

TO BE RECORDED AND WHEN RECORDED

RETURN TO:

Jones Hall, A Professional Law Corporation

475 Sansome Street, Suite 1700

San Francisco, California 94111

Attention: Christopher K. Lynch, Esq.

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

SITE AND FACILITIES LEASE

This SITE AND FACILITIES LEASE (this "Site Lease"), dated for convenience as of _____ 1, 2023, is between the CITY OF HAYWARD, a chartered city and municipal corporation duly organized and existing under the laws of the State of California, as lessor (the "City"), and the HAYWARD PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority (the "Authority");

BACKGROUND:

1. The City previously entered into a Lease Agreement dated as of August 1, 2014 (the "2014 Lease"), with the Public Property Financing Corporation of California (the "Corporation"), for the purpose of financing a new Fire Station No. 7 and a Firehouse Health Clinic to be located at the same site as Fire Station No. 7 (the "2014 Project"), under which the City agreed to pay semiannual lease payments (the "2014 Lease Payments") to the Corporation for use and occupancy of a Police Station, located at 300 West Winton Avenue in the City (the "2014 Leased Property").

2. The Corporation assigned its right to receive the 2014 Lease Payments to Umpqua Bank ("Umpqua Bank") pursuant to an Assignment Agreement, dated as of August 1, 2014 (the "2014 Assignment Agreement").

3. Section 10.2 of the 2014 Lease provides that the City may prepay the 2014 Lease Payments on any date on and after August 1, 2019, subject to providing 45 days' prior written notice to the Corporation and Umpqua Bank, in an amount equal to the principal amount of the 2014 Lease Payments to be prepaid, plus accrued interest to the prepayment date, without a prepayment premium after August 1, 2022.

4. Section 10.1 of the 2014 Lease authorizes the City to establish a security deposit for prepayment of the 2014 Lease Payments, after which all obligations of the City under the 2014

Lease shall cease and terminate, except for the obligation to pay the 2014 Lease Payments from the security deposit.

5. The Authority and the City previously entered into a Lease Agreement, dated as of August 1, 2015 (the "2015 Lease"), for the purpose of financing acquisition and construction of a number of capital improvements, including, but not limited to, (i) a new library and community learning center, (ii) improvements to existing fire stations and (iii) complete street rehabilitation and slurry seal repairs (collectively, the "2015 Project"), under which the City agreed to pay semiannual lease payments (the "2015 Lease Payments") to the Authority for use and occupancy of certain of the City's fire stations and a library and community learning center (the "2015 Leased Property").

6. The Authority assigned its rights to receive the 2015 Lease Payments to The Bank of New York Mellon Trust Company, N.A. (the "2015 Trustee"), pursuant to an Assignment Agreement, dated as of October 1, 2015 (the "2015 Assignment Agreement").

7. Pursuant to a Trust Agreement, dated as of October 1, 2015 (the "2015 Trust Agreement"), the 2015 Trustee caused to be executed and delivered the \$67,535,000 City of Hayward 2015 Certificates of Participation (Capital Projects) (the "2015 Certificates"), which evidence direct, undivided fractional ownership interests in the 2015 Lease Payments.

8. Section 9.2 of the 2015 Lease provides that the City may prepay the 2015 Lease Payments on November 1 2023, in an amount equal to the principal component of the 2015 Lease Payments to be prepaid, plus accrued interest to the prepayment date, without a prepayment premium.

9. Section 9.1 of the 2015 Lease authorizes the City to establish a security deposit for prepayment of the 2015 Lease Payments in amount sufficient to prepay the 2015 Lease Payments, after which all obligations of the City under the 2015 Lease shall cease and terminate, except for the obligation to pay the 2015 Lease Payments from the security deposit.

10. Under Section 3.01 of the 2015 Trust Agreement, the 2015 Certificates are subject to prepayment on November 1, 2023, and any date thereafter, without premium.

11. In order to take advantage of favorable interest rates prevailing in the municipal bond market, the City wishes at this time to provide for the refinancing of the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates.

