Agency and the Stanislaus County Capital Improvements Financing Authority;
  - b) the form of the Facilities Sublease with the Bank of the West;

(Continued on Page 2)

FISCAL IMPACT:

On July 10, 2012, given current refinancing opportunities that have been identified by the County's Financial Advisor, the Board of Supervisors authorized the Chief Executive Officer to proceed with the necessary financing actions to refinance the Series A of 1998 Certificates of Participation (COP) through a private placement financing to reduce the County's annual General Fund debt service obligation.  
(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-394

On motion of Supervisor Withdraw, Seconded by Supervisor Chiesa  
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withdraw, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**STAFF RECOMMENDATIONS: (Continued)**

- c) the form of the Assignment Agreement by and between Stanislaus County Capital Improvements Financing Authority and Bank of the West;
  - d) supplemental Agreement between County of Stanislaus and Bank of the West;
  - e) authorization for the Chairman of the Board and Secretary of the Authority to execute, acknowledge and deliver any and all documents required for the refinancing; and
  - f) authorization for the Chairman, Secretary and other officers of the Authority, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary and advisable to complete the refinancing.
2. Authorize the Chief Executive Officer to negotiate and execute all necessary agreements and all other documents to complete the refinancing.

**FISCAL IMPACT: (Continued)**

Since that time, the Chief Executive Officer has worked in collaboration with Debt Advisory Committee members, the County's Financial Advisor, and outside special Bond/Tax counsel to finalize a refinancing plan.

As of Fiscal Year 2012 – 2013 the total debt remaining on the Series A of 1998 COP is \$10,365,000, which includes principal and interest to maturity. The gross debt for Fiscal Year 2012-2013 is \$1,761,300, which is comprised of a scheduled principal payment of \$1,280,000 and an interest payment of \$481,300. The annual gross debt service payment for the Series A of 1998 COP is offset by \$101,444 in excess interest earnings from the reserve fund invested in a Guaranteed Investment Certificates (GIC) currently earning 5.66% annually. Accordingly, the annual net debt obligation for Fiscal Year 2012-2013 approved by the Board of Supervisors on June 5, 2012 was \$1,659,856.

The annual debt service for the Series A of 1998 COP is included in the County's Adopted Proposed Budget for Fiscal Year 2012-2013 and paid with revenue from Public Facility Fees of \$748,040, Miscellaneous Rents of \$91,604, and a General Fund contribution of \$820,212, as outlined in the chart below:

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1998 Series A Certificate of Participation Sources		Fiscal Year 2012-13
<b>Gross Annual Debt Service</b>		\$1,761,300
Interest Earnings Held with Trustee from original investment contract*		\$101,444
Subtotal		\$1,659,856
<b>Offsetting Revenues:</b>		
Public Facility Fees		\$748,040
Miscellaneous Rent		\$91,604
<b>General Fund Net County Cost Contribution</b>		\$820,212
*Investment contract will be terminated as a result of the refunding		

In comparison, the recommended private placement refinancing with the Bank of the West is estimated to reduce the County's annual debt service payment obligation by \$70,158 in Fiscal Year 2012-2013 as outlined in the sources chart below:

2012 Lease Refunding		Fiscal Year 2012-13
<b>Gross Debt Service obligation under Refunding action</b>		\$1,314,698
County Equity Contribution*		\$275,000
Subtotal		\$1,589,698
<b>Offsetting Revenues:</b>		
Public Facility Fees		\$748,040
Miscellaneous Rent		\$91,604
<b>General Fund Net County Cost Contribution</b>		\$750,054
<b>Decrease in General Fund Net County Cost Contribution for Fiscal Year 2012-2013</b>		<b>\$70,158</b>
**Contribution for two months of the 12-13 FY to smooth savings for future years based on new financing in place on August 1, 2012		

With the Board of Supervisors approval of the refinancing, the County is anticipated to reduce its debt obligation by approximately \$379,552 in present value dollars for the remainder of the debt to maturity in 2018 with a fixed interest rate of 1.99%. Additionally, the refinancing achieves an overall 3.66% Net Present Value (NPV) savings as percentage of the debt being refunded.

**DISCUSSION:**

Background

On February 10, 1998, the Board of Supervisors sitting as the Capital Improvement Financing Authority (Authority), authorized the issuance and approved the financing plan and related agreements for the Series A of 1998 COP which were issued to finance the acquisition and the construction of the County's portion of the 10th Street Public Administration building. The financing was approved to be structured in the form

of a Certificate of Participation. The total par amount financed was \$22,160,000, with a fixed interest rate through its maturity date of September 1, 2018.

On February 10, 1998, the City-County Capital Improvements and Financing Agency (Agency) adopted a resolution approving the execution of the Facilities Lease/Purchase Agreement between the City-County Capital Improvements and Financing Agency and the Stanislaus County Capital Improvements Financing Authority pursuant to which the City-County Capital Improvements and Financing Agency leased the County portion of the Building to the Stanislaus County Capital Improvements Financing Authority.

Refinancing Opportunities

On June 18, 2012, consistent with the County's debt policy, the Chief Executive Officer convened the Debt Advisory Committee (DAC) to review three refinancing scenarios with KNN Public Finance. The DAC provides advice on the issuance and management of the County's debt. Members of the Committee include the Chief Executive Officer, Auditor-Controller, Treasurer-Tax Collector, County Counsel, Director of Planning and Community Development, and the Public Works Director.

As part of the cost-benefit analyses, staff analyzed both the advantages and disadvantages of refinancing and privately placing the remaining debt on the Series A of 1998 COP. These major factors are described in the chart below:

<u>Advantages of Private Placement</u>	<u>Disadvantages of Private Placement</u>
Private placement financings typically have a "rate lock" that protect against volatility in interest rates and generates savings certainty.	Lender may have onerous terms and conditions.
No requirement to fund a debt service reserve fund, which eliminates negative arbitrage and generates additional savings.	Will need to satisfy the lender's credit review procedures and receive credit approval to close the financing.
Lower cost of issuance (No credit rating, no official statement, no underwriters discount).	May have lender origination fee.
Reduction of General Fund Net County Cost Contribution	
Typically quicker execution time than a public bond offering.	

Based on the different refinancing scenarios that were outlined by KNN Public Finance, the DAC unanimously recommended to obtain Board of Supervisors approval to contract for financial consulting services and special bond/tax counsel to pursue refinancing the 1998A COP. The Series A of 1998 COP is callable on any interest payment date of either September 1st or March 1st each fiscal year.

On July 10, 2012, the Board of Supervisors authorized the Chief Executive Officer to proceed with the necessary financing actions to refinance and privately place the Series A of 1998 COP. Staff will return to the Board of Supervisors on July 24, 2012 with a refinancing plan for consideration and approval. Any refinancing plan brought back to the Board of Supervisors shall generate at least 3% present value savings on the \$10,365,000 refinanced.

On July 17, 2012, pursuant to the original Facilities Lease/Purchase Agreement, the City-County Joint Powers Agency (JPA), in conjunction with the refinancing of the Series A of 1998 COP, approved the terms of the Amended and Restated Facilities Lease/Purchase Agreement, which revises the original Facilities Lease/Purchase Agreement to reflect that the Series A of 1998 COP is being prepaid and that the Bank of the West is the new lender on the County's private placement. This Agreement will be contingent upon the Board of Supervisors approval of the Resolution and execution of the amended documents.

**POLICY ISSUES:**

The Board of Supervisors should consider that if refinancing and reducing the annual debt service payments for its COPs is consistent with the Board's Priority of Efficient Delivery of Public Services.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this action.

**CONTACT PERSON:**

Monica Nino, Chief Executive Officer – 525-6333

**Attachments:**

- (1) Resolution of Stanislaus County Capital Improvements Financing Authority Authorizing the Execution and Delivery of Certain Documents and Authorizing Certain Actions in Connection Therewith In Order to Refinance the City-County Administration Building and Related Improvements
- (2) Amended and Restated Facilities Lease/Purchase Agreement between the City-County Capital Improvements Financing Agency and the Stanislaus County Capital Improvements Financing Authority
- (3) Facilities Sublease by and between Stanislaus County Capital Improvements Financing Authority and County of Stanislaus

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- (4) Assignment Agreement by and between Stanislaus County Capital Improvements Financing Authority and Bank of the West
- (5) Supplemental Agreement between County of Stanislaus and Bank of the West

# Attachment

1

**RESOLUTION NO. 2012-394**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF  
THE COUNTY OF STANISLAUS AUTHORIZING THE  
EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS  
AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION  
THEREWITH IN ORDER TO REFINANCE THE CITY-  
COUNTY ADMINISTRATION BUILDING AND RELATED  
IMPROVEMENTS**

WHEREAS, the Stanislaus County Capital Improvements Financing Authority is a joint powers authority organized and existing under the laws of the State of California (the "Authority") and has assisted the County of Stanislaus (the "County") in financing the City-County Administration Building located at 1010 10<sup>th</sup> Street (the "Building") and related capital improvements through the execution and delivery of the County of Stanislaus Certificates of Participation, Series A of 1998 (Downtown Center) (the "Prior Certificates"); and

WHEREAS, the Authority and the County desire to proceed with the refunding of the Prior Certificates in order to reduce the lease payments that the County is required to make with respect to the Prior Certificates thereby providing a financial benefit to the County;

WHEREAS, to facilitate the refunding of the Prior Certificates the Authority will enter into that certain Amended and Restated Facilities Lease/Purchase Agreement by and between the City-County Capital Improvements and Financing Agency (the "Agency") and the Authority (the "Lease Purchase Agreement") and the County and the Authority will enter into that certain Facilities Sublease by and between the County and the Authority (the "Sublease"), the forms of which have been presented to this Board of Supervisors at the meeting at which this Resolution has been adopted, pursuant to which Lease Purchase Agreement the Authority will agree to lease from the Agency a portion of the Building (the "Leased Premises"), and pursuant to which Sublease the County will agree to sublease the Leased Premises from the Authority and to pay certain lease payments in connection therewith to the Authority; and

WHEREAS, the Authority and Bank of the West (the "Purchaser") will enter into an Assignment Agreement by and between the Authority and the Purchaser (the "Assignment Agreement"), the form of which has been presented to this Board of Supervisors at the meeting at which this Resolution has been adopted, pursuant to which the Authority will assign certain rights in the Lease Purchase Agreement and the Facilities Sublease to the Purchaser, and the Purchaser will, in consideration of such assignment, pay an amount sufficient to provide for the refunding and defeasance of the Prior Certificates and payment of certain costs incurred by the County in connection with such transactions;

WHEREAS, the Board of Supervisors desires to consent to the terms of the Assignment Agreement; and

WHEREAS, in connection with its providing the financing to refund the Prior Certificates, the Purchaser is requiring that the County enter into that certain Supplemental Agreement



(the "Supplemental Agreement") the form of which has been presented to this Board of Supervisors at the meeting at which this Resolution has been adopted;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Stanislaus that:

Section 1. Each of the foregoing recitals is true and correct.

Section 2. The forms of the Lease Purchase Agreement, the Sublease, the Assignment Agreement and the Supplemental Agreement presented at this meeting are hereby approved. Each of the Chairman of the Board of Supervisors, the Chief Executive Officer of the County, the Treasurer-Tax Collector of the County or their designees (collectively, the "Authorized Officers"), acting alone, is hereby authorized for and in the name of the County to execute, and the Clerk to the Board of Supervisors is authorized to attest, the Sublease and the Supplemental Agreement, in substantially the forms hereby approved, with such additions thereto and changes therein as the Authorized Officer or Authorized Officers executing the same deem to be necessary, including, but not limited to, additions and changes thereto as are required by the Purchaser as condition to its entering into and performing its obligations under the Assignment Agreement; provided, however, that the terms of the Sublease, as executed, shall comply with the limitations set forth in Section 3 below. Approval of such changes shall be conclusively evidenced by the execution and delivery thereof by any one of the Authorized Officers. Each of the Authorized Officers is further authorized to execute, acknowledge and deliver any and all documents required to consummate the transactions contemplated by the Lease Purchase Agreement, the Sublease, the Assignment Agreement and the Supplemental Agreement, including for the termination of the existing leases related to the Prior Certificates and the existing Investment Agreement relating to the Reserve Fund for the Prior Certificates with AIG Matched Funding Corp.

Section 3. The term of the Sublease shall end not later than September 1, 2018, except as otherwise provided therein regarding an extension of the term. Base Rental Payments to be made by the County under the Sublease shall not exceed \$1,600,000 in any year and the principal component of Base Rental Payments shall not exceed \$9,000,000. The Board of Supervisors hereby finds and determines that the Base Rental Payments and the Additional Rental to be paid by the County under the Facilities Sublease in each year will not exceed the contemporaneous consideration received by the County for its use and occupancy of the Leased Premises in such year.

Section 4. The County hereby consents to the assignment by the Authority to the Purchaser of certain of the Authority's rights under the Lease Purchase Agreement and the Sublease, including the right to receive the Base Rental Payments and Additional Rental payments due to the Purchaser under the Sublease, and hereby approves the form of the Assignment Agreement by and between the Authority and the Purchaser. The consideration paid by the Purchaser pursuant to the Assignment Agreement shall be in an amount sufficient to provide for the refunding of the Prior Certificates and to pay costs incurred by the County in connection with the execution and delivery of the Sublease and the refunding of the Prior Certificates.

Section 5. Each of the Authorized Officers and the other officers of the County, acting alone, is hereby authorized to do any and all things and to execute and deliver any and all documents and agreements which they may deem necessary and advisable in order to consummate the refunding of the Prior Certificates and otherwise effectuate the purposes of this Resolution. In the event the Chairman and Vice Chairman of the Board of Supervisors are unavailable or unable to execute and

deliver any of the above referenced documents, any other member of the Board of Supervisors may validly execute and deliver such document. In the event that the Clerk to the Board of Supervisors is unavailable or unable to execute and deliver any of the above-referenced documents, any deputy clerk may validly execute and deliver such document.

Section 6. All actions heretofore taken by any officer of the County with respect to the execution and delivery of the Sublease and the refunding of the Prior Certificates are hereby approved, confirmed and ratified.

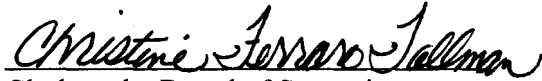
Section 7. This Resolution shall take effect from and after its date of adoption.

ADOPTED, SIGNED AND APPROVED this 24th day of July, 2012.

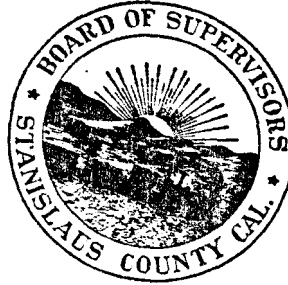


Chairman of the Board of Supervisors

ATTEST:



Clerk to the Board of Supervisors  
County of Stanislaus, California

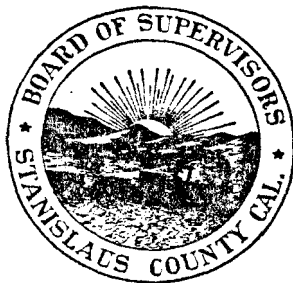


STATE OF CALIFORNIA )  
) ss.  
COUNTY OF STANISLAUS )

I, Christine Ferraro Tallman, Clerk to the Board of Supervisors of Stanislaus County, California, hereby certify that the above and foregoing Resolution was duly and regularly adopted by the said Board at a regular meeting thereof held on the 24<sup>th</sup> day of July, 2012, and that it was so adopted by the following vote of said Board:

AYES:	SUPERVISORS	Chiesa, Withrow, Monteith, De Martini and Chairman O'Brien
NOES:	SUPERVISORS	None
ABSENT:	SUPERVISORS	None

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24<sup>th</sup> day of July, 2012.



*Christine Ferraro Tallman*  
Clerk to the Board of Supervisors of Stanislaus County, California

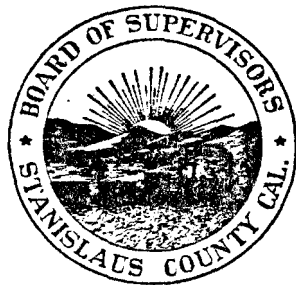
STATE OF CALIFORNIA    )  
  ) ss.  
COUNTY OF STANISLAUS )

I, Christine Ferraro Tallman, Clerk to the Board of Supervisors of the County of Stanislaus, do hereby certify that the above and foregoing Resolution is a full, true and correct copy of Resolution No. 2012-394 of said Board, and that the same has not been amended or repealed as of the date hereof.

DATED: July, 24 \_\_\_\_\_, 2012.

*Christine Ferraro Tallman*  
\_\_\_\_\_  
Clerk to the Board of Supervisors of Stanislaus  
County, California

(SEAL)



# Attachment

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RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
STRADLING YOCCA CARLSON & RAUTH )  
660 Newport Center Drive, Suite 1600 )  
Newport Beach, California 92660 )  
Attention: Robert J. Whalen, Esq. )  
 )

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This document is recorded for the benefit of  
the County of Stanislaus and the recording is fee-  
exempt under Section 27383 of the Government Code.

AMENDED AND RESTATED FACILITIES LEASE/PURCHASE AGREEMENT

by and between the

CITY-COUNTY CAPITAL IMPROVEMENTS AND FINANCING AGENCY

and the

STANISLAUS COUNTY CAPITAL IMPROVEMENTS FINANCING AUTHORITY

Dated as of July 1, 2012

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THIS AMENDED AND RESTATED FACILITIES LEASE/PURCHASE AGREEMENT (the "Facilities Lease"), executed and entered into as of July 1, 2012, by and between the CITY-COUNTY CAPITAL IMPROVEMENTS AND FINANCING AGENCY, a joint exercise of powers agency duly organized and existing under the laws of the State of California, as lessor (the "Agency"), and the STANISLAUS COUNTY CAPITAL IMPROVEMENTS FINANCING AUTHORITY, a joint exercise of powers agency duly organized and existing under the laws of the State of California, as lessee (the "Authority") amends and restates in its entirety that certain Facilities Lease/Purchase Agreement (the "Original Facilities Lease"), dated as of March 1, 1998 by and between the Agency and the Authority and recorded in the Official Records of the County of Stanislaus as Document No. 98-21737-00 on March 10, 1998.

