
LEASE AGREEMENT

Dated as of _____ 1, 2016

by and between the

**HAYWARD PUBLIC FINANCING AUTHORITY,
as Lessor**

and the

**CITY OF HAYWARD, as Lessee
(Civic Center and Capital Projects – 2007 Refunding)**

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LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease Agreement"), dated for convenience as of _____ 1, 2016, is by and between the HAYWARD PUBLIC FINANCING AUTHORITY, a joint exercise powers authority duly organized and existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF HAYWARD, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California, as lessee (the "City").

WITNESSETH:

WHEREAS, the City has previously leased certain real property to the Authority under a Site Lease, dated as of August 1, 2007, 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");

WHEREAS, 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;

WHEREAS, the City caused the 2007 Certificates to be executed and delivered for the purpose of (i) refunding on a current basis an outstanding Lease Agreement, dated as of October 1, 1996 (the "1996 Lease Agreement"), which 1996 Lease Agreement was entered into to finance certain public facilities and (ii) refunding on a current basis an outstanding Lease Agreement, dated as of October 1, 1997 (the "1997 Lease Agreement"), which 1997 Lease Agreement was entered into to refund on an advance basis the obligation of the City to make lease payments under a Lease Agreement, dated as of December 1, 1991 (the "1991 Lease Agreement"); the City entered into the 1991 Lease Agreement to finance certain public facilities;

WHEREAS, 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;

WHEREAS, in order to raise funds required for that purpose, the City has, pursuant to a Site Lease, dated as of _____ 1, 2016, and recorded concurrently herewith (the "Site Lease"), leased to the Authority land and improvements constituting the Civic Center located at 777 B Street in the City, or any property substituted therefor in accordance with Section 8.3(a) hereof (the "Leased Property");

WHEREAS, the Authority proposes to lease the Leased Property back to the City pursuant to this Lease Agreement, and to assign certain of its rights and interests hereunder to CoBiz Public Finance, Inc. (the "Bank"), pursuant to that certain Assignment Agreement, dated as of _____ 1, 2016, by and between the Authority and the Bank, and recorded concurrently herewith (the "Assignment Agreement");

WHEREAS, the proceeds of the assignment under the Assignment Agreement will be applied to: (i) pay and prepay the City's lease payment obligations under the Prior Lease and,

as a result, to pay and prepay the Prior Certificates; and (ii) pay costs of issuance incurred in connection with the execution and delivery of the Lease Agreement;

WHEREAS, ___% of the lease payments payable by the City under this Lease Agreement (the "Taxable Lease Payments") are attributable to the portion of the Lease Agreement that will be used to refund the 1997 Lease Agreement and ___% of the lease payments payable by the City under this Lease Agreement (the "Tax-Exempt Lease Payments"; together with the Taxable Lease Payments, the "Lease Payments") are attributable to the portion of the Lease Payments that will be used to refund the 1996 Lease Agreement;

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

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. The terms defined in Exhibit A attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Lease Agreement, have the meanings ascribed to them in said Exhibit A unless the context clearly requires some other meaning.

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

Exhibit A: Definitions.

Exhibit B: The description of the Leased Property.

Exhibit C: The schedules of Lease Payments to be paid by the City hereunder with respect to the Leased Property, showing the Lease Payment Date and amount of each such Tax-Exempt Lease Payment and Taxable Lease Payment.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) *Due Organization and Existence.* The City is a charter city and municipal corporation duly organized and validly existing under the Constitution and laws of the State, has full legal right, power and authority under the laws of the State to enter into this Lease Agreement, the Site Lease and the Custodian Agreement, and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the City has duly authorized the execution and delivery of this Lease Agreement, the Site Lease and the Custodian Agreement.

(b) *Due Execution.* The representatives of the City executing this Lease Agreement and the Site Lease have been fully authorized to execute the same pursuant to a resolution duly adopted by the City Council of the City.

(c) *Valid, Binding and Enforceable Obligations.* This Lease Agreement, the Site Lease and the Custodian Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.

(d) *No Conflicts.* The execution and delivery of this Lease Agreement, the Site Lease and the Custodian Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, the Site Lease and the Custodian Agreement, or the financial condition, assets, properties or operations of the City.

(e) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease Agreement, the Site Lease and the Custodian Agreement, or the consummation of any transaction on the part of the City herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions on the part of the City contemplated by or the validity of this Lease Agreement, the Site Lease and the Custodian Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions on the part of the City contemplated by this Lease Agreement, the Site Lease and the Custodian Agreement, or the financial conditions, assets, properties or operations of the City.

(g) *Status of Leased Property.* The Leased Property is fully functional, operational, and in sound condition.

(h) *City's Financial Position.* The statement of financial position of the City as of June 30, 2015, and the related statement of activities and statement of cash flows and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Bank, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the City at such date and for such period, and were prepared in accordance with generally accepted accounting principles. Since the period of such statements, there has been no (i) change which would have a Material Adverse Effect and (ii) no material increase in the indebtedness of the City.

(i) *No Default.* The City has not defaulted or failed to appropriate funds for any of its financial obligations.

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

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

(b) *No Encumbrances.* The Authority has not pledged and will not pledge the Lease Payments or other amounts derived from the Leased Property, and from its other rights under this Lease Agreement and has not mortgaged or encumbered and will not mortgage or encumber the Leased Property, except as

expressly provided under the terms of the Site Lease, this Lease Agreement and the Assignment Agreement.