12. The Board of Directors of the Authority has determined that the public convenience and necessity require assisting the City with refinancing the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates.

13. In order to provide funds to refinance the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates, (a) the City and the Authority will enter into this Site Lease, pursuant to which the City will lease certain real property more particularly described on Appendix A and the improvements thereon (the "Leased Property") to the Authority, (b) the Authority and the City will enter into a Lease Agreement, dated as of _____ 1, 2023 (the "Lease"), pursuant to which the Authority will lease the Leased Property to the City in consideration for certain semi-annual lease payments to be made by the City and (c) the City will cause execution and delivery of the 2023 Refunding Certificates of Participation (Lease Refinancing) (the "Certificates").

14. The Authority has agreed to assign its right to receive such lease payments to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), under an Assignment Agreement, dated as of _____ 1, 2023 (the "Assignment Agreement"), by and between the Authority and the Trustee, and in consideration of such assignment the Trustee will execute and deliver the Certificates, each evidencing a direct, undivided fractional interest in such lease payments, in accordance with a Trust Agreement (the "Trust Agreement"), by and among the City, the Authority and the Trustee.

15. A memorandum of the Lease and the Assignment Agreement are being recorded in the real property records of Alameda County concurrently with this Site Lease.

16. The City is authorized to enter into a lease-leaseback arrangement with the Authority under Section 37350 of the California Government Code.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Authority formally covenant, agree and bind themselves as follows:

SECTION 1. *Lease of Leased Property.* The City hereby leases to the Authority, and the Authority hereby leases from the City, the Leased Property as described more fully in Appendix A hereto, on the terms and conditions hereinafter set forth.

SECTION 2. *Term; Possession.* The term of this Site Lease commences, and the Authority becomes entitled to possession of the Leased Property, as of the date of recordation hereof. This Site Lease ends, and the right of the Authority hereunder to possession of the Leased Property thereupon ceases, on the date on which all of the outstanding Certificates are paid in full, or provision is made for such payment in accordance with the Trust Agreement, and the Trust Agreement has been discharged under Section 13.01 thereof, but under any circumstances not later than October 15, _____.

SECTION 3. *Rental.* The Authority shall pay to the City as and for rental of the Leased Property hereunder, from the proceeds of sale of the Certificates, the amount of \$_____ to be paid on or before the date of execution and delivery hereof. In accordance with the Lease and the Trust Agreement the City shall cause the amount so paid to it to be applied to prepay the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates. In addition to such payment, the Authority shall cause a portion of the proceeds of sale of the Certificates to be applied to make the deposit required under the Trust Agreement into the Costs of Issuance Fund and to cause to be paid all related underwriting, financing and other costs of issuance of the Certificates.

SECTION 4. *Leaseback to City.* The purpose for which the City agrees to lease the Leased Property to the Authority hereunder is to enable the City to refinance the 2014 Lease Payments, the 2015 Lease Payments and the 2015 Certificates from the rental payment made to it by the Authority under Section 3. The Authority hereby agrees to lease the Leased Property back to the City under the Lease.

SECTION 5. *Assignments and Subleases.* Unless the City is in default under the Lease, the Authority may not assign its rights under this Site Lease or sublet all or any portion of the

Leased Property, except as provided in the Lease, without the prior written consent of the City2023 Bond Insurer.

SECTION 6. *Right of Entry.* The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 7. *Termination.* The Authority agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted, and agrees that all buildings, improvements and structures then existing upon the Leased Property will remain thereon and title thereto will vest thereupon in the City for no additional consideration.

SECTION 8. *Default.* If the Authority is in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease shall be deemed to occur as a result thereof and this Site Lease may not be terminated by the City as a remedy for such default. Notwithstanding the foregoing, so long as the Lease remains in effect, the City shall continue to pay the Lease Payments to the Trustee.