W I T N E S S E T H :

WHEREAS, the City of Modesto (the "City") and the County of Stanislaus (the "County"), in conjunction with the Agency and the Redevelopment Agency of the City of Modesto (the "Redevelopment Agency"), have undertaken the acquisition and development of a public administration building (the "Building") on a site described in Exhibit A hereto (the "Site" and together with the Building, the "City-County Building"), located in the downtown area of the City in which the City and County maintain their administrative offices;

WHEREAS, the City, the County, the Redevelopment Agency and the Agency entered into, a Master Agreement (the "Master Agreement"), dated July 22, 1997, setting forth the responsibilities of the parties with respect to the development of the City-County Building and certain related improvements; and

WHEREAS, in accordance with the Master Agreement the City-County Building has been acquired, constructed and installed by the Agency; and

WHEREAS, the Agency has leased a portion of the City-County Building to the City to facilitate the City's financing of its portion of the City-County Building through the issuance of bonds (the "City Bonds") by the City of Modesto Public Financing Authority; and

WHEREAS, pursuant to the Original Lease, the Agency leased to the Authority the portions of the City-County Building as described in Section 1 below (the "County Facilities"); and

WHEREAS, the Authority subleased the County Facilities, together with certain other real property, to the County pursuant to a Lease Agreement dated as of March 1, 1998 (the "Original County Lease"); and

WHEREAS, simultaneous with the execution of the Original County Lease, pursuant to the terms of a Trust Agreement (the "County Trust Agreement"), dated as of March 1, 1998, by and between the County, the Authority and BNY Western Trust Company, as trustee (the "County Trustee"), the County Trustee executed and delivered Certificates of Participation, Series A of 1998 (Downtown Center) (the "Certificates"), evidencing proportionate interest in the Owners thereof in Lease Payments to be made by the County under the terms of the Lease Agreement; and

WHEREAS, the County now desires to refinance its obligations under the Original County Lease and prepay the Certificates in order to reduce the County's annual cost of leasing the County Facilities; and

WHEREAS, to facilitate the refinancing of the Original County Lease and the prepayment of the Certificates, it is necessary to amend and restate the Original Facilities Lease as set forth herein; and

WHEREAS, to obtain the financing required to prepay the lease payments due under the Original County Lease and prepay the Certificates, the County and the Authority will enter into a Facilities Sublease (the "County Sublease") dated as of July 1, 2012 which will be assigned to Bank of the West (the "Bank") under the terms of an Assignment Agreement (the "Assignment Agreement"), dated as of July 1, 2012, by and between the Authority and the Bank; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Facilities Lease;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

SECTION 1 Leased Premises.

The Agency hereby leases to the Authority and the Authority hereby leases from the Agency, on the terms and conditions hereinafter set forth, an undivided one-half interest in the Site and a portion of the City-County Building, as more fully described and depicted in Exhibit B hereto, which consists of approximately 160,000 square feet in the City-County Building to be occupied in part on an exclusive basis by the County and in part on a shared basis with the City (collectively, the "County Facilities").

SECTION 2 Refinancing of the Certificates.

In consideration of the lease of the County Facilities by the Agency to the Authority as provided in Section 1 hereof, the Authority hereby covenants to enter into the County Sublease with the County, cause the Certificates to be prepaid and to terminate the Original County Lease. The Agency covenants that it will not take any action which would cause the Interest Components of the Base Rental Payments (as defined in the County Lease) to be included in gross income for federal income tax purposes or subject to California personal income taxes (other than to the extent that the Interest Components of the Base Rental Payments made by the Sublessee under this Sublease will be included in gross income for federal income tax purposes as described in the opinion of Bond Counsel delivered to the County in connection with the execution of the County Lease).

SECTION 3 Term.

The term hereof commenced as of the date of the Original Facilities Lease and shall remain in effect until the term of the County Sublease expires as provided by Section 2 thereof, including any extension of the term pursuant to such Section 2; provided, however, that if, following an event of default under the County Sublease, the County Facilities are re-let in accordance with Section 12 of the County Sublease, then this Facilities Lease shall not terminate until the expiration of the term of any lease executed and delivered pursuant to Section 12 of the County Sublease.

SECTION 4 Rental.

The Authority has paid to the Agency as and for rental hereunder the sum of One Dollar (\$1.00) on the date of execution and delivery of the Certificates.

SECTION 5 Purpose.

The Authority shall use the County Facilities solely for the purpose of subletting the County Facilities to the County pursuant to the County Sublease; provided, that in the event of default by the County under the County Sublease, the Authority or the Bank may exercise the remedies provided in the County Sublease, including an assignment of its rights hereunder.

SECTION 6 Owner in Fee.

The Agency covenants that it is the owner in fee of the City-County Building and that there are no encumbrances of record that would impair the County's quiet use and enjoyment of the County Facilities pursuant to the terms of the County Sublease.

SECTION 7 Assignments and Subleases.

Unless the County shall be in default under the County Sublease, the Authority may not, without the written consent of the Agency, assign its rights hereunder or sublet the County Facilities, except to the Bank. The Bank may assign its interests in accordance with Section 5 of that certain Assignment Agreement dated as of July 1, 2012 by and between the Authority and the Bank.

SECTION 8 Right of Entry.

The Agency reserves the right for any of its duly authorized representatives to enter upon the County Facilities at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof, which right is exercisable only so long as the County is not in default under the County Sublease.

SECTION 9 Termination; Conveyance of Legal Title.

The Authority agrees, upon the termination hereof, to quit and surrender to the Agency the County Facilities in the same good order and condition as the same was in at the time of commencement of the term hereunder (with such modifications and improvements as are contemplated by the County Sublease), reasonable wear and tear excepted, and agrees that any permanent improvements constituting a part of the County Facilities at the time of the termination hereof shall remain thereon. The Agency agrees that, upon the termination hereof, fee title to the County Facilities shall vest in the Authority and acknowledges that pursuant to the terms of the County Sublease the County Facilities are being conveyed by the Authority to the County, such that, upon the payment by the County of all lease payments due under the County Sublease, the County will own the County Facilities.

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 Facilities Lease, which default continues for 30 days following written notice to and demand for correction thereof by the Agency, the Agency may exercise any and all remedies granted by law which do not adversely affect the interests of the Bank; provided that the Agency may not terminate this Facilities Lease and shall exercise only remedies providing for specific performance hereunder.

SECTION 11 Quiet Enjoyment.

The Authority at all times during the term hereof shall peaceably and quietly have, hold and enjoy all of the County Facilities.

SECTION 12 Waiver of Personal Liability.

All liabilities hereunder on the part of the Authority shall be solely liabilities of the Authority as a separate legal entity, and the Agency hereby releases each and every member, officer and employee of the Authority of and from any personal or individual liability under this Facilities Lease. No member, officer or employee of the Authority shall at any time or under any circumstances be individually or personally liable hereunder for anything done or omitted to be done by the Authority hereunder.

SECTION 13 Taxes.

The Agency hereby agrees and covenants to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Site.

SECTION 14 Eminent Domain.

In the event the whole (or so much thereof as to render the remainder unusable for the purposes for which it was intended by the County) or any part of the City-County Building is taken

under the power of eminent domain, the proceeds of such proceedings allocable to the County Facilities, as determined by the Agency, shall be paid to the County for application in accordance with Section 6 of the County Sublease.

SECTION 15 Title Insurance.

In the event that any proceeds are paid under the title policy payable or delivered to the Agency pursuant to Section 3.4.7.4 of the Master Agreement, such proceeds attributable to the County Facilities, as determined by the Agency, shall be paid to the County for application in accordance with Section 5.2 of the County Sublease.

SECTION 16 Liability Insurance; Casualty Insurance; and Fire and Extended Coverage.

(a) The Agency hereby covenants to obtain and cause to be maintained throughout the term of this Facilities Lease, a standard comprehensive general liability insurance policy or policies, and insurance against loss or damage to any part of the City-County Building by reason of fire and lightning, with extended coverage and vandalism and malicious mischief, in protection of the City JPA, the City, the City Trustee, the Authority, the County and the Bank and their respective members, directors, officers, agents and employees (the "Insured Parties"), indemnifying said parties against all direct or contingent loss or liability for damages for personal injury, death or property damage occasioned by reason of the operation of the City-County Building.

(b) The standard comprehensive general liability insurance policy or policies required by this Section shall have minimum liability limits of minimum liability limits of one million dollars (\$1,000,000) for personal injury or death of each person and three million dollars (\$3,000,000) for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of five hundred thousand dollars (\$500,000) 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 three million dollars (\$3,000,000) covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance carried by the Agency, the City or the County.

(c) Casualty insurance and fire and extended coverage required by this Section shall be in an amount equal to the replacement cost (without deduction for depreciation) of all structures constituting any part of the City-County Building, excluding the cost of excavations, of grading and filling, and of the land and excluding earthquake and flood (except that such insurance may be subject to deductible clauses for any one loss of not to exceed \$100,000 for any one loss), or, in the alternative, shall be in an amount and in a form sufficient, in the event of total or partial loss, to enable the payment of the portion of the City Bonds allocable to the City-County Building and unpaid Principal Components due under the County Sublease. Such casualty insurance may be maintained as part of or in conjunction with any other casualty insurance carried by the Agency.

(d) The proceeds of the liability insurance shall be applied to the payment of any claim covered by such policy. The proceeds of any casualty insurance and for any extended coverage shall be used for the repair, reconstruction or replacement of the damaged or destroyed portion of the City-County Building, and the Agency shall hold any such proceeds separate and apart from all other funds held by the Agency in a special fund to be designated the "Insurance and Condemnation Fund," to the end that such proceeds shall be applied to the repair, reconstruction or replacement of the City-County Building to at least the same good order, repair and condition as it was in prior to the damage or destruction, insofar as the same may be accomplished by the use of said proceeds; provided, however, if in the case of a total destruction of the City-County Building the Agency determines that the repair, reconstruction or replacement is not feasible within 24 months from the date of loss, then any proceeds received as a result of damage to the County Facilities shall be paid to the County for application in accordance with Section 5.1 of the County Sublease.

#### SECTION 17 Third-party Insureds.

The insurance policies required by Sections 15 and 16 hereof shall name the Authority and the Bank as additional insureds and in the case of the casualty insurance shall include endorsements making amounts payable under such policy payable to the County in accordance with its interest in the City-County Building described herein.

#### SECTION 18 Partial Invalidity.

This Facilities Lease constitutes a legal, valid and binding obligation of the Agency in accordance with its terms except as enforcement against the Agency may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

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

#### SECTION 19 Notices.

All approvals, authorizations, consents, demands, designations, notices, offers, requests, statements 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 or certified mail, return receipt requested, postage prepaid, and addressed as provided in Exhibit B hereof, with a copy to the Bank, or to such other addresses as the respective parties may from time to time designate by notice in writing.

SECTION 20 No Merger of Interests.

The leasehold estates under this Facilities Lease and the County Sublease shall not merge, whether by the exercise of any right or remedy hereunder or thereunder, by operation of law, or otherwise.

SECTION 21 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 hereof.

SECTION 22 Execution.

This Facilities Lease may be executed and entered into in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 23 Governing Law.

This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California.

SECTION 24 Amendments.

This Facilities Lease may only be amended in writing by the parties hereto and the Bank or its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed and entered into the Facilities Lease by their officers thereunto duly authorized as of the day and year first above written.

CITY-COUNTY CAPITAL IMPROVEMENTS AND  
FINANCING AGENCY

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

STANISLAUS COUNTY CAPITAL  
IMPROVEMENTS FINANCING AUTHORITY

By: \_\_\_\_\_  
Chairman



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, who proved  
to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, who proved  
to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
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entity upon behalf of which the person(s) acted, executed the instrument.

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paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

## EXHIBIT A

### Description of the County Facilities

The County Facilities shall consist of an undivided one-half interest in the approximately 160,000 square feet of the City-County Building as depicted in Exhibit B hereto and an undivided one-half interest in the following real property in the City of Modesto:

#### Description:

The land referred to herein is situated in the State of California, County of Stanislaus, City of MODESTO, described as follows:

#### PARCEL NO. 1:

AN UNDIVIDED ½ INTEREST IN LOTS 10, 11, 12, 13, 14, 15 AND 16 IN BLOCK 67 OF THE CITY OF MODESTO, AS PER MAP FILED DECEMBER 21, 1942 IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS.

#### PARCEL NO. 2:

AN UNDIVIDED ½ INTEREST IN LOTS 19 AND 20 IN BLOCK 67 OF THE CITY OF MODESTO, AS PER MAP FILED DECEMBER 21, 1942 IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS.

#### PARCEL NO. 3:

AN UNDIVIDED ½ INTEREST IN LOTS 21 AND 22 IN BLOCK 67 OF THE CITY OF MODESTO, AS PER MAP FILED DECEMBER 21, 1942 IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS.

#### PARCEL NO. 4:

AN UNDIVIDED ½ INTEREST IN ALL THAT CERTAIN REAL PROPERTY LYING WITHIN THE SOUTH ½ OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 8 AND 9 OF BLOCK 67 OF THE CITY OF MODESTO AS PER THE OFFICIAL MAP THEREOF, FILED IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS.

TOGETHER WITH THE NORTHEASTERLY HALF OF THAT PORTION OF THE ALLEY, AS SHOWN ON SAID MAP ON BLOCK 67, WHICH LIES BETWEEN THE SOUTHWESTERLY EXTENSION OF THE NORTHWESTERLY LINE OF SAID LOT 8 AND THE SOUTHWESTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF SAID LOT 9. EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL;

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 8, THENCE SOUTH 43° 31' 06" EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT, A DISTANCE OF 20.14 FEET; THENCE SOUTH 46° 27' 30" WEST, A DISTANCE OF 150.09 FEET TO THE

CENTER LINE OF SAID ALLEY; THENCE NORTH 43° 31' 16" WEST LONG SAID CENTER LINE, A DISTANCE OF 20.11 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHWESTERLY EXTENSION OF THE NORTHWESTERLY LINE OF LOT 8; THENCE NORTH 46° 26' 46" EAST, ALONG SAID EXTENSION AND SAID NORTHWESTERLY LINE OF LOT 8, A DISTANCE OF 150.09 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 5:

AN UNDIVIDED ½ INTEREST IN LOTS 17 AND 18 IN BLOCK 67 OF THE CITY OF MODESTO, AS PER MAP FILED DECEMBER 21, 1942 IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS.

PARCEL NO. 6:

AN UNDIVIDED ½ INTEREST IN THAT CERTAIN REAL PROPERTY BEING A PORTION OF LOT 25 IN BLOCK 67 OF THE CITY OF MODESTO AS PER THE OFFICIAL MAP THEREOF, FILED IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS LYING WITHIN THE SOUTH ½ OF THE SECTION 29, TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF LOT 25; THENCE SOUTH 46° 27' 01" WEST ALONG THE SOUTHEASTERLY LINE OF SAID LOT 25, A DISTANCE OF 44.92 FEET; THENCE NORTH 43° 32' 30" WEST, A DISTANCE OF 4.91 FEET; THENCE NORTH 46° 27' 30" EAST, A DISTANCE OF 54.92 FEET TO THE CENTERLINE OF THE ALLEY AS SHOWN ON SAID MAP OF BLOCK 67; THENCE SOUTH 43° 31' 16" EAST, ALONG SAID ALLEY CENTERLINE, A DISTANCE OF 4.90 FEET, TO THE POINT OF INTERSECTION WITH THE NORTHEASTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF SAID LOT 25; THENCE SOUTH 46° 27' 01" WEST ALONG SAID EXTENSION, A DISTANCE OF 10.00 FEET, TO THE POINT OF BEGINNING.

PARCEL NO. 7:

AN UNDIVIDED ½ INTEREST IN THAT CERTAIN REAL PROPERTY LYING WITHIN THE SOUTH ½ OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 23 AND 24 IN BLOCK 67 OF THE CITY OF MODESTO AS PER THE OFFICIAL MAP THEREOF, FILED IN BOOK 15 OF MAPS, STANISLAUS COUNTY RECORDS.

TOGETHER WITH THE SOUTHWESTERLY ½ OF THAT PORTION OF THE ALLEY, AS SHOWN ON SAID MAP OF BLOCK 67, WHICH LIES BETWEEN THE NORTHEASTERLY EXTENSION OF THE NORTHWESTERLY LINE OF SAID LOT 24 AND THE NORTHEASTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF SAID LOT 23.

EXCEPTING THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE MOST WESTERLY CORNER OF LOT 24; THENCE NORTH 46° 27' 01" EAST, ALONG THE NORTHWESTERLY LINE OF SAID LOT 24, A DISTANCE OF 95.17 FEET; THENCE SOUTH 43° 32' 30" EAST, A DISTANCE OF 33.11 FEET; THENCE SOUTH 46° 27' 30" WEST, A DISTANCE OF 95.18 FEET, TO A POINT ON THE SOUTHWESTERLY LINE OF LOT 23; THENCE NORTH 43° 31' 28" WEST, ALONG SAID SOUTHWESTERLY LINE OF LOT 23 AND THE SOUTHWESTERLY LINE OF LOT 24, A DISTANCE OF 33.10 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**

**[Floor Plans to be Attached]**

EXHIBIT C

Notices

If to the Lessee: Stanislaus County Capital Improvements Financing Authority  
c/o County of Stanislaus  
1100 "H" Street  
Modesto, California 95354  
Attention: Chief Executive Officer

If to the Lessor: City-County Capital Improvement and Financing Agency  
c/o Stanislaus County CEO's Office  
1100 "H" Street, 2nd Floor  
Modesto, California 95354



# Attachment

3

**RECORDING REQUESTED BY** )  
**AND WHEN RECORDED MAIL TO:** )  
 )  
Stradling Yocca Carlson & Rauth )  
660 Newport Center Drive, Suite 1600 )  
Newport Beach, California 92660 )  
Attn: Robert J. Whalen, Esq. )

---

[Space above for Recorder's use]

**FACILITIES SUBLEASE**

by and between

**STANISLAUS COUNTY CAPITAL IMPROVEMENTS FINANCING AUTHORITY,**  
as sublessor

and

**COUNTY OF STANISLAUS, CALIFORNIA,**  
as sublessee

Relating to

**COUNTY OF STANISLAUS**  
**(Downtown Center Refinancing)**

Dated as of July 1, 2012

---

NO DOCUMENTARY TRANSFER TAX  
DUE. This Facilities Sublease is recorded for  
the benefit of the County of Stanislaus and the  
recording is fee-exempt under Section 27383  
of the California Government Code.

