

TO BE RECORDED AND WHEN RECORDED

RETURN TO:

Orrick, Herrington & Sutcliffe LLP
2050 Main Street, Suite 1100
Irvine, California 92614-8255
Attention: Donald S. Field, Esq.

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MASTER SITE LEASE

by and between

CITY OF HUNTINGTON BEACH

and

HUNTINGTON BEACH PUBLIC FINANCING AUTHORITY

Dated as of [_____] 1, 2020

MASTER SITE LEASE

THIS MASTER SITE LEASE (this “Site Lease”), executed and entered into as of [] 1, 2020, is by and between the CITY OF HUNTINGTON BEACH (the “City”), a municipal corporation and chartered city organized and existing under the laws of the State of California, as lessor, and the HUNTINGTON BEACH PUBLIC FINANCING AUTHORITY (the “Authority”), a joint powers authority organized and existing under the laws of the State of California, as lessee.

RECITALS

WHEREAS, in order to refinance certain capital improvements, including certain improvements to public facilities to be installed as a part of the City’s Pier Plaza project and a portion of the City’s share of the costs of a countywide 800 MHz coordinated communications system (the “1997 Project”) and other capital projects, including South Beach Phase I and II Improvements, a Beach Maintenance Facility, energy retrofitting of various facilities, design costs of the City’s Sports Complex, water system improvements and the City’s Emerald Cove Senior Housing project (the “2000 Project”), the Authority issued its Huntington Beach Public Financing Authority Lease Revenue Refunding Bonds, 2010 Series A (the “Prior 2010A Bonds”), payable from certain lease payments to be made by the City; and

WHEREAS, in order to refinance certain capital improvements, including certain improvements to the Civic Center, including the Police Administration Building (the “1993 Project”) and the Huntington Central Park Sports Complex and certain beach improvements along Pacific Coast Highway from First Street and Pacific Coast Highway to Huntington Street and Pacific Coast Highway (the “2001 Project” and together with the Prior 1993 Project, the 1997 Project and the 2000 Project, the “Projects”), the Authority issued its Huntington Beach Public Financing Authority (Orange County, California) Lease Revenue Refunding Bonds, 2011 Series A (Capital Improvement Refinancing Project) (the “Prior 2011A Bonds” and, together with the Prior 2010A Bonds, the “Prior Bonds”), payable from certain lease payments to be made by the City; and

WHEREAS, in order to achieve certain savings, the City and the Authority desire to refund the Prior Bonds and, therefore, refinance the Projects; and

WHEREAS, in order to refund the Prior Bonds and, therefore, refinance the Projects, the City will lease certain real property, and the improvements thereto, consisting of the Donald W. Kiser Corporation Yard (the “Property”), to the Authority pursuant to this Site Lease, and the City will sublease the Property back from the Authority pursuant to a Master Lease Agreement, dated the date hereof (the “Lease Agreement”); and

WHEREAS, the Property is more particularly described in Exhibit A hereto; and

WHEREAS, in order to provide the funds necessary to refund the Prior Bonds and, therefore, refinance the Projects, the Authority and the City desire to provide for the issuance of Huntington Beach Public Financing Authority (Orange County, California) Lease Revenue Refunding Bonds, 2020 Series A (Tax-Exempt) (the “Series 2020A Bonds”), and Huntington Beach Public Financing Authority (Orange County, California) Lease Revenue Refunding Bonds, 2020 Series B (Federally Taxable) (the “Series 2020B Bonds” and, together with the Series 2020A

Bonds, the “Series 2020 Bonds”), in the respective aggregate principal amounts of \$[_____] and \$[_____] pursuant to a Master Indenture (the “Indenture”), by and among the Authority, the City and U.S. Bank National Association, as trustee (the “Trustee”), payable from the base rental payments to be made by the City pursuant to the Lease Agreement and the other assets pledged therefor under the Indenture; and

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

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS

Except as otherwise defined herein, or unless the context clearly otherwise requires, words and phrases defined in Article I of the Lease Agreement shall have the same meanings in this Site Lease.

