

Recording requested by and return to:

TOWN OF MORAGA  
2100 Donald Drive  
Moraga, CA 94556  
Attention: Town Clerk

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This transaction is exempt from California documentary transfer tax pursuant to Section 11929 of the California Revenue and Taxation Code. This document is recorded for the benefit of the Town of Moraga and the recording is fee-exempt under Section 6103 of the California Government Code.

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**SITE LEASE**

between the

**TOWN OF MORAGA**

and

**ABAG FINANCE AUTHORITY  
FOR NONPROFIT CORPORATIONS**

Dated as of February 1, 2010

**Town of Moraga  
2010 Certificates of Participation  
(Town Hall Improvement Project)**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>SECTION 1.</b> Site. ....	2
<b>SECTION 2.</b> Term. ....	2
<b>SECTION 3.</b> Site Lease Rent. ....	2
<b>SECTION 4.</b> Purpose. ....	2
<b>SECTION 5.</b> Warranties of the Town. ....	2
<b>SECTION 6.</b> Warranties of the Authority. ....	3
<b>SECTION 7.</b> Assignments and Subleases. ....	3
<b>SECTION 8.</b> Right of Entry; Easements. ....	3
<b>SECTION 9.</b> Termination. ....	3
<b>SECTION 10.</b> Default. ....	4
<b>SECTION 11.</b> Quiet Enjoyment. ....	4
<b>SECTION 12.</b> Waiver of Personal Liability. ....	4
<b>SECTION 13.</b> Taxes. ....	4
<b>SECTION 14.</b> Eminent Domain. ....	4
<b>SECTION 15.</b> Partial Invalidity. ....	4
<b>SECTION 16.</b> Notices. ....	4
<b>SECTION 17.</b> Section Headings. ....	5
<b>SECTION 18.</b> Execution. ....	5

## **SITE LEASE**

This Site Lease, dated as of February 1, 2010, by and between the TOWN OF MORAGA (the "Town"), a municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "State"), as lessor, and ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS, a joint exercise of powers authority duly organized and existing pursuant to laws of the State (the "Authority"), as lessee;

### **W I T N E S S E T H:**

WHEREAS, the Authority is authorized by its Articles of Incorporation and By-Law to assist member local agencies ("Member Jurisdictions") in financing projects and programs whenever a Member Jurisdiction determines that there are public benefits from so doing;

WHEREAS, specifically, the Authority is empowered to assist the Town, as a Member Jurisdiction, in financing a portion of the cost and expense of a project (the "Project") consisting of (a) the acquisition of certain improved real property situated within the Town and which the Town intends to utilize for public purposes of the Town, including but not limited to serving as a corporation yard, and (b) improvements for the seismic upgrading and remodeling of the building at 329 Rheem Boulevard, currently occupied by the Town as its Town Hall (the "Site");

WHEREAS, the Town intends to lease the Site (as hereinafter defined) to the Authority pursuant to this Site Lease, and the Authority intends to lease back the Leased Facilities (as hereinafter defined to mean the Site, as improved by the seismic upgrading and remodeling improvements included in the Project) to the Town pursuant to a lease, entitled "Facility Lease" and dated as of the date hereof (the "Facility Lease"); and

WHEREAS, while the Facility Lease will provide that the Authority will undertake implementation of the Project, the Facility Lease further provides that the Authority will appoint the Town and the Town will accept appointment to act as the agent of the Authority to undertake implementation of the Project and to relieve the Authority of all responsibility and obligation for such implementation; and

WHEREAS, under the Facility Lease, the Town will be obligated to make base rental payments (the "Base Rental Payments") to the Authority for the quiet use and enjoyment of the Leased Facilities; and

WHEREAS, in order to provide financing of a portion of the cost and expense of the Project, the Town, the Authority and U.S. Bank National Association, as trustee (the "Trustee") will enter into a Trust Agreement dated as of the date hereof (the "Trust Agreement") pursuant to which the Trustee will provide for the execution and delivery of certificates of participation (the "Certificates") to Stone & Youngberg LLC, as underwriter (the "Underwriter"), and will apply the proceeds of sale of the Certificates pursuant to the Trust Agreement to the payment of the authorized costs and expenses of the Project, the establishment of a reserve fund for the Certificates, and the payment of costs of issuance of the Certificates; and

WHEREAS, to provide for payment of the principal of and the interest on the Certificates, the Trust Agreement will include provisions by which the Authority will irrevocably assign to the Trustee all of its right, title and interest under the Site Lease and the Facility Lease, including but not limited to the entitlement to receive the Base Rental Payments under the Facility Lease;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED as follows:

**SECTION 1.** Site. The Town hereby leases to the Authority and the Authority hereby leases from the Town, on the terms and conditions hereinafter set forth, the improved real property (the "Site") described in Exhibit A, attached hereto and made a part hereof, together with any additional real property added thereto by any supplement or amendment hereto, or any real property substituted for all or any portion of the Site in accordance with this Site Lease and the Trust Agreement; subject, however, to the Permitted Encumbrances (as said term is defined in the Facility Lease).

**SECTION 2.** Term. The term of this Site Lease shall commence on the date of recordation of this Site Lease in the office of the County Recorder of Contra Costa County (the "Contra Costa County Recorder"), or on February 1, 2010, whichever is earlier, and shall end on October 1, 20\_\_, unless such term is extended or sooner terminated as hereinafter provided. If on October 1, 20\_\_, the Certificates shall not be fully paid, or if the rental payable under the Facility Lease shall have been abated at any time and for any reason, then the term of this Site Lease shall be extended until ten (10) days after the Certificates shall be fully paid, except that the term of this Site Lease shall in no event be extended beyond October 1, 20\_\_ (**ten years beyond scheduled termination**). If prior to October 1, 20\_\_, the Certificates shall be fully paid, the term of this Site Lease shall end ten (10) days thereafter or ten (10) days after written notice by the Town to the Authority, whichever is earlier.