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**FACILITIES SUBLEASE**

**(Downtown Center Refinancing)**

This FACILITIES SUBLEASE, dated as of July 1, 2012 (this "Sublease"), is made by and between STANISLAUS COUNTY CAPITAL IMPROVEMENTS FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Sublessor"), as sublessor, and the COUNTY OF STANISLAUS (the "Sublessee"), a political subdivision of the State of California duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "State"), as sublessee.

**WITNESSETH:**

WHEREAS, the Sublessee has previously financed certain improvements to real property consisting of a public administration building owned by the City-County Capital Improvements and Financing Agency (the "Agency") and related improvements through the execution and delivery of its Certificates of Participation Series A of 1998 (Downtown Center) (the "1998 Certificates") and is able to refinance the 1998 Certificates at this time with significant savings to the Sublessee (the "1998 Refinancing");

WHEREAS, the Agency and the Sublessor have entered into a Facilities Lease (as hereinafter defined), pursuant to which the Agency has leased to Sublessor certain real property, as more particularly described in Exhibit "A" hereto, located in the County of Stanislaus, California, together with certain of the improvements located thereon, as more particularly described in Exhibit C hereto (collectively, the "Leased Premises");

WHEREAS, the Sublessee has determined that, in order to accomplish the 1998 Refinancing, it is necessary and desirable to sublease the Leased Premises pursuant to this Sublease; and

WHEREAS, the Sublessor is simultaneously providing for the transfer of certain of its right, title and interest in and to this Sublease to Bank of the West (the "Purchaser") pursuant to an Assignment Agreement, dated as of July 1, 2012 (the "Assignment Agreement");

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

**SECTION 1. DEFINITIONS; REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**SECTION 1.1 Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Sublease, have the meanings as set forth below.

"Additional Rental" means the amounts specified as such in Section 3.1(b) hereof.

"Agency" means the City-County Capital Improvements and Financing Agency, a joint powers agency duly organized and existing under the laws of the State of California.

"Applicable Environmental Laws" means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Sections

6901 et seq.; the California Hazardous Waste Control Law (“HWCL”), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), California Health & Safety Code sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern (1) the existence, cleanup, and/or remedy of contamination on property, (2) the protection of the environment from spilled, deposited, or otherwise emplaced contamination, (3) the control of hazardous wastes, or (4) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

“Assignment Agreement” means the Assignment Agreement dated as of July 1, 2012 from the Sublessor to the Purchaser.

“Base Rental” means the amounts specified as such in Section 3.1(a) hereof, as such amounts may be adjusted from time to time in accordance with the terms hereof, but does not include Additional Rental.

“Base Rental Payments” means the periodic payments of Base Rental to be paid by the Sublessee in accordance with Section 3.1(a) hereof, the amounts for which are set out in Exhibit “B” hereto.

“Building” means the Site and the public administration building thereon located at 1010 10<sup>th</sup> Street, Modesto, California, and is owned by the Agency in accordance with the terms of that certain Master Agreement dated July 22, 1997 by and among the County, the Agency, the City of Modesto and the Redevelopment Agency of the City of Modesto.

“Business Day” means a day other than a Saturday, Sunday or legal holiday or a day on which the Purchaser is not open to the public to transact business.

“Closing Date” means \_\_\_\_\_, 2012.

“County” means the County of Stanislaus, California.

“Default Rate” shall have the meaning set forth in the Supplemental Agreement.

“Excess Amounts” shall have the meaning set forth in Section 3.1(b)(iii).

“Facilities Lease” means the Amended and Restated Facilities Lease/Purchase Agreement dated as of July 1, 2012 by and between the Agency, as lessor, and the Authority, as lessee, together with all amendments thereto.

“Independent Counsel” means an attorney or firm of attorneys of recognized national standing in the field of municipal finance selected by the Sublessee.

“Leased Premises” means the portion of the Building leased by the Agency to the Authority pursuant to the Facilities Lease and subleased hereunder by the Authority to the County as further described in Exhibit C hereto.

“Facilities Lease” means the Amended and Restated Facilities Lease/Purchase Agreement, dated as of the date hereof and recorded concurrently herewith, by and between the Agency, as lessor, and the Authority, as lessee, as amended and supplemented from time to time, and any duly authorized and executed amendments thereto.

“Fiscal Year” means the fiscal year of the Sublessee, which at the date of this Sublease is the period from July 1 to and including the following June 30.

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

“Interest Component” means the portion of any Base Rental Payment attributable to interest as indicated in Exhibit “B” hereto.

“Permitted Encumbrances” means as of any particular time: (1) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the Sublessee may, pursuant to Section 4.2 hereof, permit to remain unpaid; (2) the Assignment Agreement, as it may be amended from time to time; (3) this Sublease, as it may be amended from time to time; (4) the Facilities Lease, as it may be amended from time to time; (5) any right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law after the Closing Date which is being contested by the Sublessee in accordance with Section 4.4 hereof; (6) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Closing Date and which the Sublessee certifies in writing on the Closing Date will not materially impair the use of the Leased Premises for its intended purpose; (7) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the Closing Date, or existing on any real property substituted for the Leased Premises, to which the Purchaser and the Sublessee consent in writing and which the Sublessee certifies will not materially impair the use of the Leased Premises or real property substituted for the Leased Premises, as the case may be for its intended purpose and will not, in and of itself, result in abatement of Rental Payments hereunder; and (8) any other encumbrances or subleases expressly permitted under this Sublease.

“Principal Component” means, the portion of any Base Rental Payment attributable to principal as indicated in Exhibit “B” hereto.

“Purchaser” means Bank of the West, or any permitted assignee pursuant to Section 5 of the Assignment Agreement.

“Rental Payments” means, collectively, the Base Rental and Additional Rental due hereunder.

“Site” means the real property described from time to time in Exhibit A hereto, as such Exhibit A may be amended and supplemented from time to time in accordance with the provisions of this Sublease.

“Sublease” means this Facilities Sublease, including any amendments or supplements hereto.

“Sublease Term” means the term of this Sublease, as provided in Section 2 hereof.

“Sublease Year” means the period from the Closing Date to August 1, 2013, and thereafter the period from each August 2 to and including the following August 1, during the Sublease Term.

“Sublessee” means the County of Stanislaus, its successors or assigns.

“Sublessee Representative” means the County Administrative Officer of the County, any Assistant County Administrative Officer, any Deputy County Administrative Officer, the Treasurer-Tax Collector of the County or such officials’ designee or other official designated by the Board of Supervisors of the County and authorized to act on behalf of the Sublessee under or with respect to this Sublease and all other agreements related hereto.

“Sublessee Resolution” means the resolution approving the execution of this Sublease, adopted by the Board of Supervisors of the County of Stanislaus on July 24, 2012.

“Sublessor” means Stanislaus County Capital Improvements Financing Authority, its successors and assigns.

“Sublessor Resolution” means the resolution approving the execution of this Sublease, adopted at a regular meeting of the Board of Directors of the Stanislaus County Capital Improvements Financing Authority on July 24, 2012.

“Supplemental Agreement” means that certain Supplemental Agreement, dated as of July \_\_, 2012, by and between the County and the Purchaser, including any amendments or supplements thereto.

**SECTION 1.2 Representations, Warranties and Covenants of the Sublessee.** The Sublessee represents, warrants and covenants as follows:

(a) The Sublessee is a political subdivision of the State of California duly organized and operating pursuant to the Constitution and laws of the State of California and has all necessary power and authority to adopt the Sublessee Resolution and to enter into and perform its duties under this Sublease and the Supplemental Agreement. The Sublessee Resolution has been adopted and has not been rescinded, and this Sublease and the Supplemental Agreement constitute legal, valid and binding obligations of the Sublessee enforceable against the Sublessee in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally and by the application of equitable principles if equitable remedies are sought.

(b) The adoption of the Sublessee Resolution and the execution and delivery of this Sublease and the Supplemental Agreement, and compliance with the provisions thereof, will not in any material respect conflict with, or constitute a breach of or default under, the Sublessee’s duties under this Sublease, the Supplemental Agreement, the Sublessee Resolution or any law, administrative regulation, court decree, resolution, by-laws or other agreement to which the Sublessee is subject or by which it or any of its property is bound.



(c) Except as may be required under blue sky or other securities laws of any state, or with respect to any permits or approvals heretofore received which are in full force and effect, there is no consent, approval, authorization or other order of, or filing with, or certification by, any governmental authority, board, agency or commission or other regulatory authority having jurisdiction over the Sublessee, other than the approval and authorization of the Board of Supervisors, required for the adoption of the Sublessee Resolution and execution and delivery of this Sublease and the Supplemental Agreement or the consummation by the Sublessee of the other transactions contemplated by the Sublessee Resolution, this Sublease or the Supplemental Agreement.

(d) There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or, to the knowledge of the Sublessee, threatened against the Sublessee to restrain or enjoin the delivery of the payments to be made pursuant to the Sublease, or in any way contesting or affecting the validity of this Sublease, the Supplemental Agreement or the Sublessee Resolution, or contesting the powers of the Sublessee to enter into or perform its obligations under any of the foregoing, or which, if determined adversely to the Sublessee, would have a material adverse effect on the Sublessee's ability to perform its obligations under any of the foregoing.

(e) By official action of the Sublessee prior to the execution hereof, the Sublessee has duly adopted the Sublessee Resolution and has duly authorized and approved the execution and delivery of, and the performance by the Sublessee of the obligations on its part contained in, this Sublease and the Supplemental Agreement and the consummation by it of all other transactions contemplated by this Sublease and the Supplemental Agreement.

(f) The Sublessee is not in breach of or in default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Sublessee is a party or is otherwise subject which breach or default would have a material and adverse impact on the Sublessee's ability to perform its obligations under this Sublease and the Supplemental Agreement, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

(g) The Sublessee represents that it is not, and has not been at any time, in default as to principal or interest with respect to any indebtedness for borrowed money issued or guaranteed by it, or as to lease payments in connection with certificates of participation.

(h) The Leased Premises is integral for performing the Sublessee's governmental functions and during the term of this Sublease will be used by the Sublessee only for the purpose of performing one or more essential functions of the Sublessee.

(i) The Sublessee covenants that it will not take any action which would cause the Interest Components of the Base Rental Payments made by the Sublessee under the Sublease to be included in gross income for federal income tax purposes or subject to California personal income taxes (other than to the extent that the Interest Components of the Base Rental Payments made by the Sublessee under the Sublease will be included in gross income for federal income tax purposes as described in the opinion of Bond Counsel delivered in connection with the execution of this Sublease).

(j) No existing lien or encumbrance on the Leased Premises materially impairs the Sublessee's use of the Leased Premises.

(k) The Leased Premises is not located in a flood hazard area or flood zone and has never been subject to material damage from flooding.

(l) The insured value of the Leased Premises, based on replacement cost, is not less than the aggregate Principal Components of all of the Base Rental Payments.

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

**SECTION 1.3** Sublessor Representations, Warranties and Covenants. The Sublessor represents, warrants and covenants as follows:

(a) The Sublessor is a California joint powers authority duly organized and validly existing pursuant to the laws of the State of California and has all necessary power and authority to adopt the Sublessor Resolution and enter into and perform its duties under this Sublease, the Facilities Lease and the Assignment Agreement, the Sublessor Resolution has been adopted and has not been rescinded, and this Sublease, the Facilities Lease and the Assignment Agreement constitute legal, valid and binding obligations of the Sublessor in accordance with their respective terms except as enforcement against the Sublessor may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

(b) The adoption of the Sublessor Resolution and the execution and delivery of this Sublease, the Facilities Lease and the Assignment Agreement and compliance with the provisions thereof, will not in any material respect conflict with, or constitute a breach of or default under, the Sublessor's duties this Sublease, the Facilities Lease, the Assignment Agreement, the Sublessor Resolution or any law, administrative regulation, court decree, resolution, charter, by-laws or other agreement to which the Sublessor is subject or by which it or any of its property is bound.

(c) Except as may be required under blue sky or other securities laws of any state, or except with respect to any permits or approvals heretofore received which are in full force and effect, there is no consent, approval, authorization or other order of, or filing with, or certification by, any governmental authority, board, agency or commission or other regulatory authority having jurisdiction over the Sublessor, required for the adoption of the Sublessor Resolution and the execution and delivery of this Sublease, the Facilities Lease and the Assignment Agreement or the consummation by the Sublessor of the other transactions contemplated by the Sublessor Resolution, this Sublease, the Facilities Lease and the Assignment Agreement.

(d) There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or, to the knowledge of the Sublessor,

threatened against the Sublessor to restrain or enjoin the execution and delivery of this Sublease, the Facilities Lease and the Assignment Agreement, or in any way contesting or affecting the validity of the this Sublease, the Facilities Lease and the Assignment Agreement, the Sublessor Resolution or contesting the powers of the Sublessor to enter into or perform its obligations under any of the foregoing.

(e) By official action of the Sublessor prior to the execution hereof, the Sublessor has duly authorized and approved the execution and delivery of, and the performance by the Sublessor of the obligations on its part contained in this Sublease, the Facilities Lease and the Assignment Agreement and the consummation by it of all other transactions contemplated by the Sublessor Resolution, this Sublease, the Facilities Lease and the Assignment Agreement.

(f) The Sublessor is not in breach of or in default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Sublessor is a party or is otherwise subject which breach or default would have a material and adverse impact on the Sublessor's ability to perform its obligations under this Sublease, the Facilities Lease and the Assignment Agreement, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

(g) The Sublessor covenants that it will not take any action which would cause the Interest Components of the Base Rental Payments made by the Sublessee under the Sublease to be included in gross income for federal income tax purposes or subject to California personal income taxes (other than to the extent that the Interest Components of the Base Rental Payments made by the Sublessee under this Sublease will be included in gross income for federal income tax purposes as described in the opinion of Bond Counsel delivered in connection with the execution of this Sublease).

## **SECTION 2. SUBLEASE TERM; TRANSFER OF TITLE TO SUBLESSEE.**

The Sublessor hereby leases the Leased Premises to the Sublessee, and the Sublessee hereby leases the Leased Premises from the Sublessor and agrees to pay the Base Rental and the Additional Rental as provided herein for the use and occupancy of the Leased Premises, all on the terms and conditions set forth herein. The term of this Sublease shall begin on the Closing Date and end on the earliest of (a) June 1, 2018, (b) such earlier date as the Sublessee shall have paid all Principal Components of Base Rental and other amounts payable hereunder, or (c) the date of termination of this Sublease due to casualty or condemnation in accordance with the terms of Section 5 or 6 hereof; provided, however, that if, on June 1, 2018, all Interest Components, Principal Components and Additional Rental shall not have been fully paid by the Sublessee as a result of a default in payment or an abatement in payments in accordance with Section 3.5, then Sublessee may optionally prepay all such amounts on such date and this Sublease will terminate or, if no such election is made, then the term of this Sublease shall be extended and, subject to the abatement provisions in Section 3.5 hereof, the Sublessee shall continue to make Base Rental Payments on the first Business Day of each month in the amount of the Base Rental Payment due on June 1, 2018 and to pay Additional Rental in accordance with Section 3.1(b) hereof until all such amounts are paid, except in no event shall the term of this Sublease be extended beyond June 1, 2028.

Upon the expiration of the term of this Sublease, all of the Sublessor's right, title and interest in the Leased Premises shall be transferred directly to the Sublessee, free and clear of any interest of the Sublessor.

### **SECTION 3. RENT.**

**SECTION 3.1 Rental Payments.** The Sublessee hereby agrees, subject to the terms hereof, to pay to the Sublessor and the Purchaser, as applicable, the Base Rental and Additional Rental in the amounts, at the times and in the manner hereinafter set forth, such amounts constituting in the aggregate the rent payable under this Sublease.

(a) Base Rental. The Sublessee agrees to pay, from legally available funds, Base Rental in the amounts set forth in Exhibit "B" hereto, the Principal Components of which are attributable to principal payable to the Purchaser and the Interest Components of which are attributable to interest payable to the Purchaser as determined in accordance with the terms of such Exhibit. The Base Rental Payments payable by the Sublessee shall be due on the first Business Day of each calendar month during the Sublease Term. Base Rental payable the first Business Day of a month shall be in consideration of the use and occupancy of the Leased Premises during the prior month.

The obligation of the Sublessee to pay Base Rental shall commence on the Closing Date.

(b) Additional Rental. In addition to the Base Rental set forth herein, the Sublessee agrees to pay as Additional Rental all of the following:

(i) All taxes and assessments of any nature whatsoever levied upon the Leased Premises or upon any interest of the Sublessor therein or in this Sublease;

(ii) Insurance premiums, if any, on all insurance required under the provisions of Section 4.3 hereof; and

(iii) Following an event of default under Section 12 hereof and so long as such event of default continues, in addition to paying the Base Rental set forth in Exhibit B, the Sublessee shall pay to the Purchaser on the first Business Day of each month an amount equal to the difference between the Interest Component paid on such date and the amount determined by paying the Default Rate on the unpaid Principal Components (the "Excess Amounts").

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

**SECTION 3.2 Consideration.** The payments of Base Rental and Additional Rental under this Sublease for each Fiscal Year or portion thereof during the Sublease Term shall constitute the total rental for such Fiscal Year or portion thereof and shall be paid by the Sublessee for and in consideration of the right of use and occupancy, and the continued quiet use and enjoyment, of the Leased Premises by the Sublessee for and during such Fiscal Year or portion thereof. The parties

hereto have determined and agreed that such total annual rental is not in excess of the total annual fair rental value of the Leased Premises. In making such determination, consideration has been given to the costs of acquisition and financing of the Leased Premises, the uses and purposes served by the Leased Premises, and the benefits therefrom that will accrue to the parties by reason of this Sublease and to the general public by reason of the Sublessee's use of the Leased Premises.