ARTICLE II

LEASE OF THE PROPERTY; RENTAL

Section 2.01 Lease of Property. The City hereby leases to the Authority, and the Authority hereby leases from the City, for the benefit of the Owners of the Bonds, the Property, subject only to Permitted Encumbrances, to have and to hold for the term of this Site Lease.

Section 2.02 Rental. The Authority shall pay to the City as and for rental of the Property hereunder, the sum of not to exceed \$[_____] (the “Site Lease Payment”). The Site Lease Payment shall be paid from the proceeds of the Series 2020 Bonds; provided, however, that in the event the available proceeds of the Series 2020 Bonds are not sufficient to enable the Authority to pay such amount in full, the remaining amount of the Site Lease Payment shall be reduced to an amount equal to the amount of such available proceeds.

The City shall deposit the Site Lease Payment in one or more separate funds or accounts to be held and administered for the purpose of refinancing the Projects. The Authority and the City hereby find and determine that the amount of the Site Lease Payment does not exceed the fair market value of the leasehold interest in the Property which is conveyed hereunder by the City to the Authority. No other amounts of rental shall be due and payable by the Authority for the use and occupancy of the Property under this Site Lease.

ARTICLE III

QUIET ENJOYMENT

The parties intend that the Property will be leased back to the City pursuant to the Lease Agreement for the term thereof. It is further intended that, to the extent provided herein and in the Lease Agreement, if an event of default occurs under the Lease Agreement, the Authority, or its assignee, will have the right, for the then remaining term of this Site Lease to (a) take possession of the Property, (b) if it deems it appropriate, cause an appraisal of the Property and a study of the then reasonable use thereof to be undertaken, and (c) relet the Property. Subject to any rights the City may have under the Lease Agreement (in the absence of an event of default) to possession and enjoyment of the Property, the City hereby covenants and agrees that it will not take any action to prevent the Authority from having quiet and peaceable possession and enjoyment of the Property during the term hereof and will, at the request of the Authority and at the City's cost, to the extent that it may lawfully do so, join in any legal action in which the Authority asserts its right to such possession and enjoyment.

ARTICLE IV

SPECIAL COVENANTS AND PROVISIONS

Section 4.01 Waste. The Authority agrees that at all times that it is in possession of the Property, it will not commit, suffer or permit any waste on the Property, and that it will not willfully or knowingly use or permit the use of the Property for any illegal purpose or act.

Section 4.02 Further Assurances and Corrective Instruments. The City and the Authority 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 Property hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease, the Indenture and the Lease Agreement.

Section 4.03 Waiver of Personal Liability. All liabilities under this Site Lease on the part of the Authority shall be solely liabilities of the Authority as a joint powers authority, and the City hereby releases each and every director, officer and employee of the Authority of and from any personal or individual liability under this Site Lease. No director, officer or employee of the Authority shall at any time or under any circumstances be individually or personally liable under this Site Lease to the City or to any other party whomsoever for anything done or omitted to be done by the Authority hereunder.

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

Section 4.04 Taxes. The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Property.

Section 4.05 Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same.

Section 4.06 Representations of the City. The City represents and warrants to the Authority and the Trustee as follows:

(a) the City has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease;

(b) except for Permitted Encumbrances, the Property is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the use of the Property for governmental purposes as contemplated by the City;

(c) all taxes, assessments or impositions of any kind with respect to the Property, except current taxes, have been paid in full; and

(d) the Property is necessary to the City in order for the City to perform its governmental functions.

Section 4.07 Representations of the Authority. The Authority represents and warrants to the City and the Trustee that the Authority has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Site Lease.

ARTICLE V

ASSIGNMENT, SELLING AND SUBLEASING

Section 5.01 Assignment, Selling and Subleasing. This Site Lease may be assigned or sold, and the Property may be subleased, as a whole or in part, by the Authority, without the necessity of obtaining the consent of the City, if an event of default occurs under the Lease Agreement. The Authority shall, within 30 days after such an assignment, sale or sublease, furnish or cause to be furnished to the City a true and correct copy of such assignment, sublease or sale, as the case may be.