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

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

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

(f) *Consents and Approvals.* No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease Agreement, the Site Lease and the Assignment Agreement, or the consummation of any transaction on the part of the Authority herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(g) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions on the part of the Authority contemplated by or the validity of this Lease Agreement, the Site Lease or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, the Site Lease or the Assignment Agreement, or the financial conditions, assets, properties or operations of the Authority.

ARTICLE III

DEPOSIT OF MONEYS; REFUNDING OF PRIOR LEASE OBLIGATIONS; COSTS OF ISSUANCE

Section 3.1. Deposit of Moneys. On the Closing Date, the Authority shall cause to be deposited, from the proceeds of the Lease Agreement, amounts estimated to be required to pay Costs of Issuance (\$_____), which shall be deposited in the Costs of Issuance Account pursuant to the Custodian Agreement. The Authority will cause the balance of such proceeds to be transferred to the Escrow Agent, deposited into the Escrow Fund and used to pay and prepay the City's lease payment obligations under the Prior Lease, and thereby pay and prepay the Prior Certificates.

ARTICLE IV

AGREEMENT TO LEASE; TERM OF THIS LEASE AGREEMENT; LEASE PAYMENTS

Section 4.1. Lease. The Authority hereby leases the Leased Property to the City, and the City hereby leases the Leased Property from the Authority, upon the terms and conditions set forth in this Lease Agreement. The leasing of the Leased Property by the Authority to the City pursuant to this Lease Agreement shall not effect or result in a merger of the subleasehold estate of the City and the fee interest of the City in the Leased Property.

Section 4.2. Term of Agreement. The Term of this Lease Agreement shall commence on the Closing Date, and shall end on August 1, 2026, unless such term is extended as hereinafter provided. If, on August 1, 2026, this Lease Agreement shall not be discharged by its terms or if the Lease Payments payable hereunder shall have been abated at any time and for any reason, and not otherwise paid from rental interruption insurance or other sources, or the City shall have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and continues without cure by the City, then the Term of this Lease Agreement shall be extended until there has been deposited with the Bank an amount sufficient to pay all obligations due under this Lease Agreement, but in no event shall the Term of this Lease Agreement extend beyond August_ 1, 2036_. The provisions of this Section 4.2 are subject to the provisions of Section 6.1 relating to the taking in eminent domain of the Leased Property or any portion thereof.

Section 4.3. Possession. The Authority has agreed to lease the Leased Property from the City on the Closing Date under and pursuant to the Site Lease. The City hereby agrees to accept and take possession of the Leased Property, pursuant to this Lease Agreement, on the Closing Date. The first Lease Payment shall be due on _____ 1, 20__.

Section 4.4. Lease Payments.

(a) *Obligation to Pay*. Subject to the provisions of Articles VI and X, the City agrees to pay to the Authority, its successors and assigns, as rental for the use and occupancy of the Leased Property during each Rental Period, the Lease Payments (denominated into components of principal and interest (with interest calculated on the basis of a 360-day year comprised of 30-day months and with respect to the Tax-Exempt Lease Payments, based on an interest rate of 2.6%, and, with respect to the Taxable Lease Payments, based on an interest rate of 2.76% per annum)) in the respective amounts specified in Exhibit C hereto, to be due and payable in immediately available funds on the respective Lease Payment Dates specified in Exhibit C hereto. The Lease Payment for the Leased Property payable during any Rental Period shall be for the use of the Leased Property for such Rental Period. All Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of the Lease Payments due hereunder, but no such application of any Lease Payments that are less than the total Lease Payment due and owing shall be deemed a waiver of any default hereunder.

In the event that the City only pays a portion of the Lease Payments that are due and payable, the amounts available to pay the Lease Payments shall be applied to the Taxable Lease Payments and the Tax-Exempt Lease Payments on a pro rata basis (based on the unpaid principal component of each).

(b) *Effect of Prepayment.* In the event that the City prepays all remaining Lease Payments in full pursuant to Article X, the City's obligations under this Lease Agreement shall thereupon cease and terminate including, but not limited to, the City's obligation to pay Lease Payments under this Section 4.4; subject however, to the provisions of Section 10.1 in the case of prepayment by application of a security deposit. In the event that the City optionally prepays the Lease Payments in part but not in whole pursuant to Section 10.2 or pursuant to Section 10.3 as a result of any insurance or condemnation award with respect to any portion of the Leased Property, such prepayment shall be credited entirely towards the prepayment of the Lease Payments as follows: (i) to the principal components in inverse order of payment date in integral multiples of \$5,000; and (ii) the interest component of each remaining Lease Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable on the principal component thereby prepaid.

(c) *Rate on Overdue Payments.* In the event the City should fail to make any of the payments required in this Section 4.4, and such nonpayment shall not be cured within 10 days of the Lease Payment Date such Lease Payment was due, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date of default to the date of payment at the aggregate per annum rate equal to: (1) rate of interest then payable under the terms hereof; plus (2) ___%.

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

(e) *Source of Payments; Budget and Appropriation.* Lease Payments shall be payable from any source of available moneys of the City, subject to the provisions of Articles VI and X. During the Term of this Lease Agreement, the City shall furnish to the Bank no later than August 1 of each year, following written request by the Bank to the City, a certificate stating that the City has included the Lease Payments due in that Fiscal Year in the budget that has been approved by the City Council of the City for such Fiscal Year.