**SECTION 3.** Site Lease Rent. The Authority hereby agrees to pay to the Town, as rental for the use and occupancy of the Site during the term of this Site Lease, the amount of One Dollar (\$1.00) (the "Site Lease Rent"), which shall be due and payable on the Closing Date. No further amounts shall be due and payable by the Authority to the Town under this Site Lease.

**SECTION 4.** Purpose. The Authority shall use the Site solely for the purpose of financing the construction of the Project and the leasing of the Leased Facilities to the Town pursuant to the Facility Lease and for such purposes as may be incidental thereto; provided, that in the event of default by the Town under the Facility Lease the Authority may exercise the remedies provided in the Facility Lease.

**SECTION 5.** Warranties of the Town. The Town covenants and warrants to the Authority:

(1) That the Town has good and marketable title to the Site, has good authority to enter into, to execute and to deliver this Site Lease and the Facility Lease, and has duly authorized the execution and delivery of this Site Lease and the Facility Lease;

(2) That except for Permitted Encumbrances, the Site 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 financing as contemplated by the Facility Lease;

(3) That all taxes, assessments, or impositions of any kind with respect to the Site, except current taxes, have been paid in full;

(4) That the Site is properly zoned for its intended purposes; and

(5) That if a problem with the title to the Site or the use thereof should develop, the Town shall exercise its condemnation power to the extent permitted by law to obtain the necessary rights in the Site that will enable the parties hereto to perform the transactions contemplated by the Facility Lease and this Site Lease.

**SECTION 6.** Warranties of the Authority. The Authority covenants and warrants to the Town that the Authority has the power and authority to enter into and deliver the Facility Lease, this Site Lease and the Trust Agreement, and to perform all of its duties and obligations thereunder, and has duly authorized the execution and delivery of this Site Lease, the Facility Lease and the Trust Agreement. This Site Lease will be recorded in the official records of the Contra Costa County Recorder to secure the interest of the Authority hereunder.

**SECTION 7.** Assignments and Subleases. Unless the Town is in default under the Facility Lease, the Authority may not assign its rights under this Site Lease or sublet the Site (except pursuant to the Trust Agreement), without the written consent of the Town.

**SECTION 8.** Right of Entry; Easements. The Town reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

**SECTION 9.** Termination. The Authority agrees, upon the termination of this Site Lease, to quit and surrender the Site in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the Town.

Upon the exercise of the option to purchase set forth in Section 7.03 of the Facility Lease and upon payment of the option price required by said section, the term of this Site Lease shall terminate as to the portion of the Site upon which the part of the Project being so purchased is situated.

**SECTION 10.** Default. In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Authority, the Town may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Facility Lease shall be deemed to occur as a result thereof; provided, however, that the Town shall have no power to terminate this Site Lease by reason of any default on the part of the Authority if such termination would affect or impair any assignment or sublease of all or any part of the Site then in effect between the Authority and any assignee or subtenant of the Authority (other than the Town under the Facility Lease). So long as any such assignee or subtenant of the Authority shall duly perform the terms and conditions of this Site Lease and of its then existing sublease (if any), such assignee or subtenant shall be deemed to be and shall become the tenant of the Town hereunder and shall be entitled to all of the rights and privileges granted under any such assignment; provided, further, that so long as any Certificates are outstanding and unpaid in accordance with the terms thereof, the rentals or any part thereof payable to the Trustee shall continue to be paid to the Trustee.

**SECTION 11.** Quiet Enjoyment. The Authority at all times during the term of this Site Lease, subject to the provisions of Section 9 hereof, shall peaceably and quietly have, hold and enjoy all of the Site.

**SECTION 12.** 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 public entity and agency, and the Town hereby releases each and every member, director, officer, agent, or employee of the Authority of and from any personal or individual liability under this Site Lease. No member, director, officer, agent, or employee of the Authority shall at any time or under any circumstances be individually or personally liable under this Site Lease to the Town or to any other party whomsoever for anything done or omitted to be done by the Authority hereunder.

**SECTION 13.** Taxes. The Town 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 Site (including both land and improvements).

**SECTION 14.** Eminent Domain. In the event the whole or any part of the Site or the improvements thereon (including all or any part of the Project) is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid or outstanding Certificates attributable to such part of the Project and shall be paid to the Trustee, and the balance of the award, if any, shall be paid to the Town.

**SECTION 15.** Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 16.** Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party

to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to the Authority:

ABAG Finance Authority for Nonprofit  
Corporations  
101 Eighth Street  
Oakland, California 94607  
Attention: Executive Director

If to the Town:

Town of Moraga  
2100 Donald Drive  
Moraga, CA 94556  
Attention: Administrative Services Director

in either case with a copy to the Trustee, at the address for notices to the Trustee as set forth in the Trust Agreement, or to such other addresses as the respective parties may from time to time designate by notice in writing.

**SECTION 17.** Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

**SECTION 18.** Execution. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same lease. It is also agreed that separate counterparts of this Site Lease may separately be executed by the Town and the Authority, all with the same force and effect as though the same counterpart had been executed by both the Town and the Authority.

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

TOWN OF MORAGA, Lessor

By \_\_\_\_\_  
Town Manager

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS, Lessee

By \_\_\_\_\_  
Executive Director

**EXHIBIT A**

Legal Description of Site

[To Come]

1336982.2