The Authority shall assign all of its rights hereunder to the Trustee appointed pursuant to the Indenture.

Section 5.02 Restrictions on City. The City agrees that, except with respect to Permitted Encumbrances, it will not mortgage, sell, encumber, assign, transfer or convey the Property or any portion thereof during the term of this Site Lease.

ARTICLE VI

IMPROVEMENTS

Title to all improvements made on the Property during the term hereof shall vest in the City.

ARTICLE VII

TERM; TERMINATION

Section 7.01 Term. The term of this Site Lease shall commence as of the date of commencement of the term of the Lease Agreement and shall remain in full force and effect from such date to and including [May 1, 20__], unless such term is extended or sooner terminated as hereinafter provided.

Section 7.02 Extension; Early Termination. If, on [May 1, 20__], the Bonds shall not be fully paid, or provision therefor made in accordance with Article IX of the Indenture, or the Indenture shall not be discharged by its terms, or if the Rental Payments payable under the Lease Agreement shall have been abated at any time, then the term of this Site Lease shall be automatically extended until the date upon which all Bonds shall be fully paid, or provision therefor made in accordance with Article IX of the Indenture, and the Indenture shall be discharged by its terms, except that the term of this Site Lease shall in no event be extended more than ten years. If, prior to [May 1, 20__], all Bonds shall be fully paid, or provisions therefor made in accordance with Article IX of the Indenture, and the Indenture shall be discharged by its terms, the term of this Site Lease shall end simultaneously therewith.

Section 7.03 Action on Default. In each and every case upon the occurrence and during the continuance of a default by the Authority hereunder, the City shall have all the rights and remedies permitted by law, except the City, to the extent permitted by law, waives any and all rights to terminate this Site Lease.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the City, the Authority and their respective successors and assigns.

Section 8.02 Severability. In the event any provision of this Site Lease 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 8.03 Amendments; Substitution and Release. This Site Lease may be amended, changed, modified, altered or terminated only in accordance with the provisions of the Lease Agreement. The City shall have the right to substitute alternate real property for the Property or to release portions of the Property as provided in the Lease Agreement.

Section 8.04 Assignment. The Authority and City acknowledge that the Authority has assigned its right, title and interest in and to this Site Lease to the Trustee pursuant to the Indenture. The City consents to such assignment. The City consents to the Indenture and acknowledges and agrees to the rights of the Trustee as set forth therein.

Section 8.05 Execution in Counterparts. This Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.06 Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 8.07 Captions. The captions or headings in this Site Lease are for convenience only and in no way define or limit the scope or intent of any provision of this Site Lease.

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

CITY OF HUNTINGTON BEACH

By: _____

**HUNTINGTON BEACH PUBLIC
FINANCING AUTHORITY**

By: _____

Attest:

Robin Estanislau,
Secretary

EXHIBIT A

DESCRIPTION OF THE PROPERTY

All that certain real property situated in the County of Orange, State of California, and any improvements thereto, described as follows:

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

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

Signature _____ [SEAL]

[illegible]

4162-0786-5380.3

CERTIFICATE OF ACCEPTANCE

In accordance with Section 27281 of the California Government Code, this is to certify that the interest in the real property conveyed by the Master Site Lease, dated as of [_____] 1, 2020, by and between the City of Huntington Beach, a municipal corporation and chartered city organized and existing under of the laws of the State of California (the “City”) and the Huntington Beach Public Financing Authority, a joint powers authority organized and existing under the laws of the State of California (the “Authority”), from the City to the Authority, is hereby accepted by the undersigned on behalf of the Authority pursuant to authority conferred by resolution of the Board of Directors of the Authority adopted on [_____] 2020, and the Authority consents to recordation thereof by its duly authorized officer.

Dated: [_____] 2020

**HUNTINGTON BEACH PUBLIC
FINANCING AUTHORITY**

By: _____