**SECTION 3.3** **Budget.** The Sublessee hereby covenants to take such action as may be necessary to include all Base Rental and Additional Rental due hereunder in its annual budget and to make the necessary annual appropriations for all such Base Rental and Additional Rental, subject to Section 3.5 hereof. The obligation of the Sublessee to make Base Rental or Additional Rental Payments does not constitute an obligation of the Sublessee for which the Sublessee is obligated to levy or pledge any form of taxation or for which the Sublessee has levied or pledged any form of taxation. The obligation of the Sublessee to make Base Rental or Additional Rental Payments does not constitute an indebtedness of the Sublessee, the State or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

**SECTION 3.4** **Payment; Credit.** Base Rental and any Additional Rental owed to the Purchaser shall be paid by the Sublessee to the Purchaser (as assignee of the Sublessor) on the dates set forth in Section 3.1 hereof in lawful money of the United States of America, at the address specified by the Purchaser pursuant to the Assignment Agreement. Except as provided in Section 3.5 hereof, any amount necessary to pay any Base Rental and any Additional Rental owed to the Purchaser, or portion thereof which is not so paid, shall remain due and payable until received by the Purchaser. Notwithstanding any dispute between the Sublessee and the Sublessor hereunder, the Sublessee shall make all Rental Payments when due and shall not withhold any Rental Payments pending the final resolution of such dispute or for any other reason whatsoever. The Sublessee's obligation to make Rental Payments in the amount on the terms and conditions specified hereunder shall be absolute and unconditional without any right of set-off or counterclaim, and without abatement, subject only to the provisions of Section 3.5 hereof.

**SECTION 3.5** **Rental Abatement.** Except to the extent of amounts, if any, received in respect of rental interruption insurance, Rental Payments due hereunder shall be subject to abatement in accordance with this Section 3.5 during any period in which, by reason of material damage, destruction or condemnation of the Leased Premises or any portion thereof, or defects in title to the Leased Premises, there is substantial interference with the use and right of possession by the Sublessee of the Leased Premises or any portion thereof. The amount of rental abatement shall be such that the resulting Rental Payments in any Fiscal Year during which such interference continues, excluding any amounts received in respect of rental interruption insurance, do not exceed the fair rental value of the portions of the Leased Premises as to which such damage, destruction, condemnation or title defect does not substantially interfere with the use and right of possession of the Sublessee, as reasonably determined by the Sublessee and evidenced by a certificate of the Sublessee. Such abatement shall continue for the period commencing with the date of such damage, destruction, condemnation or discovery of such title defect and ending with the restoration of the Leased Premises or portion thereof to tenantable condition or correction of the title defect. In the event of any such damage, destruction, condemnation or title defect, this Sublease shall continue in full force and effect, except as set forth in Sections 5 and 6 hereof.

**SECTION 3.6** **Triple Net Sublease.** This Sublease is intended to be a triple net lease. The Sublessee agrees that the rentals provided for herein shall be an absolute net return to the Sublessor free and clear of any expenses, charges or set-offs whatsoever.

**SECTION 3.7 Prepayment.** The Sublessee shall have the right to prepay the aggregate Principal Components of Base Rental payable hereunder in whole or in part, (i) on any date following the date on which the Default Rate is applicable, and (ii) on any date in the event of casualty, title defects or a taking of all or a portion of the Leased Premises pursuant to eminent domain as described in Section 5 or 6 hereof, in an amount equal to 100% of the Principal Components to be prepaid, plus the proportionate amount of the Interest Components accrued to the date of prepayment, plus any Additional Rental due as of the prepayment date.

**SECTION 4. AFFIRMATIVE COVENANTS OF THE SUBLESSOR AND THE SUBLESSEE.**

The Sublessor and the Sublessee are entering into this Sublease in consideration of among other things, the following covenants:

**SECTION 4.1 Replacement, Maintenance and Repairs.** The Sublessee shall, at its own expense, during the Sublease Term maintain the Leased Premises, or cause the same to be maintained, in good order, condition and repair and shall repair or replace any portion of the Leased Premises which is destroyed or damaged to such an extent that there is substantial interference with the use and right of possession by the Sublessee of the Leased Premises or any portion thereof which would result in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof; provided, however, that the Sublessee shall not be required to repair or replace any such portion of the Leased Premises pursuant to this Section 4.1 if insurance proceeds or other legally available funds shall be applied in an amount sufficient to prepay (i) the outstanding Principal Component of the Base Rental Payments (as specified in Exhibit B), or (ii) any portion of the outstanding Principal Component of the Base Rental Payments such that the fair rental value of the remaining Leased Premises is not less than the resulting Rental Payments due in any Sublease Year following such partial prepayment.

The Sublessee shall provide or cause to be provided all security service, custodial service, janitorial service and other services necessary for the proper upkeep and maintenance of the Leased Premises. It is understood and agreed that in consideration of the payment by the Sublessee of the Rental Payments herein provided for, the Sublessee is entitled to occupy the Leased Premises and no other party shall have any obligation to incur any expense of any kind or character in connection with the management, operation or maintenance of the Leased Premises during the Sublease Term. The Sublessor shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to the Leased Premises. The Sublessee hereby expressly waives the right to make repairs or to perform maintenance of the Leased Premises at the expense of the Sublessor and (to the extent permitted by law) waives the benefit of Sections 1932, 1941 and 1942 of the Civil Code of the State relating thereto. The Sublessee shall keep the Leased Premises free and clear of all liens, charges and encumbrances other than those existing on or prior to the Closing Date and covered by the exceptions and exclusions set forth in the title policies delivered pursuant to Section 4.3 hereof, any liens on improvements, fixtures, equipment or personal property placed on the Leased Premises by the Sublessee in accordance with Section 8 hereof, and any liens of mechanics, materialmen, suppliers, vendors or other persons or entities for work or services performed or materials furnished in connection with the Leased Premises which are not due and payable or the amount, validity or application of which is being contested in accordance with Section 4.4 hereof.

**SECTION 4.2 Taxes, Other Governmental Charges and Utility Charges.** The Sublessor and the Sublessee contemplate that the Leased Premises will be used for a governmental or

proprietary purpose of the Sublessee and, therefore, that the Leased Premises will be exempt from all taxes which might otherwise be assessed and levied with respect to the Leased Premises. Nevertheless, the Sublessee hereby agrees to pay during the Sublease Term, as the same respectively become due, all taxes (except for income or franchise taxes of the Sublessor), utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Premises; provided however, that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, the Sublessee shall be obligated to pay only such installments as are accrued during such time as this Sublease is in effect; provided, further, that the Sublessee may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner which does not, in the opinion of counsel, adversely affect the right, title and interest of the Sublessor in and to any portion of the Leased Premises or its rights or interests under this Sublease or subject any portion of the Leased Premises to loss or forfeiture. Any such taxes or charges shall constitute Additional Rental under Section 3.1(b) hereof and shall be payable directly to the entity assessing such taxes or charges.

#### **SECTION 4.3     Insurance.**

(a)     Public Liability and Property Damage Insurance; Workers' Compensation Insurance.

(i)     The Sublessee shall maintain or cause the Agency to maintain, throughout the term of this Sublease, a standard comprehensive general liability insurance policy or policies in protection of the Sublessee, the Sublessor and their respective members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the use or ownership of the Leased Premises. 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 a single accident or event, and in a minimum amount of \$500,000 for damage to property (subject to a deductible clause of not to exceed \$100,000) 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 or required to be carried by the Sublessee or the Agency, and may be maintained in whole or in part in the form of self-insurance by the Sublessee, provided that such self-insurance complies with the provisions of Section 4.3(b) hereof, or may be provided by the Agency pursuant to the terms of the Facilities Lease. The proceeds of such liability insurance shall be applied in accordance with Section 5.1 hereof.

(ii)    The Sublessee shall maintain or cause to be maintained, throughout the term of this Sublease, workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the California Labor Code, or any act enacted as an amendment or supplement thereto or in lieu thereof, such workers' compensation insurance to cover all persons employed by the Sublessee in connection with the Leased Premises and to cover full liability for compensation under any such act; provided, however, that the Sublessee's obligations under this subsection may be satisfied by self-insurance, provided that such self-insurance complies with the provisions of Section 4.3(b) hereof.

(iii)   The Sublessee shall maintain or cause to be maintained casualty insurance insuring structures constituting part of the Leased Premises against fire, lightning and all

other risks covered by an extended coverage endorsement excluding earthquake and flood, to the full insurable value of such structures, subject to a \$100,000 loss deductible provision, unless some other deductible is acceptable to the Purchaser. The Sublessee's obligations under this subsection may be satisfied by self-insurance, provided that such self-insurance complies with the provisions of Section 4.3(b) hereof, or may be provided by the Agency pursuant to the terms of the Facilities Lease. Any proceeds of the insurance obtained by the Agency shall be applied in the manner set forth in Section 16 of the Facilities Lease, and to the extent paid to the Sublessee shall be applied as set forth in Section 5.1(a).

(iv) The Sublessee shall maintain, or cause the Agency to maintain, rental interruption insurance to cover the Purchaser's loss, total or partial, of Base Rental Payments and Excess Amounts resulting from the loss, total or partial, of the use of any part of the Leased Premises as a result of any of the hazards required to be covered pursuant to subsection (iii) of this Section in an amount equal to lesser of (i) the amount sufficient at all times to pay an amount not less than the product of two times the maximum Base Rental Payment scheduled to be paid in the current or any future period during the Sublease Term or (ii) such lesser amount as may be agreed to by the Purchaser. Such rental interruption insurance shall be payable for a period adequate to cover the period of repair or reconstruction, but not to exceed two years. The Sublessee shall not be permitted to self-insure its obligation under this subsection. In the event Excess Amounts begin to accrue under Section 3.1(b) hereof, Sublessee shall have 30 days to increase the amount of the rental interruption insurance to cover the Excess Amounts.

(v) The insurance required by this subsection shall be provided by carriers rated at least "A" by Standard & Poor's Ratings Services (a "Qualified Insurer"), unless the Purchaser shall approve an insurer with a lower rating. If an insurer's rating falls below "A" (or, with respect to an insurer approved by the Purchaser with a rating lower than "A," falls below the rating such insurer had when approved by the Purchaser), such insurer shall be replaced with a Qualified Insurer, unless the Purchaser shall approve an insurer with a lower rating. All policies or certificates of insurance provided for in this Section 4.3(a) shall name the Sublessee as a named insured, and, with the exception of workers' compensation insurance, the Sublessor and the Purchaser as additional insureds. All policies or certificates of insurance maintained under clauses (iii) and (iv) above shall name the Agency as loss payee if such insurance is maintained by the Agency and otherwise shall name the Sublessee as loss payee, and the proceeds of such insurance shall be deposited with the Sublessee for application pursuant to Section 5 hereof. All policies of insurance naming the Purchaser as an additional insured shall provide for the Purchaser to receive 30 days' prior notice of any cancellation or reduction in coverage. The Sublessee agrees to provide to Purchaser by August 1 of each year certificates of insurance evidencing the insurance coverages required herein. The Sublessee covenants to maintain adequate cash reserves to pay the amount of any deductible it is required to pay. Notwithstanding the generality of the foregoing (with the exception of the rental interruption insurance required by clause (iv) above), the Sublessee shall not be required to maintain or cause to be maintained more insurance than is specifically referred to above.

(b) Self-Insurance. Insurance provided through a California joint powers authority of which the Sublessee is a member or with which the Sublessee contracts for insurance shall be deemed to be self insurance for purposes hereof. Any self-insurance maintained by the Sublessee pursuant to this Section shall comply with the following terms, except to the extent that the Purchaser shall waive any of such terms:



(i) in the case of property insurance described in (iii) above, the self-insurance program shall be approved in writing by the Purchaser and there shall be delivered in connection with such approval an opinion of bond counsel in form and substance satisfactory to the Purchaser to the effect that the use of proceeds of self-insurance program for purposes allowed or required by this Sublease is authorized under the laws of the State and does not affect the validity or enforceability of the Sublease;

(ii) the self-insurance program shall be reviewed and analyzed by an independent insurance consultant (“Independent Insurance Consultant”);

(iii) the self-insurance program shall include an actuarially sound claims reserve fund out of which each self-insured claim shall be paid, the adequacy of each such fund shall be evaluated on an annual basis by the Independent Insurance Consultant and any deficiencies in any self-insured claims reserve fund shall be remedied in accordance with the recommendations of the aforementioned Independent Insurance Consultant; and

(iv) in the event the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by the Independent Insurance Consultant, shall be maintained.

(c) Title Insurance. The Sublessee shall deliver to the Purchaser, as soon as practicable after the Closing Date, (i) a copy of a CLTA Owner’s policy of title insurance issued in an amount equal to the aggregate principal amount of Base Rental Payments outstanding by a title insurance company acceptable to the Purchaser with respect to the Leased Premises, naming the Sublessee as insured and showing fee title to the Leased Premises in the name of the Agency; and (ii) a copy of a CLTA Leasehold Owner's policy of title insurance issued by a title insurance company acceptable to the Purchaser naming the Purchaser and the Sublessee as insureds, and insuring the validity and priority of the Facilities Lease (and the interest of the Sublessor thereunder, as assigned to the Purchaser) and this Sublease (and the interest of the Sublessor thereunder, as assigned to the Purchaser).

**SECTION 4.4** Liens. The Sublessee shall promptly pay or cause to be paid all sums of money that may become due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for, in, upon or about the Leased Premises and which may be secured by any mechanic's, materialman's or other lien against the Leased Premises, or the interest of the Sublessor therein, and shall cause each such lien to be fully discharged and released; provided, however, that the Sublessee or the Sublessor (i) may contest any such claim or lien without payment thereof so long as such non-payment and contest stays execution or enforcement of the lien, but if such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not stayed, or if stayed and the stay thereafter expires, then and in any such event the Sublessee shall forthwith pay and discharge such judgment or lien, or (ii) delay payment without contest so long as and to the extent that such delay will not result in the imposition of any penalty or forfeiture

**SECTION 4.5** Laws and Ordinances.

(a) General. The Sublessee agrees to observe and comply in all material respects with all rules, regulations and laws applicable to the Sublessee with respect to the Leased Premises

and the operation thereof. The cost, if any, of such observance and compliance shall be borne by the Sublessee, and the Sublessor shall not be liable therefor.

(b) Hazardous Materials. The Sublessee shall not use or permit the Leased Premises or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements on the Leased Premises, including, but not limited to, diesel storage tanks related to the operation of the generators on the Leased Premises, and done only in compliance with all Applicable Environmental Laws, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the release or threat of release of Hazardous Materials on, from or beneath the Leased Premises or onto any other Leased Premises excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of a political subdivision and those used in the underground storage tanks relating to the fueling facility and the generators, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Applicable Environmental Laws. Upon the occurrence of any release or threat of release of Hazardous Materials, the Sublessee shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to the Sublessor or the Purchaser, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Leased Premises or other property, in compliance with all Applicable Environmental Laws. Notwithstanding anything to the contrary contained herein, underground storage tanks are permitted so long as they comply with subsection (c).

(c) The Sublessee shall conform to and carry out a reasonable program of maintenance and inspection of all underground storage tanks, and shall maintain, repair, and replace such tanks only in accordance with all Applicable Environmental Laws.

**SECTION 4.6** Tax Matters. The Sublessee covenants to comply with each applicable requirement of Section 103 and Sections 141 through 150 of the Code. In furtherance of this covenant, the Sublessee agrees to comply with the Tax Certificate, as such Tax Certificate may be amended from time to time, as a source of guidance for compliance with such provisions. This covenant shall survive the payment or prepayment of all Base Rental hereunder.

**SECTION 4.7** Prohibition Against Encumbrance or Sale. The Sublessee and the Sublessor will not create or suffer to be created any mortgage, pledge, lien, charge or encumbrance upon the Leased Premises, except Permitted Encumbrances. The Sublessee and the Sublessor will not sell, lease or otherwise dispose of or abandon the Leased Premises or any property essential to the proper operation of the Leased Premises, except as otherwise provided herein.

## **SECTION 5. INSURANCE.**

### **SECTION 5.1 Application of Insurance Proceeds.**

(a) General. Proceeds of insurance (other than rental interruption insurance) received by the Sublessee in respect of destruction of or damage to any portion of the Leased Premises by fire or other casualty or event shall be applied by the Sublessee to, the cost of repair or replacement of the Leased Premises or portion thereof, unless the Sublessee pays to the Purchaser the amount necessary to prepay the Principal Components of Base Rental Payments in an aggregate principal amount equal to the Principal Component(s) of the Base Rental attributable to such damaged or destroyed portion of the Leased Premises and the Base Rental with respect to the remaining portion of the Leased Premises is sufficient to pay the Principal Components and Interest Components of the Base Rental Payments to remain outstanding after the date on which the Principal Component of Base Rental Payments to be prepaid are prepaid.

The proceeds of any insurance (other than rental interruption insurance), received by the Sublessee in respect of destruction of or damage to any portion of the Leased Premises by fire or other casualty or event, not applied to repairing or replacing such damaged or destroyed property, shall forthwith be applied to the prepayment of the Principal Component of Base Rental Payments outstanding. Any insurance proceeds in excess of the amount needed to either repair or replace a damaged or destroyed portion of the Leased Premises or to prepay the Principal Component of Base Rental Payments outstanding shall be remitted to the Sublessee.

The proceeds of rental interruption insurance shall be used to pay Base Rental Payments and Excess Amounts.

(b) If there is an abatement of Rental Payments pursuant to Section 3.5 hereof as a result of such casualty or event, and the Sublessee elects to apply such insurance proceeds and such other sums as are deposited by the Sublessee pursuant to such section to the prepayment of the Principal Components of Base Rental outstanding rather than replacing or repairing the destroyed or damaged portion of the Leased Premises, then this Sublease shall terminate with respect to the destroyed or damaged portion of the Leased Premises as of the date the amount of such insurance is applied to such prepayment.

**SECTION 5.2 Application of Title Insurance and Condemnation Proceeds.** Proceeds of any policy of title insurance or condemnation award received by the Sublessee in respect of the Leased Premises shall be applied and disbursed by the Sublessee as follows:

(a) If the Sublessee determines that the title defect or condemnation giving rise to such proceeds has not materially affected the use and occupancy of the Leased Premises and will not result in an abatement of Rental Payments payable by the Sublessee under the Sublease, such proceeds shall be remitted to the Sublessee.

(b) If the Sublessee determines that such title defect will result in an abatement of Rental Payments payable by the Sublessee under the Sublease or in the case of a condemnation will result in a termination of this Sublease or an abatement due to a partial condemnation, then the Sublessee shall apply such proceeds to the prepayment of the Principal Components of Base Rental Payments outstanding.