The City covenants to take such action as may be necessary to include all Lease Payments due hereunder in each of its budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

(f) *Assignment.* The City understands and agrees that all Lease Payments have been assigned by the Authority to the Bank pursuant to the Assignment Agreement, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby

agrees to pay to the Bank at the office of the Bank, all payments payable by the City pursuant to this Section 4.4 and Section 4.7 and all amounts payable by the City pursuant to Article X. Lease Payments shall be paid to the Bank as follows, which may be changed from time to time by the Bank upon notice to the City and the Authority:

Payments by check:

Attn: _____

Obligation # _____

Payments by wire:

Attention: _____ Routing

Number: _____
Obligation # _____

For Benefit of: City of Hayward
Contact: _____

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

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

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

Section 4.7. Additional Payments. The City shall pay or cause to be paid, when due, all costs and expenses incurred by the City and the Authority arising hereunder, including without limitation all Costs of Issuance, compensation, reimbursement and indemnification due to the Authority and the Bank, and all costs and expenses of the City and auditors, engineers, attorneys and accountants. In addition, the City agrees to pay as Additional Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Leased Property or upon any interest of the Authority therein or in this Lease Agreement; provided, however, the City may, at the City's expense and in its name, in good faith contest any such taxes and assessments and, in the event of such contest, may permit such taxes and assessments to remain unpaid during the period of such contest and appeal therefrom unless the Authority shall notify the City that, in the opinion of Bond Counsel, by nonpayment of any such items, the interest of the Authority in the Leased Property will be materially endangered or the Leased Property, or any portion thereof, will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes and assessments or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof; and

(iii) any other reasonable fees, costs or expenses incurred by the Authority in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Leased Property, including, without limitation, any amounts which may become due; provided, however, the City shall not be responsible for any costs incurred by the Authority associated with any assignment made by the Bank.

Amounts constituting Additional Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City 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 Authority to the City stating the amount of Additional Payments then due and payable and the purpose thereof.

Notwithstanding any other provision of this Section 4.7, the City shall pay such additional amounts of rent during any period only to the extent that any such payment, when added to Lease Payments due and owing during such period, will not exceed the fair rental value of the Leased Property for such period.

Section 4.8. No Withholding. Notwithstanding any dispute between the Authority or the Bank and the City or any default by the Authority or the Bank in any transaction with the City, the City shall make all Lease Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute or as a setoff against any claims of the City.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; USE LIMITATIONS; AND OTHER MATTERS

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

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

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such items, the interest of the Authority in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and shall provide the Bank with updates and such other information concerning such contest as the Bank may request from time to time.

Section 5.2. Modification of Leased Property. The City shall, at its own expense, have the right to remodel the Leased Property or to make additions, modifications and improvements to the Leased Property. All additions, modifications and improvements to the Leased Property shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease Agreement. Such additions, modifications and improvements shall not in any way damage the Leased Property, substantially alter its nature, cause the interest component of Lease Payments to be subject to federal income taxes or cause the Leased Property to be used for purposes other than those authorized under the provisions of State and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto pursuant to this Section 5.2, shall be of a value which is not substantially less than the value of the Leased Property immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by

the City pursuant to this Section 5.2; provided that if any such lien is established and the City shall first notify the Authority of the City's intention to do so, the City may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City. The City shall promptly notify the Bank of any such lien and contest and shall provide the Bank with updates and other such other information on such lien and contest as the Bank may request.

Section 5.3. Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the Term of this Lease Agreement, insurance policies, including a standard comprehensive general liability insurance policy or policies in protection of the City, the Authority and the Bank, including 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 operation of the Leased Property. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$100,000 for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City and may be maintained in the form of insurance maintained through a joint exercise of powers authority created for such purpose or in the form of self-insurance by the City, with the Bank's written consent. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

Section 5.4. Fire and Extended Coverage Insurance. The City shall maintain, or cause to be maintained throughout the Term of this Lease Agreement, insurance against loss or damage to any part of improvements constituting a portion of the Leased Property by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the lesser of (a) one hundred percent (100%) of the replacement cost of improvements constituting a portion of the Leased Property, or (b) the aggregate principal amount of the Lease Payments. Such policy may be subject to such deductibles as the City shall deem prudent, provided that such policy must expressly waive any co-insurance penalty. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried by the City and may be maintained in whole or in part in the form of insurance maintained through a joint exercise of powers authority created for such purpose. The Net Proceeds of such insurance shall be applied as provided in Section 6.2(a).

Section 5.5. Rental Interruption Insurance. The City shall maintain, or cause to be maintained, throughout the Term of this Lease Agreement rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any part of the improvements constituting a portion of the Leased Property during the Term of this Lease Agreement as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at

least equal to the maximum unpaid Lease Payments due in any twenty-four (24) month period. The Net Proceeds of such insurance shall be applied towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable.

Section 5.6. Title Insurance. On or before the Closing Date, the City shall, at its expense to be paid from the Costs of Issuance Account, (a) cause a memorandum of this Lease Agreement, the Site and Facility Lease and the Assignment Agreement in form and substance approved by Bond Counsel, to be recorded in the office of the Alameda County Recorder with respect to the Leased Property, and (b) obtain a CLTA title insurance policy covering, and in the amount of not less than the aggregate principal amount of the Lease Payments, insuring the City's and the Bank's leasehold estate in the Leased Property, subject only to Permitted Encumbrances. The Net Proceeds of such title insurance shall be applied as provided in Section 6.2(c).

Section 5.7. Insurance Net Proceeds; Form of Policies. Each policy or other evidence of insurance required by Sections 5.4, 5.5 and 5.6 shall list the Bank as a loss payee or additional insured, as applicable, shall include a lender's loss payable endorsement for the benefit of the Bank, shall provide that all proceeds thereunder shall be payable to the Bank as and to the extent required hereunder and shall be applied as provided in Section 6.2, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least 10 days before the cancellation or revision becomes effective. All required insurance policies shall be provided by a commercial insurer rated "A" by A.M. Best & Company or rated in one of the two highest rating categories by Moody's and S&P. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease Agreement; provided that the Authority shall, upon written demand of the City's Director of Finance, reimburse the City from any lawfully available funds of the Authority for any costs of insurance required under this Lease Agreement that are attributable to increased costs of insurance, over that normally carried by the City, due to the Certificate financing program. The Bank shall not be responsible for the sufficiency of any insurance herein required, including any forms of self-insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

Annually not later than August_ 1 in each year during the Term of this Lease Agreement, the City shall furnish or cause to be furnished to the Bank evidence of all insurance policies required to be maintained by this Article V, which may consist of a certificate describing material terms of such policies.

In the event that any insurance maintained pursuant to Section 5.3 shall be provided in the form of self-insurance, then (a) the City shall maintain reserve balances with respect thereto which are held by an independent trustee, (b) such self-insurance program shall be maintained by the City on an actuarially sound basis, (c) the City shall obtain, and file with the Bank annually not later than August 1 in each year, the opinion of an independent insurance consultant engaged by the City approving the program of self-insurance and stating that the reserve balances with respect thereto are sufficient, and (d) in the event the self-insurance program is discontinued at any time, the actuarial soundness of the reserve balances shall be maintained.

Section 5.8. Advances. If the City shall fail to perform any of its obligations under this Article V, the Authority may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to

repay all such advances as soon as possible, with interest at the rate of twelve percent (12%) per annum (or such lesser rate as agreed to by the Authority) from the date of the advance to the date of repayment.

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

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

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

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

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

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

Section 5.15. Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest component of the Tax-Exempt Lease Payments from the gross income of the Bank to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect from time to time.

Section 5.16. Environmental Covenants.

(a) Compliance with Laws; No Hazardous Substances. The City will comply with all Applicable Environmental Laws with respect to the Leased Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Leased Property.

(b) Notification of Bank. The City 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 Property and any operations conducted thereon or any conditions existing thereon to the Bank, and the City will notify the Bank in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Leased Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Bank

(c) Access for Inspection. The City will permit the Bank, its agents, or any experts designated by the Bank to have full access to the Leased Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Bank has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.1. Eminent Domain If all of the Leased Property shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Lease Payments shall be abated as of the day possession shall be so taken. If less than all of the Leased Property shall be taken permanently, or if all of the Leased Property or any part thereof shall be taken temporarily under the power of eminent domain, (1) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments as a result of the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the City and the Authority such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Leased Property. The City hereby covenants and agrees to the extent it may lawfully do so that so long as any obligation under the Assignment Agreement to deliver to the Bank any Lease Payments remains outstanding (even if no Lease Payments are then due), the City will not exercise the power of condemnation with respect to the Leased Property. The City further covenants and agrees to the extent it may lawfully do so that if for any reason the foregoing covenant is determined to be unenforceable or if the City should fail or refuse to abide by such covenant and condemns the Leased Property the appraised value of the Leased Property for purposes of any condemnation award shall not be less than the total amount of the principal component of the unpaid Lease Payments.

Section 6.2. Application of Net Proceeds.

(a) *From Insurance Award.* The Net Proceeds of any insurance award resulting from any damage to or destruction of any portion of the Leased Property by fire or other casualty shall be applied by the City, when received, to the prompt restoration and repair of the Leased Property.

(b) *From Title Insurance and Eminent Domain Award.* The Net Proceeds of any title insurance or eminent domain award resulting from any event described in Section 6.1 shall be paid by the City to the Bank, as assignee of the Authority under the Assignment Agreement, and applied to the prepayment of the Lease Payments in accordance with Section 10.3.

Section 6.3. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for), there is substantial interference with the beneficial use and occupancy by the City of the Leased Property or any portion thereof (other than any portions of the Leased Property described in Section 5.2), but not any specific portion of the Leased Property, as shall be agreed upon by the City and the Authority. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Leased Property not damaged or destroyed (giving due consideration to the factors identified in the last sentence of Section 4.4(d)), based upon the opinion of an MAI appraiser with expertise in valuing such properties or other appropriate method of valuation (and as further described in the next paragraph), in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall

continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that (a) the proceeds of rental interruption insurance are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute a special fund for the payment of the Lease Payments.

Section 6.4. Security Interest. As additional security for its obligations hereunder, the City hereby irrevocably grants to the Bank a security interest in any and all Net Proceeds and the right of the City to receive same. The City shall not cause or permit any other lien or security interest to exist thereon or any adverse claim to exist with respect thereto. Upon the occurrence of an Event of Default hereunder, the Bank may exercise its rights and remedies as a secured creditor with respect thereto.

ARTICLE VII

DISCLAIMER OF WARRANTIES; ACCESS; NO DISCRIMINATION

Section 7.1. Disclaimer of Warranties. THE AUTHORITY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY. IN NO EVENT SHALL THE AUTHORITY OR ITS ASSIGNS BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE ASSIGNMENT AGREEMENT OR THIS LEASE AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE LEASED PROPERTY.

