

TO BE RECORDED AND WHEN RECORDED
RETURN TO:

Jones Hall, A Professional Law Corporation
650 California Street, 18th Floor
San Francisco, California 94111
Attention: Christopher K. Lynch, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

**Draft
SITE LEASE**

This SITE LEASE (this "Site Lease"), dated as of ____ 1, 2016, is between the CITY OF HAYWARD, a municipal corporation duly organized and existing under the laws of the State of California (the "City") and the HAYWARD PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority").

B A C K G R O U N D :

1. The City has previously leased certain real property to the Authority under a Site Lease, dated as of August 1, 2007, as amended by a First Amendment and Supplement to Site Lease, dated as of (the "Prior Site Lease"), and the Authority has concurrently leased such land and improvements back to the City under a Lease Agreement, dated as of August 1, 2007 (the "Prior Lease").

2. The City's lease payment obligations under the Prior Lease are evidenced by 2007 Certificates of Participation (Civic Center and Capital Projects) in the aggregate principal amount of \$31,820,000 (the "Prior Certificates") under a Trust Agreement dated as of August 1, 2007, among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee.

3. The City has determined that it is in the best interests of the City at this time to refinance its obligations under the Prior Lease which are represented by the Prior Certificates, by exercising its right to prepay its lease payment obligations under the Prior Lease and thereby prepaying the Prior Certificates in full on August 1, 2017.

4. In order to raise funds required for that purpose, the City has agreed to lease certain real property, including land and improvements constituting the Civic Center located at 777 B Street (the "Leased Property"), as such property is more particularly described in Appendix A hereto to the Authority under this Site Lease, and the Authority has agreed to lease such property back to the City under a Lease Agreement dated as of ____ 1, 2016, which has been recorded concurrently herewith (the "Lease"), between the Authority as lessor and the City as lessee.

5. The Authority has assigned certain of its rights in the Lease to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") under an Assignment Agreement dated as of ____ 1, 2016, which has been recorded concurrently herewith (the "Assignment Agreement"), and in consideration of such assignment the Trustee has entered into a Trust Agreement dated as of ____ 1, 2016 (the "Trust Agreement"), among the Trustee, the City and the Authority, under which the Trustee has agreed to execute and deliver (i) \$_____ aggregate principal amount of 2016 Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series A and (ii) \$_____ aggregate principal amount of 2016 Federally Taxable Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series B, each evidencing a direct, undivided fractional interest in the lease payments to be paid by the City under the Lease.

6. The City is authorized to enter into this Site Lease and the Lease with the Authority under Section 37350 of the California Government Code, and the Authority is authorized to enter into this Site Lease and the Lease under the provisions of Section 6588 of the Government Code of the State of California.

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 Property to the Authority.* The City hereby leases to the Authority, and the Authority hereby leases from the City, the real property which is described more fully in Appendix A, 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 execution and delivery 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 August 1, 2036.

SECTION 3. *Rental.* In consideration of the lease of the Leased Property hereunder, and as rental therefor, the Authority shall cause the Certificates to be executed and delivered under the Trust Agreement and shall cause the amount of \$_____ to be used to pay the City's lease payment obligations under the Prior Lease

and thereby pay and prepay the Prior Certificates in accordance with the Lease and the Trust Agreement.

SECTION 4. *Purpose of Site Lease; 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 its obligations under the Prior Lease and thereby prepay the Prior Certificates from the amounts described in 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 City.

SECTION 6. *Right of Entry.* The City reserves the right for any of their 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.

SECTION 8. *Default.* If the Authority defaults 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 and the City may, and at the written direction of the Trustee (which shall only be given subject to its rights and protections under the Trust Agreement), the City shall, 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; or (b) without the consent of the Trustee or any of the Certificate Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City 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,
- (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 amend any provision thereof relating to the Tax Code, but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest represented by any of the Certificates under the Tax Code, in the opinion of Bond Counsel,
- (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 joint exercise of powers authority, 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 they have 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.

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
Attention: Director of Finance
Fax: (510) 583-3600

If to the Trustee:

The Bank of New York Mellon
Trust Company, N.A.
100 Pine Street, Suite #3150
San Francisco, California 94111
Attention: Corporate Trust Department
Fax: (415) 399-1647

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.

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

SECTION 19. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Site Lease are for any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Site Lease and such invalidity, illegality or unenforceability shall not affect any other provision of this Site Lease, and this Site Lease shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. 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 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 each of 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

By: _____
Director of Finance

Attest:

City Clerk

**HAYWARD PUBLIC FINANCING
AUTHORITY**

By: _____
Treasurer

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.