## **SECTION 6. EMINENT DOMAIN.**

**SECTION 6.1 Total Condemnation.** If the Leased Premises, or so much thereof as to render the remainder of the Leased Premises unusable for the Sublessee's purposes under this Sublease, shall be taken under the power of eminent domain, then this Sublease shall terminate as of the day possession shall be so taken, or, if the Sublessee is the condemnor, then this Sublease shall terminate as of the date of entry of a judgment or interlocutory judgment regarding the subleasehold interest in the Leased Premises. Any award made in eminent domain proceedings for the taking shall be paid to the Sublessee for application in accordance with the provisions of Section 5.2 hereof.

**SECTION 6.2 Partial Condemnation.** If less than a substantial portion of the Leased Premises shall be taken under the power of eminent domain, and the remainder is useable for the Sublessee's purposes, then this Sublease shall continue in full force and effect as to the remaining portions of the Leased Premises subject only to such rental abatement as is required by Section 3.5 hereof. The Sublessee and the Sublessor hereby waive the benefit of any law to the contrary. Any award made in eminent domain proceedings for the taking shall be paid to the Sublessee for application in accordance with the provisions of Section 5.2 hereof.

## **SECTION 7. ASSIGNMENT AND SUBLEASE.**

The Sublessee shall not mortgage, pledge, assign or transfer any interest of the Sublessee in this Sublease by voluntary act or by operation of law, or otherwise; provided, however, that the Sublessee may sublease all or any portion of the Leased Premises, and may grant concessions to others involving the use of any portion of the Leased Premises, whether such concessions purport to convey a leasehold interest or a license to use a portion of the Leased Premises; provided that any sublease or concessions must at all times be subject and subordinate to this Sublease. The Sublessee shall at all times remain liable for the performance of the covenants and conditions on its part to be performed under this Sublease, notwithstanding any subletting or granting of concessions which may be made. Nothing herein contained shall be construed to relieve the Sublessee of its obligation to pay Base Rental and Additional Rental as provided in this Sublease or to relieve the Sublessee of any other obligations contained herein. In no event will the Sublessee sublease or permit the use of all or any part of the Leased Premises in violation of the covenants contained herein or in the Tax Certificate.

The Sublessor shall, concurrently with the execution hereof, assign all of its right, title and interest in and to this Sublease (except for its right to payment of its expenses under Section 3.1(b) hereof and its right to indemnification pursuant to Section 11 hereof), including without limitation its right to receive Rental Payments payable hereunder, to the Purchaser pursuant to the Assignment Agreement, and the Sublessee hereby approves such assignment. The parties hereto further agree to execute any and all documents necessary and proper in connection therewith.

## **SECTION 8. ADDITIONS AND IMPROVEMENTS.**

The Sublessee shall have the right during the Sublease Term to make any additions or improvements to the Leased Premises, to attach fixtures, structures or signs, and to affix any personal property to the Leased Premises, so long as the fair rental value of the Leased Premises is not thereby reduced below the Rental Payments payable under this Sublease. Title to all fixtures, equipment or personal property placed by the Sublessee on the Leased Premises shall remain in the Sublessee. Title to any personal property, improvements or fixtures placed on the Leased Premises by any

sublessee or licensee of the Sublessee shall be controlled by the sublease or license agreement between such sublessee or licensee and the Sublessee, which sublease or license agreement shall not be inconsistent with this Sublease.

#### **SECTION 9. RIGHT OF ENTRY.**

Representatives of the Sublessor shall, subject to reasonable security precautions, have the right to enter upon the Leased Premises during reasonable business hours (and in emergencies at all times) (i) to inspect the same, (ii) for any purpose connected with the rights or obligations of the Sublessor under this Sublease, or (iii) for all other lawful purposes. The Sublessee hereby grants an easement to the Sublessor to enter upon any property of the Sublessee which is adjacent to the Leased Premises in order to enter upon the Leased Premises pursuant to this Section 9.

#### **SECTION 10. QUIET ENJOYMENT.**

The Sublessor covenants and agrees that the Sublessee, upon keeping and performing the covenants and agreements herein contained, shall, at all times during the Sublease Term, peaceably and quietly have, hold, and enjoy the Leased Premises.

#### **SECTION 11. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.**

The Sublessee shall, to the full extent permitted by law, indemnify, protect, hold harmless, save and keep harmless the Sublessor and its directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of (i) the entering into of this Sublease; (ii) any accident in connection with the operation, use, condition or possession of the Leased Premises or any portion thereof resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the Sublessee or the Sublessor; (iii) the failure to comply with any Applicable Environmental Laws or the use, presence, storage, disposal or release of any Hazardous Substances on or about the Leased Premises; (iv) patent, trademark or copyright infringement; (v) strict liability in tort; and (vi) loss of the federal income tax exemption of the Interest Component of Base Rental due to the failure of the Sublessee to comply with the provisions of the Tax Certificate. The indemnification arising under this Section 11 shall continue in full force and effect notwithstanding the full payment of all obligations hereunder or the termination hereof for any reason. The Sublessee and the Sublessor mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following the learning thereof by such party. However, notwithstanding anything to the contrary in this Sublease, this Section 11 provides no indemnity for liability, obligations, losses, claims, or damages caused by the Sublessor's gross negligence or willful misconduct, and the Sublessee shall not indemnify the Sublessor for the same.

#### **SECTION 12. DEFAULT BY SUBLESSEE.**

(a) Events of Default. The following shall be "events of default" under this Sublease and the terms "event of default" and "default" shall mean, whenever they are used in this Sublease, any one or more of the following events:

(i) the Sublessee shall fail to pay any Base Rental Payment or Excess Amounts required to be paid pursuant to Section 3.1(a) hereof by the close of business on the day such payment is required pursuant to Section 3.1(a) hereof;

(ii) the Sublessee shall fail to pay any item of Additional Rental (other than Excess Amounts) as and when the same shall become due and payable pursuant to Section 3.1(b) hereof and shall fail to pay such Additional Rental within a period of 30 days after written notice thereof from the Sublessor to the Sublessee;

(iii) the Sublessee shall breach any other terms, covenants or conditions contained herein, and shall fail to remedy any such breach with all reasonable dispatch within a period of 30 days after written notice thereof from the Sublessor to the Sublessee, or, if such breach cannot be remedied within such 30-day period, shall fail to institute corrective action within such 30-day period and diligently pursue the same to completion;

(iv) The Sublessee shall fail to maintain insurance as required under Section 4.3;

(v) Any material statement, representation or warranty of the Sublessee pursuant to this Sublease or in connection with its execution shall have been false, incorrect or misleading in any material respect when made;

(vi) The Sublessee shall become insolvent or be unable to pay its debts and perform its obligations as the same become due, or the Sublessee shall be the subject of bankruptcy, insolvency or receivership proceedings under any applicable law; or

(vii) Any Event of Default as set forth in Section 6.01 of the Supplemental Agreement exists of which Sublessee has been given notice by the Purchaser.

(b) Remedies on Default. The Sublessor shall have the right, at its option, or upon the direction of the Purchaser without any further demand or notice, (1) to terminate this Sublease, or, with the consent of the Sublessee which consent shall not be unreasonably withheld to keep this Sublease in full force and effect, and in either event, to reenter the Leased Premises and eject all parties in possession therefrom, and relet the Leased Premises as the agent and for the account of the Sublessee upon such terms and conditions as the Sublessor may deem advisable, in which event the rents received on such re-letting shall be applied first to the expenses of reletting and collection, including expenses necessary for repair or restoration of the Leased Premises to its original condition (taking into account normal wear and tear), reasonable attorneys' fees and any real estate commissions actually paid, and second to the payment of Base Rental and Additional Rental in accordance with this Sublease, and if a sufficient sum shall not be thus realized to pay such sums and other charges, then, if this Sublease shall not have been terminated, the Sublessee shall pay to the Sublessor any net deficiency existing on the date when Base Rental or Additional Rental is due hereunder; or (2) in lieu of the above, so long as the Sublessor does not terminate the Sublessee's right to possession, this Sublease shall continue in effect and the Sublessor shall have the right to enforce all of its rights and remedies under this Sublease, including the right to recover Base Rental and Additional Rental Payments as they become due under this Sublease pursuant to Section 1951.4 of the California Civil Code. The foregoing remedies of the Sublessor are in addition to and not exclusive of any other remedy of the Sublessor. Any re-entry pursuant to this Section 12 shall be

allowed by the Sublessee without hindrance, and the Sublessor shall not be liable in damages for any such re-entry or be guilty of trespass.

(c) In addition to the other remedies set forth above, upon the occurrence of an event of default, the Sublessor is entitled to proceed to protect and enforce the rights vested in the Sublessor by this Sublease or by law. The provisions of this Sublease and the duties of the Sublessee and of its supervisors, officers or employees are enforceable by the Sublessor by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Sublessor shall have the right to bring the following actions:

(i) Accounting. By action or suit in equity to require the Sublessee and its supervisors, officers and employees and its assigns to account as the trustee of an express trust.

(ii) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Sublessor.

(iii) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce the Sublessor's rights against the Sublessee (and its board, officers and employees) and to compel the Sublessee to perform and carry out its duties and obligations under the law and its covenants and agreements with the Sublessee as provided herein.

(d) The Sublessee acknowledges and agrees that the rights and remedies of this Section 12 are being assigned by the Sublessor to the Purchaser pursuant to the Assignment Agreement and that all rights and remedies exercisable by the Sublessor hereunder shall, with the same force and effect, be exercised solely by the Purchaser. In furtherance thereof, the Sublessor hereby irrevocably appoints the Purchaser as the agent and attorney-in-fact of the Sublessor for the purposes of exercising any of the remedies hereunder.

Except as expressly waived herein, each and every remedy of the Sublessor hereunder or at law shall be available to any assignee of the rights of the Sublessor hereunder and is cumulative, and the exercise of one remedy shall not impair the right of the Sublessor or its assignee to any or all other remedies. If any statute or rule validly shall limit the remedies given to the Sublessor or any assignee of the rights of the Sublessor hereunder, the Sublessor or its assignee nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law, except as otherwise expressly provided herein.

The Sublessor or any assignee of the rights of the Sublessor hereunder shall not exercise its remedies hereunder so as to cause the portion of Base Rental Payments designated as and comprising interest to be included in gross income for Federal income tax purposes or to be subject to State personal income taxes. Notwithstanding any other provision of this Sublease to the contrary, in no event shall the Sublessor or any assignee of the rights of the Sublessor hereunder have the right to accelerate the payment of any Base Rental hereunder.

### **SECTION 13. WAIVER.**

The waiver by the Sublessor of any breach by the Sublessee, and the waiver by the Sublessee of any breach by the Sublessor of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

#### **SECTION 14. DISCLAIMER OF WARRANTIES.**

Neither the sublessor nor any person acting on its behalf has made or makes any warranty or representation as to the past, present or future condition of the leased premises not herein expressed, and the sublessee has entered into this sublease without representations or warranties with respect thereto on the part of the sublessor, its agents, representatives or employees.

#### **SECTION 15. SUBSTITUTION AND RELEASE OF LEASED PREMISES.**

This Sublease and the Facilities Lease may be modified or amended at any time, with the prior written consent of the Purchaser, (which consent shall not be unreasonably withheld, if such amendment is to correct any error in the description of the Leased Premises) or to release from this Sublease and the Facilities Lease any portion of the Leased Premises (which consent shall be at the Purchaser's sole discretion), or to substitute other real property and improvements (the "Substituted Property") for the Leased Premises (which consent shall be at the Purchaser's sole discretion); and provided, however, that the Sublessee shall have filed with the Sublessor and the Purchaser all of the following:

(a) Executed copies of the Sublease and the Facilities Lease or amendments thereto containing the amended legal description of the Leased Premises;

(b) Evidence that copies of the Sublease, the Facilities Lease and the Assignment Agreement or amendments thereto containing the amended legal description of the Leased Premises have been duly recorded in the official records of the County Recorder of the County of Stanislaus;

(c) A certificate of the Sublessee Representative that (i) the annual fair rental value of the property which will constitute the Leased Premises after such release or substitution will be at least equal to 100% of the maximum amount of Base Rental Payments and Additional Rental becoming due in the then current Sublease Year or in any subsequent Sublease Year (assuming for purposes of such calculation that the Additional Rental in each future Sublease Year will be equal to the Additional Rental in the current Sublease Year), (ii) any substitute property has a useful life greater than the Sublease Term; (iii) any substitute property is integral for performing the Sublessee's governmental functions, (iv) there is no event that has occurred and is continuing that would give rise to an abatement of Base Rental with respect to the Leased Premises, as constituted, after such release or substitution, and (v) no event of default under this Sublease has occurred and is continuing;

(d) A certificate of the Sublessee Representative setting forth the fair replacement value of the property which will constitute the Leased Premises after such release or substitution and evidencing that such fair replacement value is equal to or greater than the sum of the then unpaid Principal Components of Base Rental Payments as set forth in Exhibit "B" hereto;

(e) In the case of substitution of property for the then existing Leased Premises, a CLTA Owner's policy or policies and a CLTA Leasehold Owner's policy or policies, or a commitment or commitments for such policies or amendments or endorsements to existing policies resulting in title insurance with respect to the Leased Premises after such substitution satisfying the requirements of Section 4.3(c). Each such insurance instrument, when issued, shall insure such substituted property subject only to such exceptions as do not substantially interfere with the Sublessee's right to use and occupy such substituted property and as will not result in an abatement of Rental Payments payable by the Sublessee under this Sublease;



(f) An opinion of counsel stating that such amendment or modification (i) is authorized or permitted by the Constitution and laws of the State and by this Sublease; (ii) complies with the terms of the Constitution and laws of the State and of this Sublease; (iii) will, upon the execution and delivery thereof, be valid and binding upon the Sublessor and the Sublessee in accordance with its terms; and (iv) will not cause the Interest Components of the Base Rental Payments to be included in gross income for federal income tax purposes; and

(g) Such other or additional information and documents as the Purchaser may reasonably require to evidence the value of the Leased Premises following such release of substitution including without limitation an insurance valuation or third party appraisal.

**SECTION 16. NOTICES.**

All notices, requests, demands and other communications under this Sublease shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or on receipt if sent by telex or other telecommunication facility or courier or, if mailed by first-class mail, postage prepaid, and properly addressed as follows:

To the Sublessee:

Stanislaus County  
1010 10th Street, Suite 6800  
Modesto, CA 95354  
Attention: Treasurer-Tax Collector  
Phone: (209) 525-4463  
Fax: (209) 342-6203

To the Sublessor:

Stanislaus County Capital Improvements Financing Authority  
c/o County of Stanislaus  
1010 10th Street, Suite 6800  
Modesto, CA 95354  
Attention: President

To the Purchaser:

Bank of the West  
180 Montgomery Street  
San Francisco, CA 94104  
Attention: Shari Sacks  
Phone:  
Fax:

or to such other address or addresses as any such person shall have designated to the others by notice given in accordance with the provisions of this Section 16.

**SECTION 17. VALIDITY.**

If any one or more of the terms, provisions, promises, covenants or conditions of this Sublease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, then each and all of the remaining terms, provisions, promises, covenants and conditions of this Sublease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Sublease shall be held by a court of competent jurisdiction to be void, voidable or unenforceable by the Sublessor or by the Sublessee, or if for any reason it is held by such a court that any of the covenants and agreements of the Sublessee hereunder, including the covenant to pay Base Rental and Additional Rental hereunder, is unenforceable for the full term hereof, then and in such event for and in consideration of the right of the Sublessee to possess, occupy and use the Leased Premises, which right in such event is hereby granted, this Sublease shall thereupon become and shall be deemed to be a lease from year to year under which the annual Base Rental Payments and Additional Rental Payments herein specified will be paid by the Sublessee.

**SECTION 18. LAW GOVERNING; VENUE.**

This Sublease is made in the State under the Constitution and laws of the State and is to be so construed. If any party to this Sublease initiates any legal or equitable action to enforce the terms of this Sublease, to declare the rights of the parties under this Sublease or which relates to this Sublease in any manner, each such party agrees that the place of making and for performance of this Sublease shall be the County of Stanislaus, State of California, and the proper venue for any such action is the Superior Court of the State of California, in and for the County of Stanislaus.

**SECTION 19. AMENDMENT.**

The Sublease may be amended in writing by agreement between the Sublessor and the Sublessee, with the consent in writing of the Purchaser. The Facilities Lease may be amended in writing by agreement between the Sublessor and the Agency, with the consent in writing of the Purchaser. Notwithstanding the foregoing, the Facilities Lease, the Sublease and the rights and obligations provided thereby may also be modified or amended at any time without the consent of the Purchaser, upon the written agreement of the parties thereto, but only (1) for the purpose of curing any ambiguity or omission relating thereto, or of curing, correcting or supplementing any defective provision contained in the Facilities Lease or the Sublease, (2) to modify or amend the description of the Leased Premises pursuant to Section 15 of the Sublease or (3) for any other reason, provided that such modification or amendment does not materially adversely affect the interests of the Purchaser; provided however, that the Sublessor and the Sublessee may rely in entering into any such amendment or modification thereof upon the opinion of counsel stating that the requirements of this sentence have been met with respect to such amendment or modification.

**SECTION 20. EXCESS PAYMENTS.**

Notwithstanding anything contained herein to the contrary, if for any reason, including but not limited to damage, destruction, condemnation, transfer, sale or disposition, the Sublessee or the Purchaser receive payments, proceeds or awards with respect to the Leased Premises in excess of the amount necessary to pay or prepay all of the Outstanding Principal Components of Base Rental

Payments, such excess shall represent the Sublessee's equity interest in the Leased Premises and shall all be paid to the Sublessee.

**SECTION 21. NO MERGER.**

If both the Sublessor's and the Sublessee's estate under this or any other lease relating to the Leased Premises or any portion thereof shall at any time or for any reason become vested in one owner, this Sublease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the Sublessee so elects as evidenced by recording a written declaration so stating, and, unless and until the Sublessee so elects, the Sublessee shall continue to have and enjoy all of its rights and privileges as to the separate estates.

**SECTION 22. FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS.**

The Sublessee and the Sublessor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Premises leased hereby or intended to be so leased or for carrying out the expressed intention of this Sublease.