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

Section 7.3. Release and Indemnification Covenants. The City hereby agrees to indemnify the Bank, the Authority and their respective directors, officers, employees, agents, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the City or any of its employees, agents, contractors, invitees or licensees, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property, (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Leased Property, (e) the use, presence, storage, disposal or clean-up of any Hazardous Substances or toxic wastes on the Leased Property or (f) the failure to comply with any Applicable Environmental Laws. No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or gross negligence under this Lease Agreement by the Authority, the Bank or their respective officers, agents, employees, successors or assigns. The indemnity hereunder shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease Agreement or the termination of the term of this Lease Agreement for any reason. The City and the Authority each agree to promptly give notice to each other and the Bank of any claim or liability hereby indemnified against promptly upon learning thereof.

ARTICLE VIII

ASSIGNMENT, SUBLEASING AND AMENDMENT

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

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

(a) The City shall have obtained the prior written consent of the Bank to such sublease;

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

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

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

(e) The City shall furnish the Authority and the Bank with a written opinion of nationally-recognized Bond Counsel, which shall be an Independent Counsel, stating that such sublease does not cause the interest components of the Tax-Exempt Lease Payments to become subject to federal income taxes or State personal income taxes.

If the City subleases the entire Leased Property and receives sublease rents therefor in any amount in excess of the Lease Payments, then the City shall remit such excess to the Bank and the amounts so remitted shall be applied to prepayment of principal component of the Lease Payments. If the City subleases a portion but not all of the Leased Property, then the City shall not be obligated to remit the sublease rents thereunder to the Bank unless an Event of Default has occurred and is continuing, in which case the City shall remit all such sublease rents to the Bank and the amounts so remitted shall be applied to prepayment of the principal component of the Lease Payments.

Section 8.3. Amendment of this Lease Agreement.

(a) *Substitution of Property*. The City has the option at any time and from time to time to substitute other real property (the "Substitute Property") for the Leased Property or any portion thereof (the "Former Property"), provided that the City must satisfy all of the following requirements which are hereby declared to be conditions precedent to such substitution:

(a) No Event of Default has occurred and is continuing.

(b) The City has filed with the Authority and the Bank, and has caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of, an amendment hereof which adds to Appendix A hereto a description of such Substitute Property and deletes therefrom the description of such Former Property.

(c) The City has obtained a CLTA policy of title insurance which insures the City's leasehold estate hereunder in such Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.

(d) The City has certified in writing to the Authority and the Bank that such Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.

(e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.

(f) The City has filed with the Authority and the Bank an MAI fair market appraisal or other written documentation which establishes that the estimated value and the fair rental value of the Substitute Property are at least equal to the estimated value and the fair rental value, respectively, of the Former Property, and that the useful life of the Substitute Property at least equals the lesser of (i) the useful life of the Former Property, or (ii) the final Lease Payment Date of the Lease Payments allocable thereto.

(g) The City has obtained an opinion of Bond Counsel stating that the substitution will not cause the interest components of the Tax-Exempt Lease Payments to become subject to federal income taxes or State personal income taxes.

(h) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Certificates.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such substitution. The Authority and the City will execute, deliver and cause to be recorded all documents required to discharge this Lease Agreement against the Former Property

(b) *Release of Property.* The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease Agreement and the Site Lease (the "Released Property") provided that the City has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release:

(a) No Event of Default has occurred and is continuing.

(b) The City has filed with the Authority and the Bank, and has caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of, an amendment hereof which removes the Released Property from this Lease Agreement and the Site Lease.

(c) The City has certified in writing to the Authority and the Bank that the estimated value of the property which remains subject to this Lease and the Site Lease following such removal is at least equal to the aggregate original principal amount of the Certificates, and the fair rental value of the property which remains subject to this Lease and the Site Lease following such removal is at least equal to the Lease Payments thereafter coming due and payable hereunder.

(d) The City has obtained evidence that the title insurance policy required by Section 5.6 is not adversely affected by the release.

(e) The City has obtained an opinion of Bond Counsel stating that the release will not cause the interest components of the Tax-Exempt Lease Payments to become subject to federal income taxes or State personal income taxes.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge this Lease Agreement and the Site Lease of record against the Released Property..

Section 8.4. Costs and Expenses Borne by City. All costs and expenses in connection with any of the acts associated with Sections 8.2 and 8.3 (including, but not limited to, any costs and expenses of the Bank) shall be borne by the City.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. The following shall be “events of default” under this Lease Agreement and the terms “Events of Default” and “Default” shall mean, whenever they are used in this Lease Agreement, with respect to the Leased Property, any one or more of the following events:

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

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease Agreement, other than as referred to in clause (i) of this Section 9.1, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority and the Bank; *provided, however,* if the failure stated in the notice can be corrected, but not within the applicable period, the Authority and the Bank shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

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

(d) Any statement, representation or warranty made by the City in or pursuant to this Lease Agreement or its execution, delivery or performance is false, incorrect, misleading or breached in any material respect and the City fails to cure such breach within 10 days after written notification from the Authority.

(e) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the City is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by the Bank or any affiliate of the Bank, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$500,000.

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

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

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement; *provided, however*, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof, the Authority may exercise any and all rights of entry and re-entry upon the Leased Property, and also, at its option, with or without such entry, may terminate this Lease Agreement; provided, that no such termination shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Authority, the City shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Lease Agreement and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to the Authority at the time and in the manner as herein provided, to wit:

(a) In the event the Authority does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Property, or, in the event the Authority is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property in the event of default by the City in the performance of any covenants herein contained to be performed by the City and to remove all personal property whatsoever situated upon the Leased Property, to place such property in storage or other suitable place within Alameda County, for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Leased Property as herein provided and all claims for damages that may result from the destruction of or injury to the Leased Property and all claims for damages to or loss of any property belonging to the City that may be in or upon the Leased Property. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease

Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease Agreement shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in paragraph (b) hereof.

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

Any amounts received by the Authority in respect of the Lease Payments or the deficiency under this Section 9.2, any surplus amounts received from re-leasing under this Section 9.2 shall be applied or credited in the same manner as any partial prepayment under Section 10.2 and shall be subject to the prepayment premium provided in Section 10.2, if any.

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

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.5. Application of Proceeds. All net proceeds received from the re-lease or other disposition of the Leased Property under this Article IX, and all other amounts derived by the Authority or the Bank as a result of an Event of Default hereunder, shall be transferred to the

Bank promptly upon receipt thereof and after payment of all fees and expenses of the Bank, including indemnifications and attorneys fees, shall be held by the Bank in escrow to be applied to the Lease Payments in order of payment date.

Section 9.6. Bank to Exercise Rights. Such rights and remedies as are given to the Authority under this Article IX have been assigned by the Authority to the Bank under the Assignment Agreement, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Bank, as provided herein.

Section 9.7. Agreement to Pay Attorneys' Fees and Expenses. If any party to this Lease Agreement defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

ARTICLE X

PREPAYMENT OF LEASE PAYMENTS

Section 10.1. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the City may, on any date, secure the payment of all or a portion of the Lease Payments remaining due by an irrevocable deposit with the Bank or an escrow holder under an escrow deposit and trust agreement, of: (a) in the case of a security deposit relating to all Lease Payments, either (i) cash in an amount which is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit C, or (ii) Defeasance Obligations in such amount as will, in the written opinion of an independent certified public accountant, together with interest to accrue thereon and, if required, all or a portion of moneys or Federal Securities or cash then on deposit and interest earnings thereon, be fully sufficient to pay all unpaid Lease Payments on their respective Lease Payment Dates (or date of prepayment, if applicable); or (b) in the case of a security deposit relating to a portion of the Lease Payments, a certificate executed by a City Representative designating the portion of the Lease Payments to which the deposit pertains, and either (i) cash in an amount which is sufficient to pay the portion of the Lease Payments designated in such City Representative's certificate, including the principal and interest components thereof, or (ii) Defeasance Obligations in such amount as will, together with interest to be received thereon, if any, in the written opinion of an independent certified public accountant, be fully sufficient to pay the portion of the Lease Payments designated in the aforesaid City Representative's certificate.

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

Section 10.2. Prepayment Option. The Authority hereby grants an option to the City to prepay the principal component of the Lease Payments in full, by paying the aggregate unpaid principal components of the Lease Payments as set forth in Exhibit C hereto on any date occurring on and after _____, by paying a prepayment price equal to the aggregate principal components of the Lease Payments to be prepaid, together with the interest component of the Lease Payment required to be paid on such date, without prepayment premium. .

Said option shall be exercised by the City by giving written notice to the Authority and the Bank of the exercise of such option at least forty-five (45) days prior to said Lease Payment Date. Such option shall be exercised in the event of prepayment in full, by depositing with said notice cash in an amount, which will be sufficient to pay the aggregate unpaid component of the

Lease Payments on said Lease Payment Date as set forth in Exhibit C hereto, together with any Lease Payments then due but unpaid, or, in the event of prepayment in part, by depositing with said notice cash in an amount divisible by \$5,000 equal to the amount desired to be prepaid, together with any Lease Payments then due but unpaid. In the event of prepayment in part, the partial prepayment shall be applied against the unpaid installments of the principal component of the Lease Payments in inverse order of due date, and the interest component of each remaining Lease Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable on the principal component thereby prepaid. Lease Payments due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the City to the Bank and the Authority, and which shall represent an adjustment to the schedule set forth in Exhibit C attached hereto taking into account said partial prepayment.

Section 10.3. Mandatory Prepayment From Net Proceeds of Title Insurance or Eminent Domain. The City shall be obligated to prepay the Lease Payments, in whole or in part, from and to the extent of any Net Proceeds of a title insurance or condemnation award with respect to the Leased Property. The City and the Authority hereby agree that such Net Proceeds shall be applied first to the payment of any delinquent Lease Payments, and thereafter shall be credited towards the City's obligations under this Section 10.3. Lease Payments due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the City to the Bank and the Authority, and which shall represent an adjustment to the schedule set forth in Exhibit C attached hereto taking into account said partial prepayment.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail in first-class form with postage fully prepaid:

If to the Authority or the City:	City Clerk City of Hayward 777 B Street Hayward, California 94541 Attention: Assistant City Manager
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If to the Bank:	CoBiz Public Finance, Inc. 2600 N. Central Avenue, Suite 2000 Phoenix, Arizona 85004
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The Authority, the City and the Bank, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 11.2. Information to be Provided to Bank. The City 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 a Default or an Event of Default under this Lease Agreement, together with a detailed statement by a City Representative of the steps being taken by the City to cure the effect of such Default or Event of Default.

(b) Prompt written notice of any Material Litigation, or any investigation, inquiry or similar proceeding by any governmental authority with respect to any matter that relates to or could impact any of the Lease Payments.

(c) Promptly upon notice thereof, any termination or cancellation of any insurance policy which the City is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the City property in excess of an aggregate of \$500,000.

(d) Promptly upon receipt by the City and in no event later than two hundred ten (210) days after the close of each Fiscal Year of the City (unless otherwise agreed in writing by the Bank), the City will furnish, or cause to be furnished, to the Bank detailed certified reports of audit, based on an examination sufficiently complete, prepared by an independent certified public accountant, covering the financial operations of the City for said Fiscal Year. Such audited financial statements shall include the City's Comprehensive Annual Financial Report ("CAFR"), including such information as is required by applicable Government Accounting Standards Board pronouncements and applicable State law. In addition, the City shall deliver to the Bank, within 15 days after adoption (unless otherwise agreed in writing by the Bank), a copy of the City's adopted budget for the then current Fiscal Year and will promptly provide all interim updates or modifications to such budget.

(e) With reasonable promptness, such other information respecting the City, the Leased Property, and the operations, affairs and financial condition of the City as the Bank may from time to time reasonably request.

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

Section 11.3. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Authority, the City, the Bank and their respective successors and assigns.

Section 11.4. Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.5. Net-net-net Lease. This Lease Agreement shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Lease Payments shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 11.6. Further Assurances and Corrective Instruments. The Authority and the City 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 Property hereby leased or intended so to be or for carrying out the expressed intentions of this Lease Agreement.

Section 11.7. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.8. Applicable Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.9. Authority and City Representatives. Whenever under the provisions of this Lease Agreement the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority by an Authority Representative and for the City by a City Representative, and each party hereto shall be authorized to rely upon any such approval or request.

Section 11.10. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease Agreement.

Section 11.11. Bank as Third Party Beneficiary. The parties hereto expressly acknowledge and agree that the Bank is an intended third party beneficiary of this Lease Agreement and a direct beneficiary under the Assignment Agreement and shall have the rights

specified herein and therein. Without limiting the generality of the foregoing, any and all rights reserved to the Authority hereunder shall be jointly held by the Authority and the Bank.

Section 11.12. Time of the Essence. Time is of the essence in the payment and performance of each obligation hereunder.

Section 11.13. Entire Agreement; Amendment. This Lease Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior written or oral understandings and agreements with respect thereto. This Lease Agreement may not be amended except in writing signed by the City and the Bank.

Section 11.14. Attorneys' Fees. If suit is brought to enforce any terms, covenants or conditions of this Lease Agreement, the parties agree that the losing party shall pay the prevailing party's reasonable attorneys' fees, including reasonable attorneys' fees incurred in enforcing a judgment, which shall be fixed by the court and court costs. As used herein, the term "prevailing party" shall mean the party, which has succeeded upon a significant issue in the litigation and achieved a material benefit with respect to the claims at issue, taken as a whole.

IN WITNESS WHEREOF, the Authority has caused this Lease Agreement to be executed in its name by its duly authorized officers; and the City has caused this Lease Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

**HAYWARD PUBLIC FINANCING
AUTHORITY, as Lessor**

By _____
Secretary/Treasurer

CITY OF HAYWARD, as Lessee

By _____

Attest:

By _____
City Clerk

EXHIBIT A
DEFINITIONS

"*Additional Payments*" means the payments authorized under Section 4.7 of the Lease Agreement.

"*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:

- (a) the existence, cleanup, and/or remedy of contamination on property;
- (b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

"*Assignment Agreement*" means the Assignment Agreement, dated as of _____ 1, 2016, by and between the Authority and the Bank, together with any duly authorized and executed amendments thereto.

"*Authority*" means the Hayward Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State.

"*Authority Representative*" means the Chairman, the Treasurer, or the designee of any such official, or any other person authorized to act on behalf of the Authority under or with respect to the Lease Agreement and the Site Lease, and identified as such to the City and the Bank in writing.

"*Bank*" means CoBiz Public Finance, Inc., a _____ organized and existing under the laws of the State of _____, the assignee of the Authority on the Closing Date.

"*Business Day*" means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the state in which the Principal Corporate Trust Office of the Bank is located are closed or are required to close or a day on which the New York Stock Exchange is closed.

“City” means the City of Hayward, a charter city and municipal corporation organized and existing under the Constitution and laws of the State.

“City Representative” means the Mayor, the City Manager, the Assistant City Manager, or the designee of any such official, or any other person authorized to act on behalf of the City under or with respect to the Lease Agreement, the Custodian Agreement and the Site Lease, and identified as such to the Bank in writing.

“Closing Date” means _____ 1, 2016.

“Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or as it may be amended to apply to obligations issued on the Closing Date, together with applicable regulations promulgated under the Code.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City or the Authority relating to the execution and delivery of the Site Lease, the Custodian Agreement, the Lease Agreement, and the Assignment Agreement, or the execution and delivery of the Lease Agreement, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, costs for statistical data, financing discounts, legal fees and charges, insurance fees and charges (including title insurance), financial and other professional consultant fees, and charges and fees in connection with the foregoing.

“Costs of Issuance Account” means the account by that name established and held by the Custodian pursuant to the Custodian Agreement.

“County” means the County of Alameda, a county duly organized and existing under the Constitution and laws of the State.

“Custodian Agreement” means the Costs of Issuance Custodian Agreement, dated as of _____ 1, 2016, by and between the City and the Bank, as the Custodian, together with any duly authorized amendments thereto.

“Custodian” means the Bank, or any successor thereto, acting as Custodian pursuant to the Custodian Agreement.

“Defeasance Obligations” means (a) cash, or (b) non-callable Federal Securities.

“Event of Default” or “Default” means an event of default under the Lease Agreement, as defined in Section 9.1 thereof.

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term “fair market value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the

Code, (c) the investment is a United States Treasury Security—State and Local Government Series, that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) the investment is the Local Agency Investment Fund of the State but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

“*Federal Securities*” means direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury) or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

“*Fiscal Year*” means the twelve-month period beginning on August 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the City as its fiscal year.

“*Governmental Authority*” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“*Hazardous Substance*” means 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.).

“*Independent Counsel*” means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Authority, the Bank or the City.

“*Lease Agreement*” means this Lease Agreement for the lease of the Leased Property by the Authority, as lessor, to the City, as lessee, dated as of _____ 1, 2016, together with any duly authorized and executed amendments thereto.

“*Leased Property*” means: (i) initially, the Original Leased Property; and (ii) any other property substituted therefor in accordance with Section 8.3.

“*Lease Payment Date*” means the first day of _____ and _____ in each year during the Term of the Lease Agreement, commencing _____; provided, that if the first day of any _____ or _____ is not a Business Day, the Lease Payment due on said day shall be due on the next occurring Business Day.

“*Lease Payments*” means, collectively, the Tax-Exempt Lease Payments and the Taxable Lease Payments,

“*Material Adverse Effect*” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities

or operations of the City, (b) the ability of the City to carry out its business in the manner conducted as of the date of this Lease Agreement or to meet or perform its obligations under this Lease Agreement on a timely basis, (c) the validity or enforceability of this Lease Agreement, or (d) the exclusion of interest with respect to the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

“Material Litigation” means any action, suit, proceeding, inquiry or investigation against the City in any court or before any arbitrator of any kind or before or by any Governmental Authority, of which the Authority has notice or knowledge and which, (i) if determined adversely to the City, may have a Material Adverse Effect, (ii) seek to restrain or enjoin any of the transactions contemplated hereby or by the Lease Agreement, or (iii) may adversely affect (A) the exclusion of interest with respect to the Lease Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes or (B) the ability of the City to perform its obligations under this Lease Agreement.

“Net Proceeds,” when used with respect to insurance or condemnation proceeds, means any insurance proceeds or condemnation award paid with respect to the Leased Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“Original Leased Property” means the City's the Civic Center located at 777 B Street in the City, and more particularly described in Exhibit B hereto and made a part hereof.

“Outstanding,” when used as of any particular time with respect to the Lease Payments, means all Lease Payments scheduled but unpaid, except Lease Payments for the payment or redemption of which funds or Defeasance Obligations in the necessary amount shall have theretofore been deposited with the Bank or an escrow holder (whether upon or prior to the maturity or prepayment date of such Lease Payments).

“Permitted Encumbrances” means, as of any particular time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Article V of the Lease Agreement, permit to remain unpaid; (b) the Assignment Agreement; (c) the Site Lease; (d) the Lease Agreement; (e) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (f) 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 City certifies in writing will not materially impair the use or reduce the value of the Leased Property and (g) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued following the Closing Date.

“Rental Period” means each twelve-month period during the Term of the Lease Agreement or the Term of the Site Lease, as applicable, commencing on August 2 in any year and ending on August 1 in the next succeeding year; *provided, however,* that the first Rental Period shall commence on the Closing Date and shall end on August 1, 2016.

“Site Lease” means that certain agreement for the lease of the Leased Property by the City, as lessor, to the Authority, as lessee, dated as of _____ 1, 2016, together with any duly authorized and executed amendments thereto.

“State” means the State of California.

“Taxable Lease Payments” means the payments required to be paid by the City pursuant to Section 4.4 of the Lease Agreement, including any prepayment thereof pursuant to Article X of the Lease Agreement, which payments consist of an interest component and a principal component, as set forth in Exhibit C to the Lease Agreement plus, in the case of prepayment, a prepayment premium, if any.

“Tax-Exempt Lease Payments” means the payments required to be paid by the City pursuant to Section 4.4 of the Lease Agreement, including any prepayment thereof pursuant to Article X of the Lease Agreement, which payments consist of an interest component and a principal component, as set forth in Exhibit C to the Lease Agreement plus, in the case of prepayment, a prepayment premium, if any.

“Term of the Site Lease” means the time during which the Site Lease is in effect, as provided in Section 4.2 of the Site Lease.

“Term of the Lease Agreement” means the time during which the Lease Agreement is in effect, as provided in Section 4.2 of the Lease Agreement.

EXHIBIT B

DESCRIPTION OF THE LEASED PROPERTY

The land referred to herein is situated in the State of California, County of Alameda, City of Hayward and described as follows:

EXHIBIT C

SCHEDULE OF LEASE PAYMENTS

Tax-Exempt Lease Payments

Total Lease Payment Principal Component Interest Component Total Lease Payment

Totals:

Taxable Lease Payments

Total Lease Payment Principal Component Interest Component Total Lease Payment

Totals: