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**Memorandum of Understanding
between City of Hayward and Hayward Area Recreation and Park District
For the La Vista Park Project**

This Memorandum of Understanding ("MOU"), effective this 29th day of January, 2025 (the "Effective Date") is between the City of Hayward ("City"), a municipal corporation of the State of California, and the Hayward Area Recreation and Park District ("HARD"), a California special district, hereinafter referred to individually as a "Party" and collectively as "Parties", for the design, construction, funding, operation and maintenance of La Vista Park in Hayward, California.

RECITALS

WHEREAS, in 2005, City approved the La Vista residential development in south Hayward, on Tennyson Road and Mission Boulevard, that included the construction of 179 new single-family homes (the "Residential Development"); and

WHEREAS, the developer of the Residential Development donated thirty (30) acres of land adjacent to the Residential Development to be used for the development of a new public park for the south Hayward community and Two Million Dollars (\$2,000,000.00) for such purpose (the "Developer Fee Contribution"); and

WHEREAS, in 2018, the size of the proposed park expanded to almost 50 acres of land with the City's acquisition of former California Department of Transportation ("CalTrans") right-of-way land from the former Route 238 bypass project; and

WHEREAS, the size of the proposed park was subsequently reduced by approximately eleven (11) acres of land to address funding constraints, thus resulting in the size of the proposed park at approximately thirty-nine (39) acres of land as shown as the "Park Property" on the Project Site Map, attached hereto as **Exhibit "A"** and incorporated herein; and

WHEREAS, the proposed park is to include a number of park and recreational facilities, including sports fields, courts, a yoga lawn, hiking trails, and amphitheater, among other amenities (collectively, the "Park Improvements"), and approximately sixteen (16) acres of open space (collectively, the "Park Project" or "Project"), all as shown on the Park Project Conceptual plan, which is attached hereto as **Exhibit "B"** and incorporated herein by reference, which was approved by the Hayward City Council on October 30, 2017; and

WHEREAS, in March 2019, City entered into a professional services agreement with Surface Design, Inc. (the "Project Architect") for the design of the Park Project and the preparation of plans and specifications for the construction of the Park Improvements; and

WHEREAS, in September 28, 2021, the Hayward City Council approved the final design of the Park Project and confirmed that no further action under the California Environmental Quality Act ("CEQA") action was required after the addendum to the original

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Initial Study/Mitigated Negative Declaration was prepared and reviewed and approved by the Hayward City Council in 2005; and

WHEREAS, City initially bid the construction of the Park Improvements in 2023, but rejected all bids because they exceeded the available funding for the project and subsequently reduced the scope of the Park Improvements; and

WHEREAS, the Project will create a much-needed amenity and attraction for the south Hayward community, a traditionally low-income and underserved service area of Hayward, by improving access to high quality park and open spaces, enhancing quality of life for residents, increasing property values, attracting visitors, and helping economic growth for local business; and

WHEREAS, City and HARD desire to collaborate on the design, funding, construction, operation and maintenance of the Project; and

WHEREAS, Chapter 4 of Division 5 of the California Public Resources Code authorizes and empowers any city and recreation district to cooperate with each other and to that end enter into agreements with each other for the purpose of establishing community recreation programs and facilities, including without limitation this MOU, subject to approval or ratification by HARD's Board of Directors and the City's City Council.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, it is mutually agreed by and between City and HARD as follows:

AGREEMENT

- 1. Park Project Generally.** The purpose of this MOU is to set forth the terms and conditions for the design, funding, construction, operation and the maintenance of the Park Project and Park Improvements. As further set forth herein, City will be responsible for the design of the improvements with input from HARD, the bidding and construction of the improvements and close-out phases of the construction of the improvements. HARD will be responsible for the operation, management, maintenance, and repair of the Park Improvements. The funding of the construction of the improvements will be shared between the Parties as set forth herein.
- 2. Term.** The Term of this MOU shall commence on the Effective Date, and shall expire, unless terminated early or extended as provided herein, on the twenty-fifth (25th) anniversary of the recording of a Notice of Completion of the construction of the Park Improvements. The Term may be extended by agreement of the Parties and documented as an amendment to this MOU. City agrees that if this MOU is terminated earlier than 2046, then City, pursuant to the HARD Measure F1 Bond tax-exempt requirements, as further discussed below, will continue to use the Park Improvements for recreational purposes until at least 2046 (the end of the Bond Term) and that it will not turn over substantial control of the Park Project to a non-governmental entity during the Bond Term.

3. Funding of Construction of Park Project Improvements.

a) **Park In-Lieu Fees.** The Parties agree that City will allocate Thirteen Million Dollars (\$13,000,000.00) in accumulated park in-lieu fees (Quimby Act fees) collected by City as of the Effective Date from certain residential development projects in the communities to be served by the Park Property, including, but not limited to, the Developer Fee Contribution ("Park In-Lieu Fees"). In addition, and as further set forth in Section 3(d), below, the Parties agree that City will allocate Six Million, Seven Hundred Thousand Dollars (\$6,700,000.00) of existing and/or future park in-lieu fees collected by City from developers of residential development projects in communities to be served by the Park Property to HARD as a reimbursement of a portion of HARD's financial contribution to the Project as described in Section 3(c), below.

b) **City Financial Contribution.** City agrees to allocate a total of Five Million, Seven Hundred Eighty-Five Thousand Dollars (\$5,785,000.00) from separate City funds for the construction of the Park Improvements, consisting of Five Million, Two Hundred Thousand Dollars (\$5,200,000.00) of Measure C funds and Five Hundred Eighty-Five Thousand Dollars (\$585,000.00) of off-site tree mitigation funds (collectively, the "City Funds"). As an additional City financial contribution to the Park Project, as of the Effective Date City has incurred One Million, Nine Hundred Twenty-Eight Thousand (\$1,928,000.00) in costs related to design consultants, geotechnical and environmental studies and Park Project administrative costs. City shall, within fifteen (15) days of the Effective Date, provide to HARD, for HARD's review, copies of documentation of previously incurred City project costs.

c) **HARD Financial Contribution.** HARD agrees to allocate a total of Fifteen Million, Four Hundred Thousand Dollars (\$15,400,000.00) in Measure F1 Bond funds for the design and construction of the Park Improvements ("HARD Funds"). The use of Measure F1 Bond funds is subject to the restrictions of the terms and conditions for the issuance of the bonds which include, but are not limited to, the requirement that improvements funded by these bonds must be used for recreational purposes during the Bond Term, or until 2046, and that the improvements cannot be operated or leased to a private party during the Bond Term. HARD will transfer the HARD Funds on a reimbursement basis to City upon City's request supported by documentation of Project costs as further set forth in Section 8, below. HARD is not obligated to provide further funding for the design and construction of the Park Improvements other than as provided in this Section 3(c).

d) **Reimbursement of HARD Financial Contribution.** As described in Section 3(a) above, the Parties agree that City will allocate Six Million, Seven Hundred Thousand Dollars (\$6,700,000.00) of existing and/or future park in-lieu fees collected by City from developers of eligible residential development projects in the communities to be served by the Park Property to HARD as a reimbursement of a portion of HARD's total financial contribution to the Project (the "Reimbursement Amount"). For any residential developments in the communities to be served by the Park Property for which park in-lieu fees are to be collected after the Effective Date, City shall, upon the approval of a

building permit for such development, in addition to its other obligations under the Quimby Act, notify HARD in writing of such development and the amount of park in-lieu fees to be collected therefrom. Upon the receipt of the park in-lieu fees, City shall pay to HARD the amount of fees collected as a portion of the Reimbursement Amount. Any such reimbursement shall be documented in writing and the Parties shall keep a record of the reimbursement payments made to HARD. The Parties may also agree to the City's transfer of existing unallocated park in-lieu fees to HARD for park projects as a part of the Reimbursement Amount. It is intended that HARD will be paid the Reimbursement Amount within ten (10) years of the date of the Effective Date. If HARD is not fully reimbursed by that date, then the unpaid portion of the Reimbursement Amount on that date shall be increased by interest at rate of the consumer price index for all urban consumers ("CPI"), compounded annually, commencing on the date 10 years from the Effective Date. Once HARD has received the full Reimbursement Amount, then City will have no further obligation under this Section 3(d). HARD shall have full discretion in its use of the funds received from City under this MOU, provided that such funds shall only be used for park land acquisition or park improvements. This subsection shall survive the early termination of this MOU.

e) Summary of Total Available Funding.

Park In-Lieu Fee Allocation	\$13,000,000.00
City of Hayward Contribution	\$5,785,000.00
City Previously Incurred Costs	\$1,928,000.00
<u>HARD Contribution</u>	<u>\$15,400,000.00</u>
Total	\$36,113,000.00

4. **Project Costs Estimate.** City has worked with the Project Architect to develop a cost estimate (shown below) of the total hard and soft costs anticipated to be incurred in the construction of the Park Improvements based on the Conceptual Plan as shown below:

Construction of Reduced Scope Park	\$25,460,000
<u>Construction Contingency (12%)</u>	<u>\$3,055,200</u>
<i>Construction Subtotal</i>	<i>\$28,515,200</i>
Design	\$1,996,064
Administration	\$1,392,520
Geotechnical Inspection, Testing and Reporting	\$2,281,216
<u>Previously Incurred City Costs</u>	<u>\$1,928,000</u>
Total Project Cost	\$36,113,000

5. **Project Budget.** City shall, with the assistance of the Project Architect and considering any information provided by HARD, prepare a detail project budget showing the estimated costs of the construction of the overall Park Improvements and the amount of the construction contingencies and project fees (the "Proposed Project Budget") and provide it to HARD within thirty (30) days of the Effective Date. HARD shall provide any proposed changes to City within fifteen (15) days thereafter. HARD's failure to provide

a response within the 15-day period shall be deemed HARD's approval of the Proposed Budget. City shall consider any HARD requested changes to the Proposed Budget except changes that materially increase the total cost of the Project, that require a change to the Conceptual Plan or that are inconsistent with the terms herein. City and HARD shall approve the agreed upon budget (the "Project Budget"). City shall be responsible for the administration of the Project Budget, but any changes to the Project Budget shall be agreed upon by both Parties.

6. **Eligible Project Costs.** The following costs and expenses may be funded with Park In-Lieu Fees, HARD Funds and City Funds (collectively, "Project Funds") as contained in the Project Budget, and to the extent not prohibited by applicable law:

- a) project contractor costs associated with direct Project construction, coordination, and support;
- b) funds expended in preparation of Project design, architectural, civil, and geotechnical services;
- c) site preparation costs;
- d) funds spent to construct the Project including but not limited to contingency amounts under any Project contractor agreement;
- e) construction management, field inspection and material testing costs; and
- f) other costs as mutually agreed upon in writing by HARD and City.

7. **Administrative Costs.** Except as otherwise provided herein, each Party shall be responsible for its own administrative costs incurred or to be incurred in connection with its role in the Park Project, including but not necessarily limited to staff time, and such costs shall not constitute Eligible Project Costs. Each Party acknowledges that by participating in design, construction, operation and maintenance of the Park Project, it will incur a significant and uncompensated investment of staff time and attorney resources.

8. **Disbursements of HARD Funds.**

- a) **Prerequisites to Disbursement of HARD Funds.** Subject to the terms and conditions of this MOU, HARD shall make each disbursement of HARD Funds to City for deposit in a separate account established by the City so that such funds shall be available for payment of Eligible Project Costs as such costs are incurred by City. City shall be responsible for the payment of funds to all Project contractors for Eligible Project Costs.

b) **Disbursements of HARD Funds.** Disbursements of HARD Funds shall be made within ten (10) business days after receipt of a written disbursement request from City which shall be accompanied by:

- 1) City's Written Statement. A written statement from City certified by City's authorized representative to be true and correct, which includes all of the following:
 - (i) the amounts previously paid to each Project contractor to whom the Eligible Project Costs are owed;
 - (ii) the amounts currently requested for payment by each such Project contractor; (iii) any balances due or anticipated to become due to each such Project contractor; (iv) a brief description of the Eligible Project Costs as defined above; and (v) confirmation that the prime or general construction contractor's performance bond has been posted and has not been withdrawn, terminated or become unenforceable;
- 2) Waivers of Liens, Affidavits, and Releases of Liens. Waivers of liens, affidavits, and releases of liens with respect to the labor and materials which are the subject of the current disbursement request;
- 3) City and Project Architect Acknowledgement. An acknowledgement by City staff and the Project Architect certifying that work for which HARD Funds have been requested has been completed and materials are in place as indicated in the current disbursement request; and
- 4) Documentation of Costs. Copies of Project contractor requests for payment or reimbursement of costs and invoices and any other documentation of payments to be made to Project contractors.

9. **Completion Report.** Promptly following acceptance of the construction of the Park Improvements, City will prepare and submit to HARD a post-completion accounting of all Project costs and expenses, including all expenditures of HARD Funds and City Funds. HARD reserves the right to independently audit all Project costs and expenses and the expenditure of HARD Funds and City Funds. City agrees to cooperate in any such audit and provide access to HARD and/or its auditors of City's accounting documents and all other Project documents.

10. **Construction Drawings and Construction Contract.**

- a) **General Requirements.** The design, materials, and location of the Park Improvements have been and shall continue to be subject to review and input by mutual agreement of City and HARD. City shall direct the Project Architect to complete the design of the Park Improvements and any additional or supplemental site plans, design documents, landscaping plans, drawings, plans and specifications (including any value engineering modifications as may be

mutually agreed upon by the Parties) and any other documentation on which Project contractors shall rely in connection with development of the Project (collectively "Construction Drawings"). The Construction Drawings shall implement and be consistent with the Conceptual Plan, unless otherwise agreed to by the Parties.

- b) **HARD Review of Construction Drawings.** City shall provide the draft drawings at one hundred percent (100%) schematic design, one hundred percent (100%) design development, and one hundred percent (100%) Construction Documents. HARD shall provide comments, if any, within ten (10) business days of receipt. City shall incorporate any changes reasonably requested by HARD into the Construction Drawings, unless such changes are inconsistent with the Conceptual Plan, this MOU, or materially increase the Project costs.
- c) **Construction Contract.** City shall contract with a prime or general contractor for the construction of the Park Improvements (the "Construction Contractor") and shall contract with such other contractors and consultants to perform work on the Park Project as identified in the Project Budget (collectively "Other Project Contractors"). City shall provide the draft construction contract and all supporting documents for the construction of the Park Improvements with the Construction Contractor (the "Construction Contract") to HARD for review and comment. HARD shall provide requested changes to City within fifteen (15) days of receipt of the draft Construction Contract from City. HARD's failure to provide requested changes within the 15-day comment period shall be deemed HARD's approval of the draft Construction Contract. City shall incorporate HARD's requested changes to the contract unless such changes are not consistent with the Conceptual Plans, the Construction Documents and/or the terms and conditions herein or materially increase the cost of the construction of the Park Improvements. City shall provide to HARD a copy of the Construction Contract entered into with the Construction Contractor.

11. **Observation During Construction.** City agrees to allow HARD's authorized representatives, agents and employees reasonable access to the Park Property to observe the construction of the Park Improvements. HARD shall provide twenty-four (24) hours prior written notice of its entrance onto the Park Property.

12. **General Construction Standards.** All work done in connection with construction of the Project shall be performed by the Construction Contractor pursuant to the Construction Contract and such amendments thereto as reviewed and agreed upon by HARD. All Project design and construction work shall be performed by licensed contractors, engineers or architects, as applicable. All such work shall be conducted in a professional fashion in accordance with Construction Drawings and in compliance with all applicable local, state and federal statutes, codes, ordinances, laws, rules, regulations and orders, including the Americans with Disabilities Act and the California Environmental Quality Act ("CEQA") and any rules, regulations or orders issued or promulgated by any

governmental agency with jurisdiction over the Project or the Park Property (collectively, "Applicable Laws").

13. **Insurance Requirements.** City and the Construction Contractor and Other Project Contractors (collectively for the purposes of this Section 13, "Project Contractors") shall maintain a commercial general liability policy in the amount of at least Two Million Dollars (\$2,000,000.00) combined single limit, or such other policy limit as City may approve or require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis.
 - a) City shall require Project architects, landscape architects, engineers and other design professionals to maintain professional liability insurance in an amount not less than One Million Dollars (\$1,000,000.00).
 - b) All Project Contractors working on behalf of City shall maintain comprehensive automobile liability coverage in the amount of at least One Million Dollars (\$1,000,000.00), combined single limit including coverage for owned and non-owned vehicles.
 - c) All Project Contractors shall obtain and maintain Workers' Compensation Insurance as required under State law.
 - d) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The commercial general liability and comprehensive automobile policies required hereunder shall name HARD and City as an additional insured party.
14. **Notice of Completion.** Upon completion of construction of the Park Improvements and City's and HARD's acceptance thereof, City shall file or cause to be filed in the Official Records of Alameda County a notice of completion with respect to the subject work (the "Notice of Completion"). City shall provide HARD with a copy of the filed Notice of Completion within five (5) days filing the date of filing.
15. **Guaranty and Warranty/Bonds.** City shall obtain a guaranty from Project Contractors that the Park Improvements shall perform satisfactorily for a period of not less than two (2) years from and after the date City and HARD accept the Project and Park Improvements as complete. Following expiration of the warranties and guaranties (or in the absence of coverage thereunder), the costs of undertaking any repairs to or replacement of the Park Project or Park Improvements shall be governed by the terms of this MOU as set forth in Section 19, below. The Construction Contract shall require the Construction Contractor to post and maintain throughout the construction of the Project performance and payment bonds applicable to similar construction projects.

16. **Promotion and Advertising.** Each Party may engage in promoting or advertising the construction of the Park Project. Any such promotion or advertisement shall indicate that the project is jointly funded by City and HARD.

17. **Signage.** The Parties may agree to post a sign or signs on the Park Property during construction of the Project that states, among other things, that the Project is jointly funded by HARD and City. HARD's and City's logo may be affixed to the sign(s). Any such sign(s) shall be removed upon the completion of the construction of the Park Improvements. Thereafter, a sign or signs shall be posted at the Property which identifies the Park Project as "La Vista Park," states that it was jointly funded by HARD and City, includes HARD's and City's logo (of approximately the same size), and such, other information as agreed on by the Parties. The Parties shall also agree on the location of the placement of the sign(s). The cost of the construction and maintenance of the sign(s) shall be evenly shared by the Parties. Any such sign(s) may be removed upon the expiration of the Term or the earlier termination hereof.

18. **Title to Land and Improvements.** City shall retain title to the Park Property. The Park Improvements shall be owned by HARD. Upon expiration of the Term and any extension thereof, or the earlier termination hereof and upon City's payment to HARD as applicable and as provided in Section 20(c), below, HARD shall record a quitclaim deed, or similar instrument, against the Park Property thus transferring its ownership interest in the Park Improvements to City. Thereafter, HARD shall have no right, interest or control of the Park Improvements. Notwithstanding the foregoing, HARD shall have the right to use the Park Improvements and to access, occupy, use and manage the Park Property upon which they are situated during the terms set forth in this MOU.

19. **Access to Park Property and Operation of Park.**

a) **Access to Park Property and Operation of Park.** Upon City's and HARD's acceptance of the Park Improvements and the recording of the Notice of Completion, the Park Property and Park Improvements shall be considered "after-acquired property" as defined in the Master Agreement and Lease ("Master Agreement) for Hayward Park Sites between HARD and the City, dated July 1, 2023, and shall be subject to all terms and provisions thereof, except as otherwise provided herein, as of the date the Hayward City Council designates inclusion of the Park Property and Park Improvements in the Master Agreement by resolution. HARD's right of access to the Park Property and the operation, management and maintenance of the Park Property and Park Improvements shall be for the Term hereof and any extension thereof. If the Master Agreement expires or is terminated prior to the end of the Term hereof, then the applicable terms and conditions of the Master Agreement shall remain applicable to this MOU, except as otherwise agreed to in writing by the Parties.

b) **Maintenance of Park Property and Park Improvements.** Consistent with the provisions of the Master Agreement, HARD shall be responsible, at its costs, for the maintenance of the Park Property and the Park Improvements in the same

manner that it maintains its other parks and park facilities pursuant to the approved Park Maintenance Standards as adopted by the HARD Board of Directors, as they may be amended from time to time. Maintenance shall include cleaning and maintaining including minor repairs, cleaning drains, and contracting for any services necessary to maintain the project area in its entirety. HARD shall be responsible for the maintenance and cleaning of all equipment, amenities and facilities within the Park Property including irrigation of all installed trees and landscaping, and open space fire abatement. HARD shall be responsible for procuring and paying for all utilities furnished to the Park Property and Park Improvements.

- c) **Capital Replacement.** Capital Replacement shall mean the repair or replacement of any Park Improvement with a cost thereof in excess of Twenty-five Thousand Dollars (\$25,000.00), increased annually at the percentage change of the CPI. For any Capital Replacement, the Parties shall meet and confer on the sharing of funding of the cost of the work, the process to retain a contractor to perform the work and the scheduling of the work so as to minimize the disruption of the use of the Park Property and the Park Improvements.

20. Termination/Events of Default.

- a) **Termination.** Either Party may terminate this MOU upon thirty (30) days' written notice following the other Party's failure to cure an Event of Default, as defined below. Upon any such termination, HARD shall remove all of its equipment, tools, materials, vehicles and other personal property owned by HARD from the Park Property and return any keys, fobs or other access mechanisms to City. Upon termination by City for an uncured HARD default, HARD shall record the quitclaim deed set forth in Section 18, above. Upon termination by HARD for an uncured City default, City shall make the payment to HARD as required in Section 20(c), below, if any.
- b) **Events of Default.** Failure by either Party to perform any material action or covenant required by this MOU, within the time periods provided herein following notice and expiration of the applicable cure period described below, shall constitute an "Event of Default." A Party claiming an Event of Default shall give written notice of default to the other Party specifying the Event of Default complained of. Except as otherwise expressly provided in this MOU, the other Party shall not be in default if (a) in the case of a monetary default, the defaulting Party cures the default within ten (10) days following receipt of the notice of default, or (b) in the case of a non-monetary default, the defaulting Party fully cures, corrects or remedies the default within sixty (60) days following receipt of such notice of default or, if the non-monetary default cannot be cured within thirty (30) days, the defaulting Party commences to cure the default within such thirty (30)-day period and thereafter diligently and continuously prosecutes such cure to completion.

c) **City Default Payment.** Should City default prior to the completion of the construction of the Park Improvements and the Parties are unable to agree on amendment of this MOU to otherwise provide for the completion of the construction of the improvements and this MOU is terminated, then City shall reimburse HARD the amount of HARD Funds transferred to City prior to the City default. Upon the receipt of such reimbursement, HARD shall record the quitclaim deed set forth in Section 18, above. Should this MOU be terminated at any other time prior to the expiration of the Term for a reason other than a HARD Event of Default, then City shall pay to HARD an amount based on the percentage of years remaining in the Term at the time of the termination and the total number of years in the Term and applied to the total amount of HARD Funds used to pay costs for the construction of the Park Improvements. For instance, if HARD Funds in the amount of \$15,400,000.00 are used on Park Improvement construction costs and the termination occurs in the 15th year of the Term, then City would pay to HARD forty percent (40%) of that amount or \$6,160,000.00. Upon receipt of such payment, HARD would record the quitclaim deed set forth in Section 18, above. Such payment would not affect HARD's entitlement to reimbursement of a portion of the HARD Funds used for construction costs from future park in-lieu fees collected by City as set forth in Section 3(d), above.

21. Indemnity for Claims.

- a) **City Indemnity.** City shall indemnify, defend (with counsel selected by City, subject to HARD's approval, which shall not be unreasonably withheld), and hold HARD and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively the "Indemnitees") harmless from and against any and all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (including without limitation reasonable attorneys' fees and court costs) (all of the foregoing, collectively "Claims") incurred by or brought against HARD for the failure of City to comply with Applicable Laws, including, but not limited to, the Quimby Act, the procurement, retention, compensation and termination of Project Contractors or the design, construction, installation or City funding of the Park Project, except to the extent such Claim arises from the negligence or willful misconduct of HARD or from HARD's failure to meet its Project funding obligations as set forth in this MOU. The foregoing indemnity obligation shall survive the expiration of the Term and extension thereof or the earlier termination of this MOU.
- b) **HARD Indemnity.** HARD shall indemnify, defend (with counsel selected by HARD, subject to City's approval, which shall not be unreasonably withheld), and hold City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively the "Indemnitees") harmless from and against any and all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (including without limitation

reasonable attorneys' fees and court costs) (all of the foregoing, collectively "Claims") incurred by or brought against City arising out of HARD's use, occupancy, operation, management, or maintenance of the park and improvements, except to the extent such Claim arises from the negligence or willful misconduct of City.

22. **Dispute Resolution.** If the Parties are unable to resolve any dispute arising in connection with this MOU, other than an Event of Default of either Party, the Parties agree to submit such dispute to a mutually acceptable professional mediator and to negotiate in good faith toward reaching a resolution of the dispute prior to commencement of any civil action. Each Party shall pay an equal share of the mediator's fees and expenses. Each Party shall be responsible for any other fees or costs such Party incurs in connection with participation in the mediation.
23. **Entire Agreement; Amendment.** This MOU constitutes the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. This MOU may be amended only in writing signed by authorized representatives of HARD and City.
24. **Severability.** Should any provision of any of this MOU be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions of such agreement which shall remain in force to the maximum extent possible.
25. **Interpretation.** The Parties acknowledge that each Party and its counsel have reviewed and revised this MOU and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed. The defined terms herein shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written."
26. **Governing Law.** This MOU shall be governed by and construed in accordance with the laws of the State of California. Any action to interpret, enforce or challenge an arbitration award as described above, shall be filed in the Superior Court of Alameda County.
27. **No Conflict of Interest.** Each Party warrants to the other that no member of the governing body of City or HARD and no other public official of such locality or localities during his/her tenure and for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project.
28. **Counterparts.** This MOU may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the

same agreement. Signatures delivered electronically or by facsimile shall be as binding as originals upon the Parties.

29. **Further Assurances.** From and after the date of each of this MOU, the Parties agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to timely complete the actions contemplated by such agreement.
30. **Authorized Representatives.** Except as otherwise expressly provided in this MOU, whenever under the provisions of any of this MOU the approval of HARD or City is required, or HARD or City is required to take some action at the request of the other, such approval or request shall be given for City by the City Manager or his or her designee, and for HARD by HARD's General Manager or his or her designee, and any Party hereto shall be authorized to rely upon and such approval or request.
31. **No Assignment.** Neither Party may assign its rights or obligations under any of this Agreement without the express written consent of the other Party which may be granted or denied in its sole discretion.
32. **Authority.** Each Party represents that the signatory has the authority to bind each respective entity, and assents to each and every term contained within this MOU.
33. **No Third-Party Beneficiaries.** It is the intention of the Parties that under no circumstances are any rights created for persons or entities who are not parties to this MOU and HARD and City owe no duty to any persons or entities not parties to this MOU under a third-party beneficiary theory or under any other theory of law.
34. **Attorneys' Fees.** If either Party commences any legal action against the other party arising out of this MOU or the performance thereof, each Party in such action shall be responsible for its own litigation expenses, including but not limited to court costs, expert witness fees, discovery expenses and attorneys' fees.
35. **No Joint Venture.** It is expressly understood and agreed that neither Party shall become as a result of this MOU a partner of the other or a joint venturer with the other Party in the conduct of such Party's business or otherwise. This MOU is not intended, and shall not be construed, to create the relationship of principal and agent, partnership, joint venture, or association as between City and HARD.
36. **Successors and Assigns.** Subject to the restrictions on assignment set forth above, all of the terms, covenants, and conditions of this MOU shall be binding upon City and HARD and their respective permitted successors and assigns.

HARD Revisions: 12-04-24

37. **Contacts.** All notices and requests hereunder by either party shall be in writing and directed to the parties as follows:

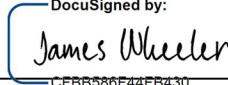
To HARD: James Wheeler, General Manager
Hayward Area Recreation and Park District
1099 E Street
Hayward, CA 94541

To the City: Dr. Ana M. Alvarez
City of Hayward
777 B Street
Hayward, CA 94541-5007

IN WITNESS HEREOF, City and HARD have executed this MOU as of the date set forth above.

HAYWARD RECREATION AND PARK DISTRICT

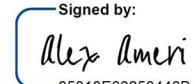
Dated: 1/24/2025

DocuSigned by:
By: 
James Wheeler, General Manager
CFBB586F44FB430...

Dated: 1/24/2025

CITY OF HAYWARD

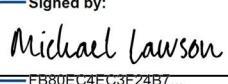
Dated: 1/29/2025

Signed by:
By: 
Alex Ameri, Director of Public Works
05010E00250440B...

Dated: 1/29/2025

Signed by:
By: 
Dr. Ana M. Alvarez, City Manager
7E02E047550B404...

Approved as to form and procedure:

Signed by:

Michael S. Lawson, City Attorney
1/28/2025
FB80EC2EC3F24B7...

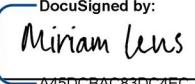
DocuSigned by:
Attest: 
Miriam Lens, City Clerk
A45DCBAC83DC4EC...
1/29/2025

EXHIBIT A

Project Site Map

(Attached hereto)



EXHIBIT B

Park Project Conceptual Plan

(Attached hereto)

EXHIBIT B - PROJECT
CONCEPTUAL PLAN