**SECTION 23. EXECUTION IN COUNTERPARTS.**

This Sublease may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Sublease as of the date first above written.

STANISLAUS COUNTY CAPITAL  
IMPROVEMENTS FINANCING AUTHORITY, as  
sublessor

By: \_\_\_\_\_

Title: Chairman

By: \_\_\_\_\_

Title: Secretary

COUNTY OF STANISLAUS, CALIFORNIA, as  
sublessee

By: \_\_\_\_\_

Title: Chairman

By: \_\_\_\_\_

Title: Clerk

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in the Leased Premises conveyed under the foregoing to the County of Stanislaus, a political subdivision of the State of California, duly organized under the laws of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of the County of Stanislaus, pursuant to authority conferred by resolution of the Board of Supervisors adopted on July 24, 2012 and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 2012

COUNTY OF STANISLAUS

By: \_\_\_\_\_  
County Executive Officer

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

The land referred to herein below is situated in the County of Stanislaus, State of California, and is described as follows:

**EXHIBIT B**

**BASE RENTAL PAYMENTS**

The Base Rental Payments shall be comprised of the following Interest Components and Principal Components:

<i>Payment Date/Period Ending</i>	<i>Principal Component*</i>	<i>Interest Rate</i>	<i>Interest Component</i>	<i>Total Base Rental</i>	<i>Total Base Rental for Fiscal Year Ended June 30</i>
09/01/2012	\$ 116,125.82	1.990%	\$ 15,343.96	\$ 131,469.78	
10/01/2012	117,277.40	1.990	14,192.39	131,469.79	
11/01/2012	117,005.28	1.990	14,464.50	131,469.78	
12/01/2012	117,665.91	1.990	13,803.87	131,469.78	
01/01/2013	117,407.42	1.990	14,062.37	131,469.79	
02/01/2013	117,608.61	1.990	13,861.18	131,469.79	
03/01/2013	119,132.05	1.990	12,337.74	131,469.79	
04/01/2013	118,014.29	1.990	13,455.50	131,469.79	
05/01/2013	118,644.05	1.990	12,825.74	131,469.79	
06/01/2013	118,419.83	1.990	13,049.96	131,469.79	
06/30/2013					\$ 1,314,697.87
07/01/2013	119,037.18	1.990	12,432.61	131,469.79	
08/01/2013	118,826.74	1.990	12,643.05	131,469.79	
09/01/2013	119,030.36	1.990	12,439.42	131,469.78	
10/01/2013	119,629.03	1.990	11,840.76	131,469.79	
11/01/2013	119,439.33	1.990	12,030.45	131,469.78	
12/01/2013	120,025.48	1.990	11,444.31	131,469.79	
01/01/2014	119,849.68	1.990	11,620.11	131,469.79	
02/01/2014	120,055.06	1.990	11,414.73	131,469.79	
03/01/2014	121,345.53	1.990	10,124.26	131,469.79	
04/01/2014	120,468.72	1.990	11,001.06	131,469.78	
05/01/2014	121,023.37	1.990	10,446.41	131,469.78	
06/01/2014	120,882.55	1.990	10,587.24	131,469.79	
06/30/2014					1,577,637.44
07/01/2014	121,424.54	1.990	10,045.25	131,469.79	
08/01/2014	121,297.77	1.990	10,172.02	131,469.79	
09/01/2014	121,505.63	1.990	9,964.16	131,469.79	
10/01/2014	122,028.55	1.990	9,441.24	131,469.79	
11/01/2014	121,922.95	1.990	9,546.84	131,469.79	
12/01/2014	122,433.10	1.990	9,036.69	131,469.79	
01/01/2015	122,341.68	1.990	9,128.11	131,469.79	
02/01/2015	122,551.33	1.990	8,918.46	131,469.79	
03/01/2015	123,604.08	1.990	7,865.70	131,469.78	
04/01/2015	122,973.14	1.990	8,496.65	131,469.79	
05/01/2015	123,451.16	1.990	8,018.63	131,469.79	
06/01/2015	123,395.42	1.990	8,074.37	131,469.79	

06/30/2015					1,577,637.47
07/01/2015	123,860.51	1.990	7,609.28	131,469.79	
08/01/2015	123,819.12	1.990	7,650.67	131,469.79	
09/01/2015	124,031.29	1.990	7,438.49	131,469.78	
10/01/2015	124,476.93	1.990	6,992.86	131,469.79	
11/01/2015	124,457.14	1.990	7,012.65	131,469.79	
12/01/2015	124,889.75	1.990	6,580.04	131,469.79	
01/01/2016	124,884.42	1.990	6,585.36	131,469.78	
02/01/2016	125,098.43	1.990	6,371.36	131,469.79	
03/01/2016	125,710.02	1.990	5,759.76	131,469.78	
04/01/2016	125,528.22	1.990	5,941.57	131,469.79	
05/01/2016	125,928.05	1.990	5,541.74	131,469.79	
06/01/2016	125,959.11	1.990	5,510.67	131,469.78	
06/30/2016					1,577,637.44
07/01/2016	126,345.76	1.990	5,124.03	131,469.79	
08/01/2016	126,391.47	1.990	5,078.32	131,469.79	
09/01/2016	126,608.05	1.990	4,861.74	131,469.79	
10/01/2016	126,974.84	1.990	4,494.95	131,469.79	
11/01/2016	127,042.59	1.990	4,427.19	131,469.78	
12/01/2016	127,396.09	1.990	4,073.70	131,469.79	
01/01/2017	127,478.60	1.990	3,991.18	131,469.78	
02/01/2017	127,697.05	1.990	3,772.74	131,469.79	
03/01/2017	128,259.80	1.990	3,209.98	131,469.78	
04/01/2017	128,135.66	1.990	3,334.12	131,469.78	
05/01/2017	128,455.71	1.990	3,014.08	131,469.79	
06/01/2017	128,575.36	1.990	2,894.43	131,469.79	
06/30/2017					1,577,637.44
07/01/2017	128,881.95	1.990	2,587.84	131,469.79	
08/01/2017	129,016.54	1.990	2,453.24	131,469.78	
09/01/2017	129,237.63	1.990	2,232.16	131,469.79	
10/01/2017	129,523.95	1.990	1,945.84	131,469.79	
11/01/2017	129,681.04	1.990	1,788.74	131,469.78	
12/01/2017	129,953.80	1.990	1,515.99	131,469.79	
01/01/2018	130,125.96	1.990	1,343.83	131,469.79	
02/01/2018	130,348.94	1.990	1,120.85	131,469.79	
03/01/2018	130,659.16	1.990	810.63	131,469.79	
04/01/2018	130,796.21	1.990	673.58	131,469.79	
05/01/2018	131,034.84	1.990	434.95	131,469.79	
06/01/2018	131,244.88	1.990	224.90	131,469.78	
06/30/2018					1,577,637.45
	<u>\$ 8,674,351.91</u>		<u>\$528,533.20</u>	<u>\$ 9,202,885.11</u>	<u>\$ 9,202,885.11</u>

\* Principal Components may be prepaid on any date in accordance with Section 3.7 of the Sublease.





## **EXHIBIT C**

### **DESCRIPTION OF THE LEASED PREMISES**

The Leased Premises shall consist of an undivided one-half interest in the Site and approximately 160,000 square feet in the City-County Administration Building located in the basement and the second through sixth floors as depicted on the following pages of this Exhibit C. A portion of the Leased Premises shall be space which the County shall have the right to occupy on an exclusive basis and a portion shall be space that the County shall have the right to occupy on a joint use basis with the City of Modesto, as further depicted on the following pages of Exhibit C.

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF STANISLAUS

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA                             )  
   ) ss.  
COUNTY OF STANISLAUS                    )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF STANISLAUS )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, who proved  
to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to  
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

# Attachment

4

**RECORDING REQUESTED BY )**  
**AND WHEN RECORDED MAIL TO: )**

)  
Stradling Yocca Carlson & Rauth )  
660 Newport Center Drive, Suite 1600 )  
Newport Beach, CA 92660 )  
Attn: Robert J. Whalen, Esq. )

---

[Space above for Recorder's use]

**ASSIGNMENT AGREEMENT**

by and between

**STANISLAUS COUNTY CAPITAL IMPROVEMENTS FINANCING AUTHORITY,**  
as assignor

and

**BANK OF THE WEST,**  
as assignee

Relating to

**COUNTY OF STANISLAUS**  
**(Downtown Center Refinancing)**

Dated as of July 1, 2012

---

NO DOCUMENTARY TRANSFER TAX  
DUE. This Assignment Agreement is  
recorded for the benefit of the County of  
Stanislaus and the recording is fee-exempt  
under Section 27383 of the California  
Government Code.

**ASSIGNMENT AGREEMENT  
(Downtown Center)**

**THIS ASSIGNMENT AGREEMENT**, dated as of July 1, 2012 and effective as of the date of recordation hereof (this "Assignment Agreement"), is made by and between **STANISLAUS COUNTY CAPITAL IMPROVEMENTS FINANCING AUTHORITY**, a joint powers authority organized and existing under the laws of the State of California (the "Assignor"), as assignor, and **BANK OF THE WEST**, as assignee (the "Assignee").

**WITNESSETH:**

**WHEREAS**, the Assignor and the City-County Capital Improvements and Financing Agency (the "Agency") have entered into an Amended and Restated Facilities Lease/Purchase Agreement (the "Facilities Lease"), dated as of the date hereof (the "Facilities Lease"), pursuant to which the Agency has agreed, among other things, to lease to the Assignor an undivided one-half interest in the real property described in Exhibit A hereto (the "Site"), together with certain space in the building located thereon, as more particularly described in Exhibit C thereto (the "Leased Premises"); and

**WHEREAS**, the County of Stanislaus (the "Sublessee") and the Assignor have entered into a Facilities Sublease, dated as of the date hereof (the "Sublease"), pursuant to which the Assignor has agreed, among other things, to sublease the Leased Premises to the Sublessee, in consideration for which the Sublessee has agreed to pay Base Rental and Additional Rental, all as more particularly described in the Sublease; and

**WHEREAS**, for valuable consideration to be paid by the Assignee, the Assignor desires to assign and transfer all of its right, title and interest in and to the Facilities Lease and the Sublease (subject to certain exceptions as set forth in Section 2 below) to the Assignee on the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

**SECTION 1. Definitions.** All capitalized terms used herein without definition shall have the meanings given to such terms in the Sublease.

**SECTION 2. Assignment.** As consideration for the receipt of the Funding Amount (as specified in a certificate of the County delivered on the effective date of this Assignment Agreement), the Assignor does hereby sell, assign and transfer to the Assignee, all of the Assignor's right, title and interest in and to the Facilities Lease and the Sublease (excepting only the Assignor's rights to receive payments under Section 3.1(b) of the Sublease and its rights to indemnification in accordance with Section 11 of the Sublease), including the Assignor's right to receive Base Rental and Additional Rental, as well as its rights to enforce payment of such Base Rental and Additional Rental when due or otherwise to protect its interest in the event of a default or termination by the Sublessee under the Sublease, in accordance with the terms thereof.

In entering into this Assignment Agreement, the Assignor is relying on the representations made by the Assignee in the Purchaser's Certificate, dated July \_\_, 2012.



**SECTION 3. Acceptance of Assignment.** The Assignee hereby accepts the assignment of such of the Assignor's rights under the Facilities Lease and the Sublease as are assigned pursuant to the terms of this Assignment Agreement.

**SECTION 4. No Additional Rights or Duties.** This Assignment Agreement shall not confer any rights upon the Assignee beyond those expressly provided in the Facilities Lease and the Sublease, nor impose any duties, obligation or responsibilities upon the Assignee. This Assignment Agreement shall not impose any duties, obligations or responsibilities upon the Assignor or the Sublessee beyond those expressly provided in the Facilities Lease and the Sublease or as otherwise set forth herein.

**SECTION 5. Subsequent Assignment by the Assignee.** (a) The Assignee's right, title and interest in and to this Agreement may be assigned and reassigned to up to five subsequent assignees by the Assignee, without the necessity of obtaining the consent of Assignor or the Sublessee; provided, that any such assignment, transfer or conveyance shall be made only to an investor which is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, and is purchasing the Assignment Agreement for its own account with no present intention to resell or distribute the Assignment Agreement, subject to such investor's right at any time to dispose of the Assignment Agreement as it determines to be in its best interests (subject to compliance with the provisions of this Section). The Assignor and the Assignee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 5 shall apply to the first and subsequent assignees and sub-assignees of any of Assignee's right, title and interest in, to and under this Assignment Agreement.

(b) No assignment, transfer or conveyance permitted by this Section 5 shall be effective until Assignor and Sublessee shall have received a written notice of assignment that discloses the name and address of such assignee.

**SECTION 6. Further Assurances.** The Assignor will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Assignment Agreement, and to assure and confirm to the Assignee the rights and benefits intended to be conveyed pursuant hereto.

**SECTION 7. Amendments.** This Assignment Agreement may be amended by an instrument in writing executed by the Assignor and the Assignee, with the written consent of the Sublessee.

**SECTION 8. Governing Law; Venue.** This Assignment Agreement is made in the State under the Constitution and laws of the State and is to be so construed. If any party to this Assignment Agreement initiates any legal or equitable action to enforce the terms of this Assignment Agreement, to declare the rights of the parties under this Assignment Agreement or which relates to this Assignment Agreement in any manner, each such party agrees that the place of making and for performance of this Assignment Agreement shall be the County of Stanislaus, State of California, and the proper venue for any such action is the Superior Court of the State of California, in and for the County of Stanislaus.

**SECTION 9. Consideration Paid by Assignee.** The parties acknowledge that the recordation of this Assignment Agreement will evidence that the Assignee has paid the Funding Amount referenced in Section 2 above as consideration for the execution of this Assignment

Agreement by the Assignor and the assignment of rights set forth herein. Such amount shall be paid by the Assignee in accordance with instructions to be delivered to the Assignee by the Assignor.

**SECTION 10. Counterparts.** This Assignment Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same agreement.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Assignment Agreement as of the date first above written.

STANISLAUS COUNTY CAPITAL  
IMPROVEMENTS FINANCING AUTHORITY, as  
assignor

By: \_\_\_\_\_

Title: Chairman

By: \_\_\_\_\_

Title: Secretary

*[SIGNATURES CONTINUED ON NEXT PAGE]*

*[SIGNATURE PAGE CONTINUED]*

BANK OF THE WEST, as assignee

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

The land referred to herein below is situated in the County of Stanislaus, State of California, and is described as follows:

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF STANISLAUS

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA	)	
	)	ss.
COUNTY OF STANISLAUS	)	

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC



# Attachment

5

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**SUPPLEMENTAL AGREEMENT**

**dated as of July 1, 2012,**

**between**

**COUNTY OF STANISLAUS**

**and**

**BANK OF THE WEST**

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## **SUPPLEMENTAL AGREEMENT**

**THIS SUPPLEMENTAL AGREEMENT**, dated as of July 1, 2012 (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “Supplemental Agreement”), between **COUNTY OF STANISLAUS**, a political subdivision of the State of California, duly organized and existing under the Constitution and laws of the State of California (the “County”) and **BANK OF THE WEST** (the “Bank”).

### **RECITALS**

WHEREAS, in order to finance certain facilities, the County caused to be executed and delivered the County of Stanislaus Certificates of Participation Series A of 1998 (Downtown Center) (the “Prior Certificates”); and

WHEREAS, the County desires to cause the Prior Certificates to be prepaid; and

WHEREAS, in order to facilitate the refinancing of the Prior Certificates, the City-County Capital Improvements and Financing Agency (the “Agency”) will lease certain real property and the improvements thereto to the Stanislaus County Capital Improvements Financing Authority, a joint exercise of powers agency duly organized and existing under the laws of the State of California (the “Authority”) pursuant to an Amended and Restated Facilities Lease/Purchase Agreement, dated as of July 1, 2012 (the “Facilities Lease”), and the County will sublease such real property and improvements from the Authority pursuant to a Facilities Sublease, dated as of July 1, 2012 (the “Sublease”); and

WHEREAS, the County and the Authority have determined that it would be in the best interests of the County and the Authority to provide the funds necessary to cause the prepayment of the Prior Certificates through the assignment by the Authority of all rights to receive Base Rental to be paid under the Sublease pursuant to an Assignment Agreement, dated as of July 1, 2012 (the “Assignment Agreement”); and

WHEREAS, in consideration of such assignment, the Bank has agreed to provide the funds to prepay the Prior Certificates, and as a condition to such funding, the Bank has required the County to enter into this Supplemental Agreement.

NOW, THEREFORE, to induce the Bank to provide the funds to prepay the Prior Certificates, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the County and the Bank hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Certain Defined Terms.** In addition to the terms defined in the recitals and elsewhere in this Supplemental Agreement and the Sublease, the following terms shall have the following meanings:

“Bank” means Bank of the West, and its successors and assigns.

“Base Rate” means a fluctuating rate per annum equal to the higher of (i) the Prime Rate and (ii) the Federal Funds Rate plus 0.5% per annum.

“Closing Date” means [\_\_\_\_\_], 2012.

“Contract” means any indenture, contract, agreement (other than this Supplemental Agreement), other contractual restriction, lease, mortgage, instrument, guaranty, certificate of incorporation, charter or by-law.

“County Long-Term Borrowing General Fund Obligation” means any long-term obligations to third parties in respect of borrowed moneys payable from the general fund of the County, including without limitation lease payments in connection with certificates of participation and lease revenue bonds, but excluding equipment leases. The County Long-Term Borrowing General Fund Obligations outstanding as of the Closing Date are listed on Exhibit B hereto.

“County Long-Term Borrowing General Fund Obligation Issuing Document” means any Contract or resolution authorizing or evidencing the issuance or incurrence of any County Long-Term Borrowing General Fund Obligation.

“Default” means any event or condition which with notice, passage of time or any combination of the foregoing would constitute an Event of Default.

“Default Rate” means a fluctuating rate per annum equal to the Base Rate plus 3% per annum; provided that at no time shall the Default Rate exceed 12% per annum. The Default Rate shall be calculated on the basis of a 365/366-day year and actual days elapsed.

“Event of Insolvency” means, with respect to any Person, the occurrence of one or more of the following events:

(a) the issuance, under the laws of any state or under the laws of the United States of America, of an order of rehabilitation, liquidation or dissolution of such Person;

(b) the commencement by or against such Person of a case or other proceeding seeking liquidation, reorganization or other relief with respect to such Person or its debts under any bankruptcy, insolvency or other similar state or federal law now or hereafter in effect, including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for such Person or any substantial part of its

property or there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;

(c) the making of an assignment for the benefit of creditors by such Person;

(d) the failure of such Person to generally pay its debts as they become due;

(e) a debt moratorium, debt adjustment, debt restructuring or comparable restriction with respect to the payment of any indebtedness of such Person is declared or imposed by such Person or by any governmental authority having jurisdiction over such Person;

(f) such Person shall admit in writing its inability to pay its debts when due;  
or

(g) the initiation of any actions to authorize any of the foregoing by or on behalf of such Person.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average (rounded upwards, if necessary to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Bank from three Federal funds brokers of recognized standing selected by it.

“Generally Accepted Accounting Principles” means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the County.

“Lease Documents” means this Supplemental Agreement, the Facilities Lease, the Sublease, the Assignment Agreement, the Termination Agreement and the Tax Certificate.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business or operations of the County, (b) the ability of the County to carry out its business as of the date of this Supplemental Agreement or as proposed herein to be conducted or to meet or perform its obligations under this Supplemental Agreement or any of the other Lease Documents on a timely basis, (c) the validity or enforceability of this Supplemental Agreement or any other Lease Document, or (d) the rights or remedies of the Bank under this Supplemental Agreement or any other Lease Document.

“Material Litigation” has the meaning assigned to such term in Section 4.05(a) of this Supplemental Agreement.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, trust, unincorporated association, joint venture, governmental unit or other entity.

“Prime Rate” means an index for a variable interest rate which is quoted, published or announced by the Bank as its prime rate and as to which loans may be made by the Bank at, above or below such rate.

“State” means the State of California.

“Transactions” means the execution and delivery of the Lease Documents, the providing of funds by the Bank to prepay the Prior Certificates, the execution and delivery by the County of this Supplemental Agreement and the other Lease Documents, the lease of the Leased Premises, the performance by the County of its obligations (including payment obligations) hereunder and thereunder.

**Section 1.02. Construction.** Unless the context of this Supplemental Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Supplemental Agreement refer to this Supplemental Agreement as a whole and not to any particular provision of this Supplemental Agreement. The Section headings contained in this Supplemental Agreement and the table of contents preceding this Supplemental Agreement are for reference purposes only and shall not control or affect the construction of this Supplemental Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Supplemental Agreement unless otherwise specified. Each exhibit, schedule and annex attached hereto is incorporated by reference herein and is a constituent part of this Supplemental Agreement.

**Section 1.03. Incorporation of Certain Definitions by Reference.** Any capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Sublease.

**Section 1.04. Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with Generally Accepted Accounting Principles consistently applied. In the event of changes to Generally Accepted Accounting Principles which become effective after the Closing Date, the County and the Bank agree to negotiate in good faith appropriate revisions of this Supplemental Agreement so as to perpetuate the meaning and effect of such provisions as originally negotiated and agreed upon.



## ARTICLE II THE FUNDING

**Section 2.01. Funding.** Upon the terms and conditions set forth herein, subject to fulfillment of each of the conditions precedent set forth in Article III hereof, and upon the basis of the representations set forth herein, the Bank hereby agrees to provide funds to the County in an aggregate principal amount of \$[9,000,000], in consideration of the assignment by the County to the Bank of all rights to receive Base Rental to be paid under the Sublease.

## ARTICLE III CONDITIONS PRECEDENT

**Section 3.01. Closing Conditions.** The Bank has agreed to provide funds to prepay the Prior Certificates in reliance upon the representations, warranties and agreements of the County contained herein, and in reliance upon the representations, warranties and agreements of the County, the Authority and the Agency to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the County of its obligations hereunder as of the Closing Date. Accordingly, the Bank's obligations under this Supplemental Agreement to provide funds to prepay the Prior Certificates shall be conditioned upon the performance by the County of its obligations to be performed hereunder and under such documents and instruments on or prior to the Closing Date, and shall also be subject to the following additional conditions, including the delivery by the County of such documents as are enumerated herein, in form and substance reasonably satisfactory to the Bank and its counsel; *provided that*, unless set forth in a separate section of this Supplemental Agreement or in a Lease Document other than this Supplemental Agreement, the County's obligation to satisfy any condition under this Section 3.01 shall exist only until the Closing Date and shall cease thereafter:

- (a) The following Agency documents:
  - (i) A copy of the resolution of the Agency approving the execution and delivery of the Lease Documents to which the Agency is a party, approving the form of the Lease Documents to which it is not a party and the other matters contemplated hereby and thereby, certified by the Secretary of the Agency as being true and complete and in full force and effect on the Closing Date.
  - (ii) Certified copies of the Agency's joint exercise of powers agreement, notice of a joint powers agreement filed with the Secretary of State and roster of public agencies filing and acknowledgment from the Secretary of State.
  - (iii) A certificate by the Secretary of the Agency certifying the names and signatures of the persons authorized to sign, on behalf of the Agency, the Lease Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder.

(b) The following Authority documents:

(i) A copy of the resolution of the Authority approving the execution and delivery of the Lease Documents to which the Authority is a party, approving the form of the Lease Documents to which it is not a party and the other matters contemplated hereby and thereby, certified by the Secretary of the Authority as being true and complete and in full force and effect on the Closing Date.

(ii) Certified copies of the Authority's joint exercise of powers agreement, notice of a joint powers agreement filed with the Secretary of State and roster of public agencies filing and acknowledgment from the Secretary of State.

(iii) A certificate by the Secretary of the Authority certifying the names and signatures of the persons authorized to sign, on behalf of the Authority, the Lease Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder.

(c) The following County documents:

(i) A copy of the resolution of Board of Supervisors of the County approving the execution and delivery of the Lease Documents to which the County is a party, approving the form of the Lease Documents to which it is not a party and the other matters contemplated hereby and thereby, certified by the Clerk of the Board of Supervisors of the County as being true and complete and in full force and effect on the Closing Date.

(ii) A certificate by the Clerk of the Board of Supervisors of the County certifying the names and signatures of the persons authorized to sign, on behalf of the County, the Lease Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder.

(d) The following financing documents:

(i) An executed original of each of the Lease Documents (including without limitation a Sublease that includes the terms set forth on Exhibit A hereto).

(ii) Recording instructions for the recordation of such of the Lease Documents as may be required by the Bank.

(iii) Certificates signed by an authorized representative of the County, the Authority and the Agency, respectively, stating that on and as of the Closing Date, copies of each of the Lease Documents to which it is a party received by the Bank are true, correct and complete copies of such documents, such documents were duly issued, adopted or executed and delivered, have not been modified, amended or rescinded and are in full force and effect on and as of the Closing Date, and such other customary matters as the Bank may reasonably request.

(iv) A certificate signed by an authorized representative of the County, stating that on and as of the Closing Date (i) all requirements and preconditions to the execution and delivery of the Lease Documents shall have been satisfied; (ii) the County has complied with all agreements and covenants and satisfied all conditions stated in this Supplemental Agreement on its part to be performed or satisfied at or prior to the Closing Date; (iii) each representation and warranty on the part of the County contained in this Supplemental Agreement and the other Lease Documents is true and correct as though made on and as of such date, (iv) no Default or Event of Default has occurred and is continuing or would result from the execution or performance of this Supplemental Agreement or the other Lease Documents to which the County is a party; and (v) and such other customary matters as the Bank may reasonably request.

(v) A certificate of the Authority, signed by an authorized representative of the Authority, stating that on and as of the Closing Date (i) the representations and warranties of the Authority contained in the Lease Documents to which the Authority is a party are correct on and as of the Closing Date as though made on and as of such date; (ii) no Default or Event of Default has occurred and is continuing, or would result from the Authority's execution and performance of any of the Lease Documents to which the Authority is a party; (iii) all conditions precedent to the execution and delivery of the Lease Documents to which the Authority is a party are correct have been satisfied; and (iv) and such other customary matters as the Bank may reasonably request.

(vi) A certificate of the Agency, signed by an authorized representative of the Agency, stating that on and as of the Closing Date (i) the Agency is a joint exercise of powers agency duly organized and validly existing pursuant to the laws of the State and has all necessary power and authority to adopt its authorizing resolution and enter into and perform its duties under the Lease Documents to which the Agency is a party, its authorizing resolution has been adopted and has not been rescinded; (ii) the adoption of its authorizing resolution and the execution and delivery of the Lease Documents to which the Agency is a party and compliance with the provisions thereof, will not in any material respect conflict with, or constitute a breach of or default under, the Agency's duties under the Lease Documents to which it is a party, its authorizing resolution or any law, administrative regulation, court decree, resolution, charter, by-laws or other agreement to which the Agency is subject or by which it or any of its property is bound; (iii) except as may be required under blue sky or other securities laws of any state, or except with respect to any permits or approvals heretofore received which are in full force and effect, there is no consent, approval, authorization or other order of, or filing with, or certification by, any governmental authority, board, agency or commission or other regulatory authority having jurisdiction over the Agency, required for the adoption of its authorizing resolution and the execution and delivery of the Lease Documents to which it is a party or the consummation by the Agency of the other transactions contemplated by its authorizing resolution and the Lease Documents to which it is a party; (iv) there is no action, suit, proceeding or investigation at law or in equity before or by any

court or governmental agency or body pending or, to the knowledge of the Agency, threatened against the Agency in any way contesting or affecting the validity of the Lease Documents to which the Agency is a party or its authorizing resolution, or contesting the powers of the Agency to enter into or perform its obligations under any of the foregoing; (v) by official action of the Agency prior to the execution hereof, the Agency has duly adopted its authorizing Resolution and has duly authorized and approved the execution and delivery of, and the performance by the Agency of the obligations on its part contained in, the Lease Documents to which the Agency is a party and the consummation by it of all other transactions contemplated thereby; (vi) the Agency has a valid and enforceable fee simple interest in the County Facilities, subject only to Permitted Encumbrances; (vii) the representations and warranties of the Agency contained in the Lease Documents to which the Agency is a party are correct on and as of the Closing Date as though made on and as of such date; (viii) no Default or Event of Default has occurred and is continuing, or would result from the Agency's execution and performance of any of the Lease Documents to which the Agency is a party; (ix) all conditions precedent to the execution and delivery of the Lease Documents to which the Agency is a party are correct have been satisfied; and (x) and such other customary matters as the Bank may reasonably request.

(vii) Evidence that the Leased Premises shall consist of real property and/or improvements constituting an undivided one-half interest in the real property and 160,000 square feet of the County Administration Center located at 1010 10<sup>th</sup> Street, Modesto, California, satisfactory to the Bank on the basis of essentiality, fair rental value and insurance coverage and the existence of any mortgage, pledge, lien, charge, encumbrance or claim thereon or with respect thereto.

(viii) Evidence that the fair rental value as of the Closing Date is sufficient to fully amortize Base Rental by June 1, 2018.

(ix) Certificates of insurance evidencing the satisfaction of the insurance requirements as set forth in Section 4.3 of the Sublease and Section 16 of the Facilities Lease in form and substance satisfactory to the Bank; each policy (other than for worker's compensation) required under Section 4.3 of the Sublease and Section 16 of the Facilities Lease shall name the Bank as additional insured.

(x) Pro forma CLTA owner's and leasehold title insurance policies and a marked-up unconditional binder for such insurance from a title insurance company acceptable to the Bank in respect of the Leased Premises (the "Title Policy"), together with evidence satisfactory to the Bank that all premiums in respect of the Title Policy have been paid or provided for. The Title Policy shall (i) be in an aggregate amount at least equal to the initial principal components of Base Rental, (ii) be subject only to such liens and other exceptions as shall be approved by the Bank; (iii) name the Bank as an insured party thereunder; and

(iv) contain such endorsements and affirmative insurance as the Bank may request.

(xi) The most recent adopted budget of the County and the audited financial statements of the County for the fiscal years ended June 30, 2011, 2010 and 2009.

(xii) True and correct copies of any and all governmental approvals necessary for the County and the Authority to enter into this Supplemental Agreement and the County, the Authority and the Agency to enter into the other Lease Documents to which it is a party and the transactions contemplated thereby and hereby and not otherwise covered by Section 3.01(a)(i) or Section 3.01(b)(i) hereof.

(xiii) Such other certifications as to matters of fact, due authorization, execution and delivery by the parties thereto of the Lease Documents, evidence of corporate authority, copies of governmental consents, permits, licenses and approvals, and other documents as shall be reasonably requested by the Bank, and the form and substance of any order or other official action granting any consent, permit, license or approval shall be satisfactory to the Bank.

(e) The following opinions, addressed to the Bank or on which the Bank is otherwise expressly authorized to rely:

(i) From counsel to the Agency, as to the due authorization, execution and delivery of each of the Lease Documents to which it is a party, their validity, binding effect and enforceability, and such other customary matters as the Bank may reasonably request.

(ii) From counsel to the Authority, as to the due authorization, execution and delivery of each of the Lease Documents to which it is a party, their validity, binding effect and enforceability, and such other customary matters as the Bank may reasonably request.

(iii) From counsel to the County, as to the due authorization, execution and delivery of each of the Lease Documents to which it is a party, their validity, binding effect and enforceability, and such other customary matters as the Bank may reasonably request.

(iv) From Special Counsel, in customary form, an approving opinion to the effect that the Lease Documents have been duly authorized and validly executed and delivered, that interest components of Base Rental will not be included in gross income of the holders thereof for federal or state tax purposes, and as to such other customary matters as the Bank may reasonably request.

(f) The following documents relating to the Prior Certificates, each such opinion or certificate to be addressed to the Bank or on which the Bank is otherwise expressly authorized to rely:

(i) An opinion of Special Counsel, as to provision of payment of the Prior Certificates.

(ii) Certificates of authorized representatives of the trustee for the Prior Certificates certifying as to the authority, incumbency and specimen signatures of the authorized representatives of the trustee for the Prior Certificates authorized to sign the Lease Documents to which they are a party and any other documents to be delivered by them hereunder.

(g) Other conditions:

(i) Each representation and warranty contained in this Supplemental Agreement and the other Lease Documents is true and correct.

(ii) No Default or Event of Default has occurred and is continuing or would result from the execution or performance of this Supplemental Agreement or the other Lease Documents.

(iii) Since the most current date of the information, financial or otherwise, supplied by the County to the Bank, there has been no change in the assets, liabilities, financial position or results of operations of the County which might reasonably be anticipated to cause a Material Adverse Effect and the County has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.

(iv) The Bank shall be reasonably satisfied that payment will be made promptly after demand therefor after the Closing Date of the Bank's fees and expenses (including outside counsel legal fees) incurred in connection with the Transactions.

(v) All other legal matters pertaining to the execution and delivery of each of the Lease Documents shall be reasonably satisfactory to the Bank and its counsel.

(vi) The Bank shall have completed all due diligence with respect to the County, the Leased Premises, the Authority, the Agency and the Lease Documents in scope and determination satisfactory to the Bank.

(h) Such other instruments, documents and opinions as the Bank shall reasonably require to evidence and secure the obligations of the County hereunder and under the other Lease Documents and to comply with the provisions of this Supplemental Agreement and the other Lease Documents and the requirements of any governmental authority to which the Bank, the County, the Authority or the Agency are subject.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

All representations and warranties made herein to the Bank or incorporated hereby for the benefit of the Bank are made with the understanding that the Bank is relying upon the accuracy of such representations and warranties. Notwithstanding that the Bank may conduct its own investigation as to some or all of the matters covered by the representations and warranties in the Lease Documents, and any certificates, information, opinions or documents delivered in connection therewith, the Bank is entitled to rely on all representations and warranties as a material inducement to the Bank's extension of the credit evidenced by the Lease Documents. All representations and warranties made herein to the Bank or incorporated hereby for the benefit of the Bank shall survive the making of and shall not be waived by the execution and delivery of this Supplemental Agreement or the other Lease Documents.

**Section 4.01. Existence and Power.** The County is a political subdivision of the State duly organized, validly existing and in good standing under the Constitution and laws of the State and has the corporate power and authority to own its properties and to carry on its businesses as now being conducted and as currently contemplated to be conducted hereafter and is duly qualified to do business in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of any material portion of its business (as now conducted and as currently contemplated to be conducted) makes such qualification necessary.

**Section 4.02. Due Authorization.**

(a) The County has the corporate power, and has taken all necessary corporate action to authorize the Lease Documents, to execute, deliver and perform its obligations under this Supplemental Agreement and each of the other Lease Documents to which it is a party in accordance with their respective terms. The County has approved the form of the Lease Documents to which it is not a party.

(b) The County is duly authorized and licensed to own its property (real, personal or mixed) under the laws of all governmental authorities having the jurisdiction to license or regulate such property, and the County has obtained all requisite approvals of all such governmental authorities required to be obtained for such purposes. All authorizations and approvals necessary for the County to enter into this Supplemental Agreement and the other Lease Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own its property have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other authorization or approval or other action by, and no notice to or filing with, any governmental authority is required for the due execution, delivery and performance by the County of this Supplemental Agreement or the due execution, delivery or performance by the County of the other Lease Documents.

**Section 4.03. Valid and Binding Obligations.** This Supplemental Agreement and each of the Lease Documents to which the County is a party has been duly executed and delivered by one or more duly authorized officers of the County and are legal, valid and binding obligations

of the County enforceable in accordance with their respective terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 4.04. Noncontravention; Compliance with Law.**

(a) The execution, delivery and performance of this Supplemental Agreement and each of the Lease Documents in accordance with their respective terms do not and will not (i) require any consent or approval of any creditor of the County, (ii) violate any applicable law, (iii) conflict in any material respect with, result in a material breach of or constitute a material default under any Contract to which the County is a party or by which it or any of its property may be bound or (iv) result in or require the creation or imposition of any lien upon or with respect to any property now owned or hereafter acquired by the County except such liens, if any, expressly created by any Lease Document.

(b) The County is in compliance with all applicable laws, except for noncompliance that, singly or in the aggregate, has not caused and could not reasonably be expected to cause a Material Adverse Effect or an adverse effect on the County's ability to perform its obligations hereunder and under the other Lease Documents.

**Section 4.05. Pending Litigation and Other Proceedings.**

(a) There are no actions, suits or proceedings pending nor are there any actions, suits or proceedings threatened against the County or any property of the County in any court or before any arbitrator of any kind or before or by any governmental or non governmental body, which, in any case, (i) directly or indirectly relates to the Leased Premises or the enforceability of this Supplemental Agreement or any of the other Lease Documents; (ii) involve claims equal to or in excess of \$5,000,000 or (iii) may have a Material Adverse Effect (any of the foregoing being herein referred to as "Material Litigation").

**Section 4.06. Financial Statements.** The balance sheet of the County as of June 30, 2011 and the related statement of revenues and expenses and changes in financial position for such Fiscal Year and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Bank pursuant to Section 5.01(a) hereof, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the County at such date and for such Fiscal Year, and were prepared in accordance with Generally Accepted Accounting Principles consistently applied. Since the period of such statements, there has been no change which would have a Material Adverse Effect.



**Section 4.07. Defaults.** No Event of Default and no Default has occurred and is continuing or exists.

**Section 4.08. Insurance.** The County maintains, or causes the Agency to maintain pursuant to the Facilities Lease, insurance of such type and in such amounts or in excess of such amounts as are required by Section 4.3 of the Sublease and Section 16 of the Facilities Lease.

**Section 4.09. Accuracy of Information.** All information, reports and other papers and data furnished by the County to the Bank were, at the time the same were so furnished, complete and correct in all material respects and insofar as necessary to give the Bank a true and accurate knowledge of the subject matter and were provided in expectation of the Bank's reliance thereon in providing funds to prepay the Prior Certificates. No fact is known to the County which has had or, so far as the County can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the budget and financial statements previously furnished to the Bank or in other such information, reports, papers and data or otherwise disclosed in writing to the Bank prior to the Closing Date. Any financial, budget and other projections furnished to the Bank by the County or its agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the Closing Date, represent the County's best estimate of its future financial performance. No document furnished nor any representation, warranty or other written statement made to the Bank in connection with the negotiation, preparation or execution of this Supplemental Agreement or any of the other Lease Documents contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

**Section 4.10. Environmental Matters.** The County has reviewed the effect of Applicable Environmental Laws on the business, operations and properties of the County, and has identified and evaluated associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean up or closure of properties presently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, and related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted there at and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of this review, the County has reasonably concluded that it has not failed to comply with any Applicable Environmental Laws in a manner which may reasonably be expected to have a Material Adverse Effect.

**Section 4.11. Essentiality.** The Leased Premises are an essential asset of the County necessary to serve the needs of the residents of the County. The County believes that at all times while any Base Rental or Additional Rental or any obligation of the County hereunder remains unpaid, the Leased Premises will remain an essential asset of the County.

**Section 4.12. Tax-Exempt Status.** The County has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest components of Base Rental from gross income for Federal income tax purposes or the exemption of such interest components from State personal income taxes.

**Section 4.13. Sovereign Immunity.** The County does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations under this Supplemental Agreement or any of the other Lease Documents to which it is a party. To the extent the County has or hereafter may acquire under any applicable law any right to immunity from set-off or legal proceedings on the grounds of sovereignty, the County hereby waives, to the fullest extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Supplemental Agreement or the other Lease Documents to which it is a party.

**Section 4.14. Fair Rental Value; Use and Occupancy.** Base Rental and Additional Rental payable under the Sublease do not exceed the fair rental value of the Leased Premises for each period for which said rental is to be paid. In making such determination of fair rental value, consideration has been given to the uses and purposes which may be served by the Leased Premises and the benefits therefrom which will accrue to the County and the general public. The County currently has the use and occupancy of the Leased Premises and the County has the legal authority to pay Base Rental and Additional Rental pursuant to the Sublease for the use and occupancy of the Leased Premises.

**Section 4.15. Usury.** The terms of this Supplemental Agreement and the Lease Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

**Section 4.16. Title to Leased Premises.** The County has a valid and enforceable subleasehold interest in the Leased Premises, subject only to Permitted Encumbrances.

**Section 4.17. Access to Leased Premises; Communication with Accountant.** The County shall permit the duly authorized representatives of the Bank, during the County's normal administrative business hours, to enter the Leased Premises or any parts thereof, to examine and copy the County's financial and corporate books, records and accounts and to discuss the affairs, finances, business and accounts of the County with the County's officers, directors and employees.

## ARTICLE V

### COVENANTS OF THE COUNTY

So long as any Base Rental or Additional Rental or any obligation of the County hereunder or under the Lease Documents remains unpaid or unperformed, the County shall comply with the following covenants hereunder and as additional covenants under the Sublease, unless waived in writing by the Bank:

**Section 5.01. Reporting Requirements.** The County shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of

or in relation to the business and affairs of the County in accordance with Generally Accepted Accounting Principles consistently applied, and will furnish to the Bank each of the following:

(a) As soon as available, and in any event within 240 days after the close of each Fiscal Year of the County, the financial statements of the County which shall be audited and reported on without qualification by independent certified public accountants reasonably acceptable to the Bank and shall be certified to the County by such accountants as (i) having been prepared in accordance with Generally Accepted Accounting Principles consistently applied and (ii) fairly presenting the financial condition of the County as at the end of such Fiscal Year and reflecting its operations during such Fiscal Year and (iii) showing all material liabilities, direct or contingent, and disclosing the existence of any off-balance sheet transactions, and shall include, without limitation, balance sheets, profit and loss statements and statements of cash flows, together with notes and supporting schedules, all on a consolidated and consolidating basis and in reasonable detail and including a copy of any management letter or audit report provided to the County by such auditors.

(b) As soon as available and in any event within 60 days after adoption, the annual operating budget of the County for such Fiscal Year.

(c) As soon as available and in any event within 45 days after the close of each fiscal quarter of the County, such information as of the close of such fiscal quarter as the Bank may from time to time reasonably request regarding the County's general fund in order to demonstrate the County's compliance with Section 5.03 hereof.

(d) As soon as available and in any event promptly after presentation to the Board of Supervisors, a copy of the County of Stanislaus Treasury Pool monthly investment report containing a statement as to the sufficiency of cash as at the end of such calendar month to meet the County's historical cash needs for the next six months.

(e) Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the County and the Leased Premises as the Bank may from time to time reasonably request.

**Section 5.02. Notices.** The County shall provide to the Bank:

(a) Immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default or Default.

(b) Prompt written notice of any Material Litigation.

(c) Prompt written notice of any event which has or is reasonably anticipated to have a Material Adverse Effect.

**Section 5.03. Liquidity Covenant.** The County shall maintain adequate liquidity to ensure the payment of scheduled County Long-Term Borrowing General Fund Obligation debt service payments as they come due.

## ARTICLE VI

### EVENTS OF DEFAULT

**Section 6.01. Events of Default.** The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of law) shall be an “Event of Default” hereunder and an additional Event of Default under the Sublease entitling the Bank to the rights and remedies available under the Sublease, unless waived in writing by the Bank:

(a) Failure of the County to comply with the requirements of Section 5.03 hereof or failure of the County to budget and appropriate as required by Section 3.3 of the Sublease;

(b) Default by the County in the payment of any amount when due in respect of any County Long-Term Borrowing General Fund Obligation and any such default shall remain unremedied for seven (7) days, or default by the County under any County Long-Term Borrowing General Fund Obligation Issuing Document, and continuance of such default beyond the period of grace, if any, allowed with respect thereto; or the occurrence of any act or omission by the County under any such County Long-Term Borrowing General Fund Obligation Issuing Document which results in such County Long-Term Borrowing General Fund Obligation becoming, or being capable of becoming, immediately due and payable or being terminated early or being subject to early termination;

(c) This Supplemental Agreement or any of the other Lease Documents or any material provision of this Supplemental Agreement or any of the other Lease Documents shall at any time, for any reason, cease to be the legal, valid and binding obligation of the County, the Authority or the Agency or shall cease to be in full force and effect, or shall be declared to be unenforceable, invalid or void, or the validity or enforceability thereof shall be contested by the County, the Authority or the Agency, or the County, the Authority or the Agency shall renounce the same or deny that it has any further liability hereunder or thereunder, or any court of competent jurisdiction or other governmental authority with jurisdiction to rule on the validity of any provision of this Supplemental Agreement or any of the other Lease Documents shall find or rule that this Supplemental Agreement or any of the other Lease Documents are not valid or not binding on the County, the Authority or the Agency;

(d) Dissolution or termination of existence of the County, the Authority or the Agency;

(e) An Event of Insolvency shall occur with respect to the County, the Authority or the Agency; or

(f) The long-term unenhanced ratings assigned to any County Long-Term Borrowing General Fund Obligation shall be withdrawn or suspended or otherwise

unavailable for credit-related reasons or reduced below Baa3 by Moody's Investors Service, Inc., BBB- by Standard & Poor's Rating Service or BBB- by Fitch, Inc.

## ARTICLE VII

### INDEMNIFICATION; COSTS, EXPENSES AND TAXES

**Section 7.01. Indemnification.** In addition to any and all other rights of reimbursement, indemnification, subrogation and other similar rights pursuant to this Supplemental Agreement, the other Lease Documents or under law or equity, the County hereby covenants and agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Bank and its officers, directors, employees, representatives and agents (each, an "Indemnitee") from and against any and all claims, causes of action, judgments, fines, penalties, damages, losses, liabilities, and expenses whatsoever (including reasonable attorneys' fees) which may be incurred by an Indemnitee or which may be claimed against an Indemnitee by any Person whatsoever by reason of or directly or indirectly in connection with any of the Transactions; provided that the County shall not be required to indemnify an Indemnitee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of such Indemnitee as determined in a final, non appealable judgment. Nothing under this Section 7.01 is intended to limit the County's payment of its obligations hereunder or under the other Lease Documents.

**Section 7.02. Costs, Expenses and Taxes.** The County shall pay to the Bank within thirty (30) days after demand: (a) if an Event of Default shall have occurred, all costs and expenses of the Bank in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights under this Supplemental Agreement, the other Lease Documents and such other documents which may be delivered in connection therewith; and (b) the reasonable fees and out of pocket expenses for counsel or other reasonably required consultants to the Bank in connection with advising the Bank as to its rights and responsibilities under this Supplemental Agreement and the other Lease Documents or in connection with responding to requests from the County for approvals, consents, amendments and waivers. In addition, if at any time any governmental authority shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Supplemental Agreement or the other Lease Documents, then, if the County lawfully may pay for such stamps, taxes or fees, the County shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the County agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay or omission of the County in paying, such stamps, taxes and fees hereunder.

**Section 7.03. Late Payment.** Any Base Rental Payment or Additional Payment which shall not be paid by the County when due and payable under the Sublease shall accrue interest until the same shall be paid at a rate equal to the Default Rate, and the County hereby agrees to pay such amounts to the Bank upon demand.

**Section 7.04. Survival.** The obligations of the County under this Article VII shall survive the payment in full of Base Rental and the termination of the Lease Documents.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.01. Amendments.** No amendment or waiver of any provision of this Supplemental Agreement nor consent to any departure by the parties hereto shall in any event be effective unless the same shall be in writing and signed by such parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 8.02. Severability.** The provisions of this Supplemental Agreement are intended to be severable. If any provision of this Supplemental Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

**Section 8.03. Governing Law; Consent To Jurisdiction; Waiver Of Jury Trial.**

(a) This Supplemental Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State.

(b) Each of the parties hereto hereby submits to the exclusive jurisdiction of a court of record in the State located in the County of Stanislaus or in the United States District Court for the Eastern District of the State located in the County of Stanislaus for the purpose of any suit, action or other proceeding arising out of or relating to this Supplemental Agreement and the other Lease Documents and hereby waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 16 of the Sublease.

(c) Each party to this Supplemental Agreement, to the fullest extent permitted by law, hereby waives its respective right to a trial by jury in any legal proceeding arising out of or relating to this Supplemental Agreement or any other Lease Document or the transactions contemplated hereby or thereby. The County and the Authority each warrants and represents that such waiver has been intentionally, knowingly and voluntarily made, following consultation with its legal counsel. If the waiver of jury trial as set forth in this Section shall be declared void or unenforceable, each of the County, the Authority and the Bank agrees to refer the dispute to a judicial referee in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure.

**Section 8.04. No Advisory or Fiduciary Responsibility.** In connection with all aspects of the transactions contemplated by this Supplemental Agreement or the other Lease Documents (including in connection with any amendment, waiver or other modification hereof or of any other Lease Document), the County acknowledges and agrees that: (a) (i) the arranging,

structuring and other services regarding this Supplemental Agreement provided by the Bank are arm's length commercial transactions between the County on the one hand, and the Bank on the other hand, (ii) the County has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the County is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Supplemental Agreement or the other Lease Documents; (b)(i) the Bank is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the County, or any other Person and (ii) the Bank does not have any obligation to the County with respect to the transactions contemplated by this Supplemental Agreement or the other Lease Documents, except those obligations expressly set forth herein; and (c) the Bank may be engaged in a broad range of transactions that involve interests that differ from those of the County, and the Bank does not have any obligation to disclose any of such interests to the County. To the fullest extent permitted by applicable laws, the County hereby waives and releases any claims that it may have against the Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Supplemental Agreement or the other Lease Documents.

**Section 8.05. Counterparts.** This Supplemental Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

**Section 8.06. Successors and Assigns.** This Supplemental Agreement is a continuing obligation and shall be binding upon the County, its permitted successors and assigns and shall inure to the benefit of the Bank and its permitted successors, transferees and assigns. The County may not assign or otherwise transfer or delegate any of its rights or obligations hereunder or under the other Lease Documents without the prior written consent of the Bank. The Bank may, in accordance with applicable law, from time to time and without the consent of the County or any other Person assign, sell or transfer in whole or in part, this Supplemental Agreement and any of its rights or interests hereunder and all or any part of its interest in the Lease Documents, subject to the limitations set forth in the Assignment Agreement. In addition, the Bank may at any time pledge or grant a security interest in all or any portion of its rights under the Lease Documents to secure obligations of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

[Signatures begin on the following page.]

[Signature page of Supplemental Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be duly executed and delivered as of the date first above written.

COUNTY OF STANISLAUS

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

BANK OF THE WEST

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



Exhibit A

Sublease Terms

1. (a) Funding Date: [\_\_\_\_\_], 2012
- (b) Amount of Proceeds: \$[9,000,000]
- (c) Term: final Principal Payment Date on June 1, 2018
- (d) Interest Payment Dates: first Business Day of each calendar month, commencing [September 1], 2012.
- (e) Principal Payment Dates: first Business Day of each calendar month, commencing [September 1], 2012, in such amounts required to fully amortize Base Rental by June 1, 2018.
- (f) Interest Rate: [1.99]% per annum, except upon the occurrence and during the continuance of an Event of Default under the Sublease, in which case the Default Rate will apply, in each case calculated on the basis of a 365/366-day year and actual days elapsed.
- (g) Prepayment: None, except for (i) prepayment, without prepayment premium, in accordance with Sections 5.1 and 5.2 of the Sublease from condemnation awards and insurance proceeds and (ii) optional prepayment, without prepayment premium, at any time interest is accruing at the Default Rate.
- (h) Events of Default under Sublease: Includes Events of Default under this Supplemental Agreement.
- (i) Tax Exemption: An opinion from Special Counsel as to the exclusion of interest evidenced by the interest components of Base Rental from gross income of the holders thereof for federal income tax purposes and the exemption of such interest components from State personal income taxes.
- (j) Other Lease Terms: fair rental value sufficient to support payment of default interest; insurance requirements (including 24 months of rental interruption insurance) and repair and replacement of Leased Premises; maintenance and operation of Leased Premises; payment of taxes and removal of liens; further assurances; no amendment of Facilities Lease or Sublease without Bank consent; no sale or other disposition of, or encumbrance of or lien on Leased Premises; budget and appropriation; environmental compliance; no abandonment of Leased Premises; Additional Rental includes all amounts (other than Base Rental) due and payable under this Supplemental Agreement; Excess Amounts payable on Interest Payment Dates; required title insurance shall be in form and substance satisfactory to the Bank.

- (k) Assignability/Transferability: Assignable/transferable by the Bank to up to five investors which are a “qualified institutional buyer” as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended.

Exhibit B

County Long-Term Borrowing General Fund Obligations

[PLEASE CONFIRM]

\$108,970,000 original aggregate principal amount of County of Stanislaus Taxable Pension Obligation Refunding Bonds, Series 1995

\$10,630,000 original aggregate principal amount of County of Stanislaus Refunding Certificates of Participation, Series B of 1997

\$15,340,000 original aggregate principal amount of County of Stanislaus Certificates of Participation (2004 Capital Improvement Projects), Series 2004A

\$27,455,000 original aggregate principal amount of County of Stanislaus Certificates of Participation (2004 Capital Improvement Projects), Series 2004B

\$40,540,000 original aggregate principal amount of County of Stanislaus Refunding Certificates of Participation, Series A of 2007



# Stanislaus County

Refinancing Plan Overview – 1998A COPs

Tuesday, July 24<sup>th</sup>, 2012



1333 Broadway, Suite 1000, Oakland, CA 94612  
phone 510-839-8200 fax 510-208-8282

A Division of Zions First National Bank

# Staff Recommendations

1. Approve a resolution to refinance the Series A of 1998 Certificates of Participation through a private placement financing with the Bank of the West, which includes:
  - a) The form of the Amended and Restated Facilities Lease/Purchase Agreement between the City-County Capital Improvements Financing Agency and the Stanislaus County Capital Improvements Financing Authority;
  - b) The form of the Facilities Sublease with the Bank of the West;
  - c) The form of the Assignment Agreement by and between Stanislaus County Capital Improvements Financing Authority and Bank of the West;
  - d) Supplemental Agreement between the County of Stanislaus and the Bank of the West;
  - e) Authorizes the Chairman of the Board and Secretary of the Authority to Execute, Acknowledge and Deliver any and all Documents Required for the Refinancing; and
  - f) Authorizes the Chairman, Secretary and Other Officers of the Authority, Jointly and Severally, to Do Any and All Things and to Execute and Deliver Any and All Documents which they Deem Necessary and Advisable to Complete the Refinancing.

# Staff Recommendations

2. Authorize the Chief Executive Officer to negotiate and execute all necessary agreements and all other documents to complete the refinancing.