SECTION 9. *Amendments.* The Authority and the City may at any time amend or modify any of the provisions of this Site Lease, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Certificates and the 2023 Bond Insurer; or (b) without the consent of the Trustee or any of the Certificate Owners, and only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City or the Authority contained in this Site Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City or the Authority (provided, however that no right or power may be surrendered by the Authority to the extent that such right or power has been assigned by the Authority to the Trustee pursuant to the Assignment Agreement),
- (ii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, for the purpose of conforming to the original intention of the City and the Authority,
- (iii) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest with respect to the Certificates,
- (iv) to amend the description of any component of the Leased Property to reflect accurately the property originally intended to be included therein, or to effectuate any substitution of property as permitted by Section 4.6 of the Lease or any release or property as permitted by Section 4.7 of the Lease,

- (v) in any other respect whatsoever as the Authority and the City deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Certificates.

The City must obtain and cause to be filed with the Trustee an opinion of Bond Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment as set forth in this Section have been satisfied. Promptly following the effective date of any amendment or modification under this Section, the City must mail written notice thereof to each rating agency which then maintains a rating on the Certificates.

SECTION 10. *Quiet Enjoyment.* The Authority at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease and subject only to Permitted Encumbrances.

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Authority are solely corporate liabilities of the Authority as a nonprofit corporation, and the City hereby releases each and every member and officer of the Authority of and from any personal or individual liability under this Site Lease. No member or officer of the Authority or its governing board is at any time or under any circumstances individually or personally liable under this Site Lease for anything done or omitted to be done by the Authority hereunder.

SECTION 12. *Taxes.* The City will pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 13. *Eminent Domain.* If the whole or any part of the Leased Property, or any improvements thereon, are taken by eminent domain proceedings, the interest of the Authority will be the aggregate amount of the then unpaid principal components of the Lease Payments payable under the Lease and the balance of the award, if any, will be paid to the City. The City hereby waives any and all rights that it has or may hereafter have to acquire the interest of the Authority in and to the Leased Property through the eminent domain powers of the City.

SECTION 14. *Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Site Lease are to any extent 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 terms, provisions, covenants and conditions of this Site Lease will be affected thereby, and each provision of this Site Lease will be valid and enforceable to the fullest extent permitted by law. The Authority and the City each hereby declares that it would have entered into this Site Lease and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Site Lease may be held illegal, invalid or unenforceable.

SECTION 15. *Notices.* Any notice, request, complaint, demand or other communication under this Site Lease must be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice will be effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the

Authority and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City or the Authority: City of Hayward
777 B Street, 2nd Floor
Hayward, California 94541
Attn: Finance Director
Fax: 510-583-3600

If to the Trustee: The Bank of New York Mellon Trust Company, N.A.
Attn: Corporate Trust Department
100 Pine Street, Suite 3150
San Francisco, CA 94111
Fax: 415-399-1647
X

If to the 2023 Bond Insurer: See Appendix D of the Trust Agreement

SECTION 16. *Governing Law.* This Site Lease is governed by the laws of the State of California.

SECTION 17. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary and the Trustee may enforce any right, remedy, or claim conferred, given or granted hereunder. [The 2023 Bond Insurer shall be a third party beneficiary hereof.]

SECTION 18. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns, subject, however, to the limitations contained herein.

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

SECTION 21. *Execution in Counterparts.* This Site Lease may be executed in any number of counterparts, each of which is an original but all together constitute one and the same instrument. It is also agreed that separate counterparts of this Site Lease may be separately executed by the Authority and the City, all with the same force and effect as though the same counterpart had been executed by both the Authority and the City.

SECTION 22. *Defined Terms.* All capitalized terms used herein and not otherwise defined have the respective meanings given those terms in the Trust Agreement.

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

CITY OF HAYWARD, as lessor

By _____
City Manager

Attest:

City Clerk

**HAYWARD PUBLIC FINANCING
AUTHORITY, as lessee**

By _____
Executive Director

Attest:

Secretary

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The property constituting the Leased Property consists of the land located in the City of Hayward, County of Alameda, State of California, which is described as follows, including all buildings, improvements and facilities at any time situated thereon: