

DRAFT
TRUST AGREEMENT

Dated as of _____ 1, 2016

between

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as trustee

HAYWARD PUBLIC FINANCING AUTHORITY

and the

CITY OF HAYWARD

Relating to

\$ _____

2016 Refunding Certificates of Participation
(Civic Center and Capital Projects - 2007 Refunding), Series A

\$ _____

2016 Federally Taxable Refunding Certificates of Participation
(Civic Center and Capital Projects - 2007 Refunding), Series B

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TRUST AGREEMENT

This TRUST AGREEMENT (this "Trust Agreement"), dated as of _____ 1, 2016, is among THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee"), the HAYWARD PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), and the CITY OF HAYWARD, a municipal corporation duly organized and existing under the laws of the State of California (the "City").

BACKGROUND:

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

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

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

4. In order to raise funds required for that purpose, the Authority and the City have agreed to enter into a Site Lease dated as of _____ 1, 2016 (the "Site Lease"), and a Lease Agreement dated as of _____ 1, 2016 (the "Lease") relating to certain real property, including land and improvements constituting the Civic Center located at 777 B Street (the "Leased Property"), and the Authority has assigned certain of its rights under the Lease to the Trustee under an Assignment Agreement dated as of _____ 1, 2016.

5. In consideration of such assignment the Trustee has agreed to enter into this Trust Agreement under which the Trustee agrees to execute and deliver (i) \$_____ aggregate principal amount of 2016 Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding) ("Series A Certificates") and (ii) ("Series B Certificates"; together with Series A Certificates, the "2016 Certificates"), each evidencing a direct, undivided fractional interest in the lease payments to be paid by the City under the Lease, the proceeds of which will be used to pay and prepay the City's lease payment obligations under the Prior Lease and thereby pay and prepay all of the outstanding Prior Certificates on August 1, 2017.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City, the Authority and the Trustee formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms used in this Trust Agreement have the meanings given them in Appendix A hereto.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Trust Agreement, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE CERTIFICATES OF PARTICIPATION

SECTION 2.01. *Authorization.* The Trustee is hereby authorized and directed upon written request from the Authority to register, execute and deliver to the Original Purchaser, the following Certificates:

(i) 2016 Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series A, in the aggregate principal amount of \$_____, and

(ii) 2016 Federally Taxable Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series B, in the aggregate principal amount of \$_____.

The Certificates evidence direct, undivided fractional ownership interests of the Owners thereof in the Lease Payments. In no event shall the Certificates be deemed an obligation or debt of the Trustee.

SECTION 2.02. *Date.* Each Certificate shall be dated as of the date of its execution and interest represented thereby shall be payable from the Interest Payment Date next preceding the date of execution thereof, unless:

- (a) it is executed following a Record Date and on or before the next succeeding Interest Payment Date, in which event interest represented thereby shall be payable from such Interest Payment Date,
- (b) unless it is executed on or before the first Record Date, in which event interest represented thereby shall be payable from the Closing Date, or
- (c) if, as of the date of any Certificate, interest represented by such Certificate is in default, in which event interest represented thereby shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to such Certificate.

SECTION 2.03. *Terms of Certificates.* Principal represented by the Certificates is payable on November 1 in each of the respective years and in the respective amounts, and interest represented thereby is computed at the respective rates, as follows:

Series A Certificates

<u>Maturity Date (November 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Maturity Date (November 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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Series B Certificates

<u>Maturity Date (November 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Maturity Date (November 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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SECTION 2.04. *Fully Registered Form; Interest.* The Certificates will be delivered in the form of fully registered Certificates without coupons in the authorized denominations of \$5,000 or any integral multiple thereof, except that no Certificate shall represent principal payable in more than one year. The Trustee shall assign the Certificates such alphabetical and numerical designation as the Trustee deems appropriate.

Interest represented by the Certificates is payable on each Interest Payment Date to and including the date of maturity or prepayment, whichever is earlier, as provided in Section 2.09. Said interest represents the portion of Lease Payments designated as interest and coming due on each of the respective Interest Payment Dates. The share of the portion of Lease Payments designated as interest with respect to any Certificate shall be computed by multiplying the portion of Lease Payments designated as principal represented by such Certificate by the rate of interest represented by such Certificate (on the basis of a 360-day year consisting of twelve 30-day months).

SECTION 2.05. *Book Entry System.*

(a) Original Delivery. The Certificates will be initially delivered in the form of a separate single fully registered Certificate (which may be typewritten) for each maturity of the Certificates. Upon initial delivery, the ownership of each such Certificate will be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Certificates shall be registered in the name of the Nominee on the Registration Books.

With respect to Certificates the ownership of which is registered in the name of the Nominee, the City and the Trustee have no responsibility or obligation to any Depository System Participant or to any person on behalf of which the City holds an interest in the Certificates. Without limiting the generality of the immediately preceding sentence, the City and the Trustee have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any Depository System Participant or any other person, other than a Certificate Owner as shown in the Registration Books, of any notice with respect to the Certificates, including any notice of prepayment, (iii) the selection by the Depository of the beneficial interests in the Certificates to be prepaid if the City elects to prepay the Certificates in part, (iv) the payment to any Depository System Participant or any other person, other than a Certificate Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest represented by the Certificates or (v) any consent given or other action taken by the Depository as Owner of the Certificates. The City and the Trustee may treat and consider the person in whose name each Certificate is registered as the absolute owner of such Certificate for the purpose of payment of principal, premium, if any, and interest represented by such Certificate, for the purpose of giving notices of prepayment and other matters with respect to such Certificate, for the purpose of registering transfers of ownership of such Certificate, and for all other purposes whatsoever. The Trustee shall pay the principal, interest and premium, if any, represented by the Certificates only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal, interest and premium, if any, represented by the Certificates to the extent of the sum or sums so paid. No person other than a Certificate Owner may receive a Certificate evidencing the obligation of the City to make payments of principal, interest and premium, if any, under this Trust Agreement. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the City shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Certificates for the Depository's book-entry system, the City shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Certificates. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the City or the Trustee any obligation whatsoever with respect to persons having interests in the Certificates other than the Certificate Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the City in such letter with respect to the Trustee to at all times be complied with. In addition to the

execution and delivery of such letter, the City may take any other actions, not inconsistent with this Trust Agreement, to qualify the Certificates for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Certificates, or (ii) the City determines to terminate the Depository as such, then the City shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the City and the Trustee in the issuance of replacement Certificates by providing the Trustee with a list showing the interests of the Depository System Participants in the Certificates, and by surrendering the Certificates, registered in the name of the Nominee, to the Trustee on or before the date such replacement Certificates are to be executed and delivered. The Depository, by accepting delivery of the Certificates, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the City fails to identify another Securities Depository to replace the Depository, then the Certificates shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Certificates shall designate, in accordance with the provisions hereof.

If the City determines that it is in the best interests of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, the City may notify the Depository System Participants of the availability of such certificated Certificates through the Depository. In such event, the Trustee will issue, transfer and exchange Certificates as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the City shall cooperate with the Depository in taking appropriate action (y) to make available one or more separate certificates evidencing the Certificates to any Depository System Participant having Certificates credited to its account with the Depository, or (z) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Certificates, all at the City's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Trust Agreement to the contrary, so long as any Certificate is registered in the name of the Nominee, all payments with respect to principal, interest and premium, if any, represented by such Certificate and all notices with respect to such Certificate shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.06. *Form and Execution of Certificates.* The Certificates shall be substantially in the form set forth in Appendix B hereto. The Trustee shall execute the Certificates with the manual signature of an authorized signatory of the Trustee. If any person whose signature appears on any Certificate ceases to be an authorized signatory before the date of delivery of said Certificate, such signature shall nevertheless be as effective as if such person had remained an authorized signatory until such date.

SECTION 2.07. *Transfer and Exchange.*

(a) Transfer of Certificates. The registration of any Certificate may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by duly authorized attorney, upon surrender of

such Certificate for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, manually executed. Whenever any Certificate or Certificates shall be surrendered for registration of transfer, the Trustee shall execute and deliver a new Certificate or Certificates representing the same maturity, interest rate and aggregate principal amount, in any authorized denominations. The City shall pay all costs of the Trustee incurred in connection with any such transfer, except that the Trustee may require the payment by the Certificate Owner of any tax or other governmental charge required to be paid with respect to such transfer.

(b) Exchange of Certificates. Certificates may be exchanged at the Office of the Trustee, for a like aggregate principal amount of Certificates representing other authorized denominations of the same interest rate and maturity. The City shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee shall require the payment by the Certificate Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

(c) Limitations on Transfer or Exchange. The Trustee may refuse to transfer or exchange either (i) any Certificate during the period established by the Trustee for the selection of Certificates for prepayment, or (ii) any Certificate which the Trustee has selected for prepayment in whole or in part under the provisions of Section 3.02.

SECTION 2.08. *Certificates Mutilated, Lost, Destroyed or Stolen.* If any Certificate is mutilated, the Trustee, at the expense of the Owner of such Certificate, shall execute and deliver a new Certificate of like principal amount, interest rate and maturity in replacement for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. The Trustee shall cancel and destroy every mutilated Certificate so surrendered to it and shall deliver a certificate of destruction to the City at the request of the City. If any Certificate is lost, destroyed or stolen, evidence of such loss, destruction or theft must be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and if an indemnity satisfactory to the Trustee is given, the Trustee, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like principal amount, interest rate and maturity and numbered as the Trustee shall determine in lieu of and in replacement for the Certificate so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each replacement Certificate delivered under this Section 2.08 and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section 2.08. Any Certificate delivered under the provisions of this Section 2.08 in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee is not required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate shall be treated as one and the same. Notwithstanding any other provision of this Section 2.08, in lieu of delivering a replacement for a Certificate which has been mutilated, lost, destroyed or stolen, and which has matured, the Trustee may make payment with respect to such Certificate upon receipt of indemnity satisfactory to the Trustee and the City.

SECTION 2.09. *Payment.* Payment of interest represented by any Certificate on any Interest Payment Date shall be made to the person appearing on the Registration Books as the Owner thereof as of the close of business on the Record Date immediately preceding such Interest Payment Date, such interest to be paid by check mailed on the applicable Interest Payment Date to such Owner, by first class mail postage prepaid, at such Owner's address as it appears on the Registration Books. At the written request of the Owner of Certificates in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee prior to the Record Date preceding any Interest Payment Date, the Trustee shall pay interest represented by such Certificates coming due and payable on such Interest Payment Date by wire transfer in immediately available funds to such account in the United States as is specified in such written request. The principal, interest and prepayment premium, if any, represented by any Certificate at maturity or upon prepayment are payable in lawful money of the United States of America upon surrender of such Certificate at the Office of the Trustee.

SECTION 2.10. *Execution of Documents and Proof of Ownership.* Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

- (a) The fact and date of the execution by any Owner or any Owner's attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to acknowledge deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged before him the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of authority.
- (b) The fact of the ownership of Certificates by any person and the amount, the maturity and the numbers of such Certificates and the date of such person's holding the same shall be proved by the Registration Books.

Nothing in this Section 2.10 limits the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent of the Owner of any Certificate binds every future Owner of the same Certificate in respect of anything done or suffered to be done by the Trustee under such request or consent.

SECTION 2.11. *Registration Books.* The Trustee shall keep or cause to be kept sufficient records for the registration and registration of transfer of the Certificates, which shall at all reasonable times be open to inspection by the City and the Authority upon prior notice, during regular business hours; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Certificates as hereinbefore provided.

ARTICLE III

PREPAYMENT OF CERTIFICATES

SECTION 3.01. *Prepayment.*

(a) Optional Prepayment.

The Series B Certificates are not subject to optional prepayment prior to their stated maturity date.

The Series A Certificates maturing on or before November 1, 20___, are not subject to optional prepayment before their respective stated maturities. The Series A Certificates maturing on or after November 1, 20___, are subject to prepayment prior to their respective stated maturities, at the option of the City, in whole, or in part among maturities on such basis as designated by the City and by lot within any one maturity, on November 1, 20__ or on any date thereafter, at a prepayment price of 100% the principal amount of Series A Certificates or portions thereof to be prepaid, together with accrued interest represented thereby to the prepayment date.

(b) Prepayment From Net Proceeds of Insurance or Condemnation. The Certificates are subject to mandatory prepayment, in whole or in part on any Business Day, from the Net Proceeds of insurance or eminent domain proceedings credited towards the prepayment of the Lease Payments under Section 9.3 of the Lease and Article VI, at a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest represented thereby to the date fixed for prepayment, without premium.

(c) Sinking Fund Prepayment. The Certificates are not subject to mandatory sinking fund prepayment prior to maturity.

SECTION 3.02. *Selection of Certificates for Prepayment.* Whenever provision is made in Section 3.01(a) or (b) for the prepayment of Certificates of more than one maturity, the Certificates to be prepaid shall be selected among maturities on such basis as shall be set forth in a written certificate of the City filed with the Trustee, and the Trustee shall select the Certificates to be prepaid within any maturity by lot in any manner which the Trustee in its sole discretion shall deem appropriate. For the purposes of such selection, Certificates shall be deemed to be composed of \$5,000 portions, and any such portion may be separately prepaid. The Trustee shall promptly notify the City and the Authority in writing of the Certificates or portions thereof so selected for prepayment.

SECTION 3.03. *Notice of Prepayment.* When prepayment is authorized or required under Section 3.01, the Trustee shall give notice of the prepayment of the Certificates on behalf and at the expense of the City. Such notice must:

- (a) state the prepayment date and prepayment price;
- (b) state the numbers or maturities of the Certificates to be prepaid, if less than all of the then Outstanding Certificates are to be called for prepayment;
- (c) if a Certificate is to be prepaid only in part, identify the portion of the Certificate which is to be prepaid;
- (d) require that such Certificates be surrendered on the prepayment date at the Office of the Trustee for prepayment at said prepayment price;
- (e) state that interest represented by the Certificates will not accrue after the prepayment date; and
- (f) state that on the prepayment date the principal and premium, if any, represented by each Certificate will become due and payable, together with accrued interest represented thereby to the prepayment date, and that from and after such date interest represented thereby ceases to accrue and be payable; and
- (g) state that the prepayment may be conditioned upon the availability of funds on the prepayment date, and that if funds are not available on the prepayment date, the prepayment notice may be rescinded.

The Trustee has no liability for any designation of the CUSIP numbers of the Certificates to be prepaid, and neither the failure to identify the CUSIP numbers of the Certificates to be prepaid nor any incorrect designation of such CUSIP numbers will affect the sufficiency of the proceedings for the prepayment of such Certificates or the cessation of accrual of interest represented thereby from and after the date fixed for prepayment.

The Trustee shall mail notice of prepayment by first class mail with postage prepaid, to the Information Services and the Securities Depositories, to the Owners of Certificates designated for prepayment at their respective addresses appearing on the Registration Books, at least 30 days but not more than 60 days prior to the prepayment date. Neither the failure to receive any such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of such Certificates or the cessation of accrual of interest represented thereby from and after the date fixed for prepayment.

SECTION 3.04. *Partial Prepayment of Certificates.* Upon surrender of any Certificate prepaid in part only, the Trustee shall execute, authenticate and deliver to the Owner thereof, at the expense of the City, a new Certificate or Certificates of authorized denominations equal in aggregate principal amount to the unprepaid portion of the Certificate surrendered and of the same interest rate and the same maturity.

SECTION 3.05. *Effect of Notice of Prepayment.* Moneys for the prepayment (including the interest to the applicable date of prepayment) of Certificates having been set aside in the Lease Payment Fund, the Certificates shall become due and payable on the date of such prepayment, and, upon presentation and surrender thereof at the Office of the Trustee, said Certificates shall be paid at the unpaid principal amount (or applicable portion thereof) represented thereby plus interest accrued and unpaid to said date of prepayment.

If, on said date of prepayment, moneys for the prepayment of all the Certificates to be prepaid, together with interest represented thereby to said date of prepayment, shall be held by the Trustee so as to be available therefor on such date of prepayment, then, from and after said date of prepayment, interest represented by the Certificates shall cease to accrue and become payable. All moneys held by the Trustee for the prepayment of Certificates shall be held in trust for the account of the Owners of the Certificates so to be prepaid, and shall be held by the Trustee in cash uninvested.

All Certificates paid at maturity or prepaid prior to maturity under the provisions of this Article III shall be canceled upon surrender thereof.

SECTION 3.06. *Purchase of Certificates.* In lieu of prepayment of Certificates as provided in this Article III, amounts held by the Trustee for such prepayment may, at the written request of the City Representative received by the Trustee at least 75 days prior to the selection of Certificates for prepayment, be applied by the Trustee to the purchase of Certificates at public or private sale as and when and at such prices (including brokerage, accrued interest and other charges) as the City may in its discretion direct, but not to exceed the prepayment price which would be payable if such Certificates were prepaid.

ARTICLE IV

DISPOSITION OF PROCEEDS OF SALE

SECTION 4.01. *Application of Proceeds.*

(a) Series A Certificates. The proceeds received by the Trustee on the Closing Date from the sale of the Series A Certificates in the amount of \$_____ (which is equal to the principal amount of \$_____, plus a net original issue premium of \$_____, less underwriter's discount of \$_____, and less a portion of the Reserve Policy premium which shall be paid directly by the Underwriter to the Reserve Policy Provider) shall be deposited by the Trustee into a special fund to be known as the Series A Certificate Proceeds Fund (and which shall be closed immediately following all transfers therefrom on the Closing Date), and shall be applied by the Trustee as follows:

- (a) The Trustee shall deposit the amount of \$_____ in the Costs of Issuance Fund.
- (b) The Trustee shall transfer the amount of \$_____ to the 2007 Trustee for deposit and application in accordance with the 2007

Escrow Agreement, to be held and applied for the purpose of prepaying a portion of the City's lease payment obligations under the Prior Lease and thereby prepaying all of the outstanding Prior Certificates on August 1, 2017.

(b) Series B Certificates. The proceeds received by the Trustee on the Closing Date from the sale of the Series B Certificates in the amount of \$_____ (which is equal to the principal amount of \$_____, plus a net original issue premium of \$_____, less underwriter's discount of \$_____, and less a portion of the Reserve Policy premium which shall be paid directly by the Underwriter to the Bond Insurer) shall be deposited by the Trustee into a special fund to be known as the Series B Certificate Proceeds Fund (and which shall be closed immediately following all transfers therefrom on the Closing Date), and shall be applied by the Trustee as follows:

(a) The Trustee shall deposit the amount of \$_____ in the Costs of Issuance Fund.

(b) The Trustee shall transfer the amount of \$_____ to the 2007 Trustee for deposit and application in accordance with the 2007 Escrow Agreement, to be held and applied for the purpose of prepaying a portion of the City's lease payment obligations under the Prior Lease and thereby prepaying all of the outstanding Prior Certificates on August 1, 2017.

(c) Reserve Policy. In addition, the Trustee shall credit the Reserve Policy in the amount of the Reserve Requirement to the Reserve Fund.

SECTION 4.02. *Reserve Fund*.

(a) General Provisions. The Trustee shall establish a special fund designated as the "Reserve Fund" to be held by the Trustee in trust for the benefit of the City and the Owners of the Certificates, and applied solely as provided herein. Moneys and assets in the Reserve Fund shall be held in trust as a reserve for the payment when due of the Lease Payments on behalf of the City.

The City will initially fund the Reserve Fund for the Certificates with a municipal bond debt service reserve insurance policy (the "Reserve Policy") issued by the Reserve Policy Provider.

The amounts available under the Reserve Policy shall be used and withdrawn by the Trustee solely for the purpose of making transfers to the Lease Payment Fund, in the event of any deficiency at any time in the Lease Payment Fund for its purposes.

The Trustee shall comply with all documentation relating to the Reserve Policy as shall be required to maintain the Reserve Policy in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this Section.

Neither the City nor the Authority shall have any obligation to replace the Reserve Policy or to fund the Reserve Fund with cash if, at any time that the Certificates are Outstanding, amounts are not available under the Reserve Policy or the Reserve

Policy is no longer in effect. At such time as the City concludes that the Reserve Policy is no longer in effect, the City may direct the Trustee to close the Reserve Fund and to return the Reserve Policy to the Reserve Policy Provider.

(b) Application of Reserve Fund. If on any Interest Payment Date the moneys available in the Lease Payment Fund do not equal the amount of the Lease Payment then coming due and payable, the Trustee shall apply the moneys available in the Reserve Fund to make such payments on behalf of the City by transferring the amount necessary for this purpose to the Lease Payment Fund. Upon receipt of any delinquent Lease Payment with respect to which moneys have been advanced from the Reserve Fund, such Lease Payment shall be deposited in the Reserve Fund to the extent of such advance.

SECTION 4.03. *Establishment and Application of Costs of Issuance Fund.* The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund." The Trustee shall disburse moneys in the Costs of Issuance Fund to pay the Costs of Issuance upon submission of written requisitions executed by a City Representative stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On _____, 2016, the Trustee shall withdraw all remaining moneys in the Costs of Issuance Fund and deposit such moneys in the Lease Payment Fund, and the Trustee shall thereupon close the Costs of Issuance Fund.

ARTICLE V

LEASE PAYMENTS; LEASE PAYMENT FUND

SECTION 5.01. *Assignment of Rights in Lease.* Under the Assignment Agreement, the Authority has transferred, assigned and set over to the Trustee certain of its rights under the Lease, including but not limited to all of the Authority's rights to receive and collect all of the Lease Payments and all other amounts required to be deposited in the Lease Payment Fund. The City shall pay to the Trustee all Lease Payments and other amounts which have been assigned to the Trustee under the Assignment Agreement. Any Lease Payments collected or received by the Authority shall be deemed to be held and to have been collected or received by the Authority as the agent of the Trustee, and the Authority shall immediately transfer all such Lease Payments and other amounts to the Trustee.

SECTION 5.02. *Establishment of Lease Payment Fund.* The Trustee shall establish a special fund designated as the "Lease Payment Fund." All moneys at any time deposited by the Trustee in the Lease Payment Fund shall be held by the Trustee in trust for the benefit of the City and the Owners of the Certificates. So long as any Certificates are Outstanding, neither the City nor the Authority has any beneficial right or interest in the Lease Payment Fund, or the moneys deposited therein, except only as provided in this Trust Agreement, and the Trustee shall apply the Lease Payment Fund solely as set forth in this Trust Agreement.

SECTION 5.03. *Deposits.* The Trustee shall deposit all Lease Payments received by it in the Lease Payment Fund, including any moneys received by the Trustee for

deposit therein under Section 5.01 or under Article VI hereof, or Article IX of the Lease, and any other moneys required to be deposited therein under the Lease or under this Trust Agreement.

SECTION 5.04. *Application of Moneys.* So long as any Certificates are Outstanding, the Trustee shall apply amounts in the Lease Payment Fund solely for the purpose of paying the principal, interest and prepayment premiums (if any) represented by the Certificates as the same become due and payable, in accordance with the provisions hereof.

SECTION 5.05. *Surplus.* Any surplus remaining in the Lease Payment Fund, after prepayment and payment of all Certificates, including premiums and accrued interest (if any) and payment of any applicable fees and expenses to the Trustee, or provision for such prepayment or payment having been made to the satisfaction of the Trustee, shall be withdrawn by the Trustee and remitted to the City.

ARTICLE VI

INSURANCE AND CONDEMNATION FUND

SECTION 6.01. *Establishment of Insurance and Condemnation Fund; Application of Net Proceeds of Insurance Award.* Any Net Proceeds of insurance collected by the City in the event of accident to or destruction of any component of the Leased Property shall be paid to the Trustee under Section 6.1 of the Lease and deposited by the Trustee promptly upon receipt thereof in a special fund designated as the "Insurance and Condemnation Fund" which the Trustee shall thereupon establish. If the City determines and notifies the Trustee in writing of its determination, within 90 days following the date of such deposit, that the replacement, repair, restoration, modification or improvement of the Leased Property is not economically feasible or in the best interests of the City, then such Net Proceeds shall be promptly transferred by the Trustee to the Lease Payment Fund and applied to the prepayment of Lease Payments under Section 9.3 of the Lease and the corresponding prepayment of Certificates under Section 3.01(b), which prepayment shall be made on the first Interest Payment Date for which notice of prepayment can be timely given. Notwithstanding the foregoing provisions of this Section 6.01, the determination of the City to apply Net Proceeds to the prepayment of Certificates is subject to the following:

- (a) if the Leased Property is damaged or destroyed in full, such Net Proceeds may be transferred to the Lease Payment Fund to be used to prepay Outstanding Certificates only if such Net Proceeds, together with other available moneys, are sufficient to cause the corresponding prepayment of all Lease Payments allocable to the Leased Property; and
- (b) if the Leased Property is damaged or destroyed in part but not in whole, such Net Proceeds may be transferred to the Lease Payment Fund to be used to prepay Outstanding Certificates only if the Lease Payments which result after the corresponding abatement thereof under Section 6.3 of the Lease are sufficient to pay the full amount of

principal and interest represented by the Certificates which remain Outstanding after such prepayment.

All Net Proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Lease Payment Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the City, upon receipt of written requisitions of the City stating with respect to each payment to be made (a) the name and address of the person, firm or corporation to whom payment is due, (b) the amount to be paid and (c) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation. Any balance of the Net Proceeds remaining after the City shall file a written certificate with the Trustee stating that such work has been completed shall, after payment of all amounts then due and owing to the Trustee hereunder, be paid to the City.

SECTION 6.02. *Deposit and Application of Net Proceeds of Eminent Domain Award.* If all or any part of the Leased Property is taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited with the Trustee in the Insurance and Condemnation Fund, under Section 6.1 of the Lease, and shall be applied and disbursed by the Trustee as follows:

- (a) If the City gives written notice to the Trustee of its determination that (i) such eminent domain proceedings have not materially affected the interest of the City in the Leased Property or the ability of the City to meet any of its financial obligations under the Lease, and (ii) that such proceeds are not needed for repair, replacement or rehabilitation of the Leased Property, and the City has given written notice to the Trustee of such determination, the Trustee shall transfer such proceeds to the Lease Payment Fund to be credited towards the payment of the Lease Payments as they become due and payable.
- (b) If the City gives written notice to the Trustee of its determination that (i) such eminent domain proceedings have not materially affected the interest of the City in the Leased Property or the ability of the City to meet any of its financial obligations under the Lease, and (ii) such proceeds are needed for repair, replacement or rehabilitation of the Leased Property, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for the repair or rehabilitation of the Leased Property, upon the filing of requisitions of the City Representative meeting the requirements of Section 6.01.
- (c) If (i) less than all of the Leased Property is taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the City gives written notice to the Trustee of its determination that such eminent domain proceedings have materially affected the interest of the City in the Leased Property or the ability of the City to meet any of its financial

obligations under the Lease, or (ii) all of the Leased Property is taken in such eminent domain proceedings, then the Trustee shall transfer such proceeds to the Lease Payment Fund to be credited toward the prepayment of the Lease Payments under Section 9.3 of the Lease and applied to the corresponding prepayment of Certificates under Section 3.01(b), which prepayment shall be made on the first prepayment date for which notice of prepayment can be timely given.

In making any such determination whether to repair, replace or rehabilitate the Leased Property under this Section 6.02, the City may obtain, but is not required to obtain, at its expense, the report of an independent engineer or other independent professional consultant, a copy of which must be filed with the Trustee. Any such determination by the City is final.

ARTICLE VII

MONEYS IN FUNDS; INVESTMENTS

SECTION 7.01. *Held in Trust.* The moneys and Permitted Investments held by the Trustee under this Trust Agreement are irrevocably held in trust for the benefit of the City and the Owners of the Certificates solely for the purposes herein specified, and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Trust Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the Authority, the Trustee, the City or the Owner of any Certificates.

SECTION 7.02. *Investments Authorized.* Upon the written request of a City Representative filed with the Trustee from time to time, moneys held by the Trustee in any fund or account hereunder shall be invested and reinvested by the Trustee in Permitted Investments which mature not later than the date such moneys are required or estimated by the City to be required to be expended hereunder. In the absence of any written request of the City directing the investment of uninvested moneys held by the Trustee hereunder, the Trustee shall hold such moneys uninvested. Such investments, if registrable, shall be registered in the name of the Trustee, as trustee or in the name of its nominee, and shall be held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section 7.02. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee may act as purchaser or agent in the making or disposing of any investment. Whenever in this Trust Agreement any moneys are required to be transferred by the City to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Section 7.02. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories. The Trustee may rely on the investment directions of the City as to both the suitability and legality of the directed investments.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grants the City the right to receive brokerage confirmations of security transactions as they occur, at no additional cost, the City specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

SECTION 7.03. *Accounting.* The Trustee shall furnish to the City, not less than monthly, an accounting (in the form customarily used by the Trustee) of all investments and other transactions made by the Trustee under this Trust Agreement.

SECTION 7.04. *Allocation of Earnings.* Any income, profit or loss on such investments shall be deposited in or charged to the respective funds from which such investments were made; except that (i) all income received on the investment of amounts on deposit in the Reserve Fund shall be applied as set forth in Section 4.02, and (ii) any income received on the investment of amounts on deposit in the Reserve Fund shall be transferred to the Rebate Fund if and to the extent the Trustee receives written directions from a City Representative to do so in accordance with Section 10.05(f).

SECTION 7.05. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the City covenants that all investments of amounts deposited in any fund or account created by or under this Trust Agreement, or otherwise containing gross proceeds of the Certificates (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued (as of the date that valuation is required by this Trust Agreement or the Tax Code) at Fair Market Value as such term is defined in subsection (d) below. The Trustee has no duty in connection with the determination of Fair Market Value other than to follow the express investment directions of the City in any written directions of a City Representative.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the Reserve Fund shall be valued by the City at their present value (within the meaning of Section 148 of the Tax Code, consisting generally of the cost thereof); provided that the City shall provide written notice to the Trustee as to which funds are subject to a yield restriction.

(c) For the purpose of determining the amount in any fund, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least quarterly at the market value thereof. The Trustee may sell, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section 7.05, the term "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 Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) 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 Tax Code, (iii) 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 (iv) any commingled investment fund in which the City and any related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment. Notwithstanding the foregoing, in determining market value of Permitted Investments, the Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

ARTICLE VIII

THE TRUSTEE

SECTION 8.01. *Appointment of Trustee.* The Bank of New York Mellon Trust Company, N.A. is hereby appointed Trustee by the Authority and the City for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Trust Agreement. The Authority and the City agree that they will maintain a Trustee having a corporate trust office in the State of California and having a combined capital and surplus (or whose related bank holding company has a combined capital and surplus) of at least \$50,000,000, and which shall be subject to supervision or examination by Federal or state authority, so long as any Certificates are Outstanding. If such bank, national banking association or trust company publishes a report of condition at least annually under law or to the requirements of any supervising or examining authority above referred to then for the purpose of this Section 8.01 the combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The City and the Authority covenant that they will maintain a Trustee which is qualified under the provisions of the foregoing provisions of this Section 8.01, so long as any Certificates are Outstanding.

The Trustee is hereby authorized to pay or prepay the Certificates when duly presented as provided herein for payment at maturity, or on prepayment, or on purchase by the Trustee as directed by the City prior to maturity in accordance with Section 3.06, and to cancel all Certificates upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Certificates paid and discharged. The Trustee shall be compensated for its services rendered under the provisions of this Trust Agreement.

SECTION 8.02. *Acceptance of Trusts.* The Trustee hereby accepts the express trusts imposed upon it by this Trust Agreement, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

- (a) The Trustee, prior to the occurrence of an Event of Default and after curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Trust Agreement. In case an Event of Default has occurred (which has not been cured or waived) the Trustee may exercise such of the rights and powers vested in it by this Trust Agreement, and shall use the same degree of care and skill in their exercise, as a prudent corporate trustee would exercise or use under the circumstances.
- (b) No provision in this Trust Agreement requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or indemnity satisfactory to it against such risk or liability is not in the conclusive opinion of the Trustee satisfactorily assured to it.
- (c) The Trustee is not responsible or liable for any recital herein, or in the Certificates, or for any of the supplements thereto or instruments of further assurance, or for the validity or sufficiency of the security for the Certificates executed and delivered hereunder or intended to be secured hereby and the Trustee shall not be bound at any time to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Authority or the City under the Lease. The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Article VII.
- (d) The Trustee is not accountable for the use of any Certificates delivered hereunder or the proceeds thereof. The Trustee may become the Owner of Certificates with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the City with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Certificates, whether or not such committee shall represent the Owners of the majority in aggregate principal amount of the Certificates then Outstanding.
- (e) The Trustee shall be protected in acting upon any notice, request, requisition, consent, certificate, order, affidavit, letter, telegram, direction, facsimile transmission, electronic mail or other paper or document believed by the trust officer responsible for the administrative of the trusts created hereunder to be genuine and correct and to have been signed or sent by the proper person or

persons. Any action taken or omitted to be taken by the Trustee in good faith under this Trust Agreement upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Certificate, shall be conclusive and binding upon all future Owners of the same Certificate and upon Certificates delivered in exchange therefor or in place thereof. The Trustee is not bound to recognize any person as an Owner of any Certificate or to take any action at such person's request unless such Certificate shall be deposited with the Trustee or satisfactory evidence of the ownership of such Certificate shall be furnished to the Trustee.

- (f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by an Authority Representative or a City Representative as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been given notice or is deemed to have notice, as provided in Section 8.02(h), shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of an Authority Representative or a City Representative to the effect that an authorization in the form therein set forth has been adopted by the Authority or the City, as the case may be, as conclusive evidence that such authorization has been duly adopted, and is in full force and effect.
- (g) The permissive right of the Trustee to do things enumerated in this Trust Agreement may not be construed as a duty and the Trustee is not answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee extend to its officers, directors, employees and agents.
- (h) The Trustee is not required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the City to make any of the Lease Payments to the Trustee required to be made by the City under the Lease or failure by the Authority or the City to file with the Trustee any document required by this Trust Agreement or the Lease to be so filed subsequent to the delivery of the Certificates on a date certain, unless the Trustee shall be specifically notified in writing of such default by the Authority, the City or the Owners of at least 25% in aggregate principal amount of Certificates then Outstanding. All notices or other instruments required by this Trust Agreement to be delivered to the Trustee must, in order to be effective, be delivered at the Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default except as aforesaid.

- (i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, have the right (but not any duty) fully to inspect the Leased Property, including all books, papers and records of the Authority or the City pertaining to the Leased Property and the Certificates, and to take such memoranda from and with regard thereto as may be desired.
- (j) The Trustee is not required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.
- (k) Notwithstanding anything elsewhere in this Trust Agreement with respect to the execution of any Certificates, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Trust Agreement, the Trustee has the right, but is not required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, which may be deemed desirable by the Trustee for the purpose of establishing the right of the Authority or the City to the execution of any Certificates, the withdrawal of any cash, or the taking of any other action by the Trustee.
- (l) Before taking any action referred to in Article XII at the direction of the Certificate Owners, the Trustee may require that a satisfactory indemnity bond be furnished by the Certificate Owners, or any of them, for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any such action.
- (m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee has no liability for interest on any moneys received hereunder except such as may be agreed upon, other than interest derived from investments made or required to be made under Section 7.02.
- (n) The Trustee is not responsible for the sufficiency of the Lease, its right to receive moneys under the Lease, or the value of or title to the Leased Property.
- (o) The Trustee is not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of a majority in aggregate principal amount of the Outstanding Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Trust Agreement.

- (p) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers and the Trustee is not responsible for any misconduct or negligence on the part of any attorney, agent, or receiver appointed with due care. The Trustee shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder and shall be protected in any action taken or suffered by it hereunder in reliance on such advice.
- (q) The Trustee is not liable for any error of judgment made in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.
- (r) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.
- (s) The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Trust Agreement and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.); provided, however, that, the City and/or the Authority, as applicable, shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City and/or the Authority, as applicable, whenever a person is to be added or deleted from the listing. If the City and/or the Authority, as applicable, elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The City and the Authority understand and agree that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee

shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The City and the Authority shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the City, the Authority and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City and/or the Authority, as applicable. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City and the Authority agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions that the method(s) selected by the City and/or the Authority, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

- (t) In acting or omitting to act pursuant to the Lease, the Site Lease, the Assignment Agreement or any other document executed in connection herewith or therewith, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Trust Agreement, including, but not limited to, this Article 8.02. Notwithstanding the effective date of this Trust Agreement or anything to the contrary in this Trust Agreement, the Trustee shall have no liability or responsibility for any act or event relating to this Trust Agreement which occurs prior to the date the Trustee formally executes this Trust Agreement and commences acting as Trustee hereunder.
- (u) The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Certificates.
- (v) The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct.

SECTION 8.03. *Fees, Charges and Expenses of Trustee.* The Trustee shall be entitled to payment and reimbursement by the City for reasonable fees for its services

rendered hereunder and all advances, agent and counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. The Trustee has a first lien with right of payment prior to payment on account of principal, premium, if any, and interest represented by any Certificate upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively. The Trustee shall be entitled to interest on all moneys advanced by it in the performance of its duties hereunder at the maximum legal rate allowable. The City's obligation to compensate the Trustee under this Section 8.03 survives the maturity and payment or discharge of the Certificates and the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency arrangement, moratorium, reorganization or other debtor relief law.

SECTION 8.04. *Notice to Certificate Owners of Default.* If an Event of Default occurs of which the Trustee has been given or is deemed to have notice, as provided in Section 8.02(h), then the Trustee shall promptly give written notice thereof by first class mail, postage prepaid, to the Owner of each Outstanding Certificate, unless such Event of Default has been cured before the giving of such notice; *provided, however* that unless such Event of Default consists of the failure by the City to make any Lease Payment when due, the Trustee may elect not to give such notice to the Certificate Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Certificate Owners not to give such notice.

SECTION 8.05. *Removal of Trustee.* The City may remove the Trustee upon thirty (30) days prior notice, unless an Event of Default has occurred and is continuing, and shall remove the Trustee (a) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of a majority in aggregate principal amount of the Certificates then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 8.01, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of 30 days' prior written notice of such removal by the City to the Trustee, whereupon the City shall appoint a successor Trustee in accordance with Section 8.07.

SECTION 8.06. *Resignation by Trustee.* The Trustee and any successor Trustee may at any time resign by giving written notice by registered or certified mail to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee in accordance with Section 8.07. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the City shall mail notice thereof to the Certificate Owners at their respective addresses set forth on the Registration Books.

SECTION 8.07. *Appointment of Successor Trustee.* If the Trustee resigns or is removed under Sections 8.05 or 8.06, respectively, the City shall promptly appoint a

successor Trustee. If the City for any reason whatsoever fails to appoint a successor Trustee within 30 days following the delivery to the Trustee of the instrument described in Section 8.05 or within 30 days following the receipt of notice by the City under Section 8.06, the Trustee may apply to any federal or state court for the appointment of a successor Trustee meeting the requirements of Section 8.01. Any such successor Trustee appointed by such court will become the successor Trustee hereunder notwithstanding any action by the City purporting to appoint a successor Trustee following the expiration of such 30 day period.

SECTION 8.08. *Merger or Consolidation.* Any company or association into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company or association shall be eligible under Section 8.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 8.09. *Concerning any Successor Trustee.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority and the City an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of the City, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the City be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article VIII, shall be filed or recorded by the successor Trustee in each recording office where the Assignment Agreement has been filed or recorded.

SECTION 8.10. *Non-Liability of Trustee.* The recitals, statements and representations by the City and the Authority contained in this Trust Agreement or in the Certificates shall be taken and construed as made by and on the part of the City and the Authority, as the case may be, and not by the Trustee, and the Trustee has no responsibility, obligation or liability for the correctness of any thereof.

The Trustee makes no representation or warranty, express or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City or the Authority of the Leased Property. In no event shall the Trustee be liable for special or consequential damages in connection

with or arising from the Lease for the existence, furnishing or use of the Leased Property.

The Trustee is not: (a) responsible for the sufficiency or enforceability of the Lease or the assignment under the Assignment Agreement of its rights to receive Lease Payments; (b) deemed to have knowledge of any Event of Default unless and until it has received written notice thereof or, with respect to Section 8.1(a) of the Lease, has actual knowledge thereof or except as provided in Section 8.02(h); or (c) accountable for the use or application by the City or the Authority of any funds which the Trustee has released under this Trust Agreement.

SECTION 8.11. *Actions Through Agents.* The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee is not answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Trustee is not answerable for the exercise of any discretion or power under this Trust Agreement or for anything whatever in connection with the funds and accounts established hereunder, except only for its own negligence or willful misconduct.

SECTION 8.12. *Nature of Trust Engagement.* The Trustee undertakes to perform such duties and only such duties as are expressly and specifically set forth in the Trust Agreement and no implied covenants or obligations whatsoever shall be read into the Trust Agreement against the Trustee. In accepting the trusts hereby created, the Trustee acts solely as Trustee and not in its individual capacity. All persons, including without limitation the Owners, the City and the Authority having any claim against the Trustee arising from the Trust Agreement shall look only to the funds and accounts hereunder for payment except as otherwise provided herein; *provided, however*, that nothing in this sentence is intended or shall be construed to apply to, or limit the source of payment of, claims against the Trustee arising from the negligence or willful misconduct of the Trustee. Under no circumstances is the Trustee liable in its individual capacity for payment of the obligations represented by the Certificates.

SECTION 8.13. *Payment Procedure Pursuant to the Reserve Policy.*

[to come]

ARTICLE IX

MODIFICATION OR AMENDMENT

SECTION 9.01. *Amendments Permitted.* This Trust Agreement and the rights and obligations of the Owners of the Certificates may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, exclusive of Certificates disqualified as provided in Section 13.05, has been filed with the Trustee. No such modification or amendment may (a) extend or have the effect of extending the fixed maturity of any Certificate or reducing the interest rate represented thereby or extending the time of payment of interest, or reducing the amount of principal represented thereby or reducing any premium payable upon the prepayment thereof, without the express consent of the Owner of such Certificate, or (b) reduce or have the effect of reducing the percentage of Certificates required for the affirmative vote or written consent to an amendment or modification hereof, or (c) modify any of the rights or obligations of the Trustee without its written assent thereto. Any such supplemental agreement shall become effective as provided in Section 9.02.

This Trust Agreement and the rights and obligations of the Owners of the Certificates may be modified or amended at any time by a supplemental agreement, without the consent of any Certificate Owners, but only to the extent permitted by law and only:

- (a) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein reserved to the Authority or the City,
- (b) to cure, correct or supplement any ambiguous or defective provision contained herein,
- (c) in regard to questions arising hereunder, as the parties hereto or thereto may deem necessary or desirable and which shall not, in the opinion of Bond Counsel, materially adversely affect the interests of the Owners of the Certificates,
- (d) if and to the extent permitted in the opinion of Bond Counsel filed with the Trustee, the City and the Authority, to delete or modify any of the provisions hereof or thereof relating to the exclusion from gross income of interest represented by the Certificates for federal income tax purposes, or
- (e) to conform to any amendments of the Lease which are permitted to be made under Section 7.5 thereof.

Any such supplemental agreement shall become effective upon execution and delivery by the parties hereto.

SECTION 9.02. *Procedure for Amendment with Written Consent of Certificate Owners.* If the consents of the Owners of the Certificates are required to any amendment hereof under Section 9.01, such amendment shall be required to comply with the provisions of this Section 9.02. A copy of such supplemental agreement, together with a request to the Certificate Owners for their consent thereto, shall be mailed by the Trustee to each Owner of a Certificate at such Owner's address as set forth on the Registration Books, but failure to mail copies of such supplemental agreement and request shall not affect the validity of the supplemental agreement when assented to as provided in this Section.

Such supplemental agreement may not become effective unless there shall be filed with the Trustee the written consents of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding (exclusive of Certificates disqualified as provided in Section 13.05) and a notice has been mailed as hereinafter provided in this Section. Each such consent shall be effective only if accompanied by proof of ownership of the Certificates for which such consent is given, which proof shall be such as is permitted by Section 2.10. Any such consent shall be binding upon the Owner of the Certificate giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Certificates have filed their consents to such supplemental agreement, the Trustee shall mail a notice to the Owners of the Certificates in the manner hereinbefore provided in this Section for the mailing of such supplemental agreement of the notice of adoption thereof, stating in substance that such supplemental agreement has been consented to by the Owners of the required percentage of Certificates and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental agreement shall become effective upon the mailing of such last-mentioned notice, and such supplemental agreement shall be deemed conclusively binding upon the parties hereto and the Owners of all Certificates at the expiration of 60 days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such 60 day period.

SECTION 9.03. *Effect of Supplemental Agreement.* From and after the time any supplemental agreement becomes effective under this Article IX, this Trust Agreement shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto, and the rights of the affected Certificate Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental agreement shall be deemed to be part of the terms and conditions of this Trust Agreement for any and all purposes.

SECTION 9.04. *Endorsement or Replacement of Certificates Delivered After Amendments.* The Trustee may determine that Certificates delivered after the effective date of any action taken as provided in this Article IX shall bear a notation, by

endorsement or otherwise, in form approved by the Trustee, as to such action. In that case, upon demand on the Owner of any Certificate Outstanding at such effective date and presentation of such Owner's Certificate for the purpose at the Office of the Trustee, a suitable notation shall be made on such Certificate. The Trustee may determine that the delivery of substitute Certificates, so modified as in the opinion of the Trustee is necessary to conform to such Certificate Owners' action is necessary or desirable, which substitute Certificates shall thereupon be prepared, executed and delivered. In that case, upon demand on the Owner of any Certificate then Outstanding, such substitute Certificate shall be exchanged at the Office of the Trustee, without cost to such Owner, for a Certificate of the same character then Outstanding, upon surrender of such Outstanding Certificate.

SECTION 9.05. *Amendatory Endorsement of Certificates.* The provisions of this Article IX shall not prevent any Certificate Owner from accepting any amendment as to the particular Certificates held by him, provided that proper notation thereof is made on such Certificates.

SECTION 9.06. *Opinion of Counsel.* Prior to executing any supplemental Trust Agreement, the Trustee shall be furnished an opinion of counsel, upon which it may conclusively rely to the effect that all conditions precedent to the execution of such supplemental Trust Agreement under this Trust Agreement have been satisfied and such supplemental Trust Agreement is authorized and permitted under this Trust Agreement and does not adversely affect the exclusion of interest with respect to the Certificates from gross income for federal income tax purposes or adversely affect the exemption of interest with respect to the Certificates from personal income taxation by the State of California.

SECTION 9.07. *Notice to Rating Agencies.* The City shall send copies of any proposed amendment or modification hereof to each rating agency which then maintains a rating on the Certificates, at least 10 days prior to the effective date of any such amendment or modification.

ARTICLE X

OTHER COVENANTS

SECTION 10.01. *Compliance With and Enforcement of Lease.* The City covenants to perform all obligations and duties imposed on it under the Lease. The Authority covenants and agrees with the Owners of the Certificates to perform all obligations and duties imposed on it under the Lease.

The City will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of the Lease by the Authority thereunder. The Authority and the City, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting their respective estates, or either of them, in the Leased Property, which may or can in any manner affect such estate of the City, will deliver the same, or a copy thereof, to the Trustee.

SECTION 10.02. *Observance of Laws and Regulations.* The City will keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the City, including its right to exist and carry on business as a public agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

SECTION 10.03. *Prosecution and Defense of Suits.* The City shall promptly, upon request of the Trustee or any Certificate Owner, from time to time take such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Leased Property, whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and shall indemnify and save the Trustee and every Certificate Owner harmless from all loss, cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceeding.

SECTION 10.04. *Recordation and Filing.* The City shall record and file the Lease or a memorandum thereof, the Site Lease, the Assignment Agreement and all such documents as may be required by law (and shall take all further actions which may be necessary or be reasonably required by the Trustee, which has no duty to make such request), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee and the Certificate Owners.

SECTION 10.05. *Tax Covenants.*

(a) Private Business Use Limitation. The City shall assure that the proceeds of the Series A Certificates are not used in a manner which would cause any of the obligations of the City under the Lease to become "private activity bonds" under and within the meaning of Section 141(a) of the Tax Code.

(b) Private Loan Limitation. The City shall assure that no more than the lesser of \$5,000,000 or 5% of the aggregate amount of the proceeds of the Series A Certificates are used, directly or indirectly, to make or finance a loan (other than loans constituting nonpurpose obligations as defined in the Tax Code or constituting assessments) to persons other than state or local government units.

(c) 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 obligations of the City under the Lease to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Series A Certificates or of any other obligations 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 obligations of the City under the Lease to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Rebate of Excess Investment Earnings to United States. The City shall calculate or cause to be calculated all Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the City from any source of legally available funds of the City, including but not limited to from amounts on deposit in the Rebate Fund.

The City shall keep or cause to be kept, and retain or cause to be retained for a period of 6 years following the retirement of the Series A Certificates, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements herein.

(f) Establishment of Rebate Fund. At the written request of a City Representative, the Trustee shall establish and maintain a special fund designated as the “Rebate Fund” to be held by the Trustee for the benefit of the City. The Trustee shall deposit into the Rebate Fund any amounts provided to it by the City for that purpose, and shall also transfer into the Rebate Fund any earnings received from the investment of amounts in the Reserve Fund (to the extent permitted by Section 4.02), if and to the extent so directed in writing by a City Representative. At the written direction of the City, amounts on deposit in the Rebate Fund shall be disbursed by the Trustee for the purpose of making payments of Excess Investment Earnings in accordance with subsection (e) of this Section. If the City determines that any amounts held by the Trustee in the Rebate Fund are not required to make payments of Excess Investment Earnings, such amounts shall be transferred to the Lease Payment Fund at the written direction of the City.

SECTION 10.06. *Continuing Disclosure.* The City shall comply with and carry out all of the provisions of that certain Continuing Disclosure Certificate executed by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Trust Agreement, failure of the City to comply with such Continuing Disclosure Certificate does not constitute an Event of Default; except that any Participating Underwriter (as such term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Certificates may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

SECTION 10.08. *Further Assurances.* The Authority and the City will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Trust Agreement and the Lease, and for the better assuring and confirming unto the Owners of the Certificates the rights and benefits provided herein.

ARTICLE XI

LIMITATION OF LIABILITY

SECTION 11.01. *Limited Liability of City.* Except for the payment of Lease Payments when due in accordance with the Lease and the performance of the other covenants and agreements of the City contained in the Lease and this Trust Agreement, the City has no pecuniary obligation or liability to any of the other parties or to the Owners of the Certificates with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Lease Payments to the Owners by the Trustee, except as expressly set forth herein.

SECTION 11.02. *No Liability of the Authority for Trustee Performance.* Neither the City nor the Authority has any obligation or liability to any of the other parties or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

SECTION 11.03. *Indemnification of Trustee.* The Authority and the City shall jointly and severally indemnify and save the Trustee, its directors, officers, agents and employees harmless from and against (whether or not litigated) all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on, the Project or the Leased Property by the Authority or the City,
- (b) any breach or default on the part of the Authority or the City in the performance of any of their respective obligations under this Trust Agreement and any other agreement made and entered into for purposes of the Project or the Leased Property,
- (c) any act of negligence of the Authority or the City or of any of their respective agents, contractors, servants, employees, licensees with respect to the Project or the Leased Property,
- (d) any act of negligence of any assignee of, or purchaser from the Authority or the City or of any of its or their respective agents, contractors, servants, employees or licensees with respect to the Project or the Leased Property,
- (e) the application of the proceeds of the Certificates,
- (f) the actions of any other party, including but not limited to the ownership, operation or use of the Project or the Leased Property by the Authority or the City, or
- (g) the Trustee's exercise and performance of its powers and duties hereunder and under the Assignment Agreement, the Site Lease, the

Lease Agreement and any document executed or contemplated herewith or therewith.

No indemnification is made under this Section 11.03 or elsewhere in this Trust Agreement for willful misconduct or negligence under this Trust Agreement by the Trustee, its officers, agents, employees, successors or assigns. The Authority's and the City's obligations hereunder will remain valid and binding notwithstanding maturity and payment or discharge of the Certificates and notwithstanding any resignation or removal of the Trustee.

SECTION 11.04. *Opinion of Counsel.* Before being required to take any action, the Trustee may, at the expense of the City, require an opinion of counsel acceptable to the Trustee, or an opinion of Bond Counsel acceptable to the Trustee with respect to any federal tax matters, or a verified certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, Trustee shall be absolutely protected in relying on any such opinion or certificate obtained by the Trustee.

SECTION 11.05. *Limitation of Rights to Parties and Certificate Owners.* Nothing in this Trust Agreement or in the Certificates expressed or implied is intended or shall be construed to give any person other than the City, the Authority, the Trustee and the Owners of the Certificates, any legal or equitable right, remedy or claim under or in respect of this Trust Agreement or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the City, the Authority, the Trustee and said Owners.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

SECTION 12.01. *Assignment of Rights.* Under the Assignment Agreement the Authority has transferred, assigned and set over to the Trustee certain of the Authority's rights in and to the Lease (excepting only the Authority's rights under Sections 4.4, 5.10, 7.3 and 8.4 thereof), including without limitation all of the Authority's rights to exercise such rights and remedies conferred on the Authority under the Lease as may be necessary or convenient (a) to enforce payment of the Lease Payments and any other amounts required to be deposited in the Lease Payment Fund or the Insurance and Condemnation Fund, and (b) otherwise to exercise the Authority's rights and take any action to protect the interests of the Trustee or the Certificate Owners in an Event of Default.

SECTION 12.02. *Events of Default Defined.* As provided in Section 8.1 of the Lease, any one or more of the following events constitutes an Event of Default:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified in the Lease.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Lease or in this Trust Agreement, other than as referred to in the preceding

subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; *provided, however*, that if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the failure will not constitute an Event of Default if the City commences to cure the failure within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time, such period of time to be no longer than 180 days after such default notice has been given to the City.

- (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 Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 12.03. *Remedies.* If an Event of Default happens, then and in each and every such case during the continuance of such Event of Default, the Trustee may, and if requested in writing at the written direction of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, upon the Trustee being indemnified to its satisfaction, the Trustee shall, exercise any and all remedies available under law or granted under the Lease; *provided, however*, that notwithstanding anything herein or in the Lease to the contrary, there shall be no right under any circumstances to accelerate the maturities of the Certificates or otherwise to declare any Lease Payment not then in default to be immediately due and payable.

SECTION 12.04. *Application of Funds.* All moneys received by the Trustee under any right given or action taken under the provisions of this Article XII or Article VIII of the Lease, or held under this Trust Agreement (except moneys held by the Trustee in the Rebate Fund) shall be applied by the Trustee in the order following upon presentation of the several Certificates, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid -

First, to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default and in taking any remedial action with respect thereto, including reasonable compensation to its agents, attorneys and counsel, and including such other necessary costs incurred in connection with the performance of its powers and duties under this Trust Agreement;

Second, to the payment of the whole amount then owing and unpaid with respect to the Certificates for principal and interest, with interest on the overdue principal and installments of interest at the rate set forth in Section 4.3(c) of the Lease (but such interest on overdue installments of interest shall be paid only to the extent funds are available therefor following payment of principal and interest and interest on overdue principal, as aforesaid), and in case such moneys shall be

insufficient to pay in full the whole amount so owing and unpaid with respect to the Certificates, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

Third, to the payment of any amounts owed to the Reserve Policy Provider under the Reserve Policy.

SECTION 12.05. *Institution of Legal Proceedings.* If one or more Events of Default occur and are continuing, the Trustee in its discretion may, upon the written request of the Owners of a majority in principal amount of the Certificates then Outstanding and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Owners of Certificates by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as shall be deemed most effectual in support of any of its rights or duties hereunder.

SECTION 12.06. *Non-waiver.* Nothing in this Article XII or in any other provision of this Trust Agreement or in the Certificates, affects or impairs the obligation of the City, which is absolute and unconditional, to pay or prepay the Lease Payments as provided in the Lease. No delay or omission of the Trustee or any Certificate Owner to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article XII to the Trustee or the Certificate Owners may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Certificate Owners.

SECTION 12.07. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Trustee or the Certificate Owners is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

SECTION 12.08. *Power of Trustee to Control Proceedings.* If the Trustee, upon the happening of an Event of Default, takes any action, by judicial proceedings or otherwise, under its duties hereunder, whether upon its own discretion, or upon the direction of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, it has full power, in the exercise of its discretion for the best interests of the Owners of the Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; *provided, however*, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in aggregate principal amount of the Outstanding Certificates opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

SECTION 12.09. *Limitation on Certificate Owners' Right to Sue Exclusive.* No Owner of any Certificate delivered hereunder may institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Trust Agreement, unless (a) such Owner has previously given to the Trustee written notice of the occurrence of an Event of Default hereunder; (b) the Owners of a majority in aggregate principal amount of all the Certificates then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee has refused or omitted to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Certificates of any remedy hereunder; it being understood and intended that no one or more Owners of Certificates has any right in any manner whatever by its or their action to enforce any right under this Trust Agreement, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Certificates.

SECTION 12.10. *Possession of Certificates by Trustee Not Required.* All rights and remedies granted to or exercisable by the Trustee hereunder or under the Lease may be exercised by the Trustee without possession of any of the Certificates or the production thereof at the trial or other proceeding relative thereto, and any suit, action or proceeding instituted by the Trustee hereunder or under the Lease shall be brought in its name for the benefit of all the Owners of such Certificates, subject to the provisions of this Trust Agreement.

ARTICLE XIII

DISCHARGE; ADMINISTRATIVE PROVISIONS

SECTION 13.01. *Discharge Hereof.* If and when the obligations represented by any Outstanding Certificates shall be paid and discharged in any one or more of the following ways:

- (a) by well and truly paying or causing to be paid the principal, interest and prepayment premiums (if any) represented by such Certificates Outstanding, as and when the same become due and payable, or
- (b) by depositing with the Trustee or any other fiduciary, under an escrow deposit and trust agreement, security for the payment of Lease Payments relating to such Certificates as more particularly described in Section 9.1 of the Lease, said security to be held by the Trustee on behalf of the City to be applied by the Trustee or by such

other fiduciary to pay or prepay such Lease Payments as the same become due, under Section 9.1 of the Lease,

then notwithstanding that such Certificates have not been surrendered for payment, all rights hereunder of the Owners of such Certificates and all obligations of the Authority, the Trustee and the City with respect to such Certificates shall cease and terminate, except only the obligations of the Authority and the City under Section 11.03 and the obligations of the Trustee under Sections 2.07 and 2.08, and the obligation of the Trustee to pay or cause to be paid, from Lease Payments paid by or on behalf of the City from funds deposited under paragraph (b) of this Section, to the Owners of such Certificates not so surrendered and paid all sums represented thereby when due and in the event of deposits under paragraph (b), such Certificates shall continue to represent direct, undivided fractional interests of the Owners thereof in the Lease Payments.

Any funds held by the Trustee, at the time of discharge of the obligations represented by all Outstanding Certificates as a result of one of the events described in paragraphs (a) or (b) of this Section, which are not required for the payment to be made to Owners, shall, upon payment in full of all fees and expenses of the Trustee (including attorneys' fees and expenses) then due, be paid over to the City.

Notwithstanding the foregoing provisions of this Section 13.01, if the principal, interest and premium (if any) represented by the Certificates are paid by the Reserve Policy Provider by draws on the Reserve Policy, the obligations of the Trustee, the Authority and the City will continue in full force and effect and the Reserve Policy Provider will be fully subrogated to the rights of all Owners of the Certificates so paid. In addition, the obligations of the Trustee, the Authority and the City hereunder, will continue in full force and effect, and shall not be terminated, until such time as there has paid all amounts (if any) due and owing to the Reserve Policy Provider under the Reserve Policy; and the Trustee will not distribute any funds to the City under the preceding paragraph unless the Authority has certified to the Trustee that there are no obligations then due and owing by the Authority to the Reserve Policy Provider under the Reserve Policy.

SECTION 13.02. *Records.* The Trustee shall keep complete and accurate records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the City, the Authority and any Owner, or the agent of any of them, at any reasonable time during regular business hours upon prior notice.

SECTION 13.03. *Notices.* Any notice, request, complaint, demand or other communication under this Trust Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 72 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Authority:*

City of Hayward
777 B Street, 2nd Floor
Hayward, California 94541
Attention: Director of Finance
Fax: (510) 583-3600

If to the Trustee:

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

SECTION 13.04. *Disqualified Certificates.* In determining whether the Owners of the requisite aggregate principal amount of Certificates have concurred in any demand, request, direction, consent or waiver under this Trust Agreement, Certificates which are owned or held by or for the account of the City (but excluding Certificates held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, *provided, however,* that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Certificates which the Trustee actually knows to be so owned or held shall be disregarded, unless all such Certificates are so owned in which case all such Certificates shall be deemed Outstanding. Upon request of the Trustee, the City shall specify in a certificate to the Trustee those Certificates disqualified pursuant to this Section and the Trustee may conclusively rely on such certificate.

SECTION 13.05. *Payment of Certificates After Discharge of Trust Agreement.* Notwithstanding any provisions of this Trust Agreement, but subject to any applicable laws of the State of California relating to the escheat of funds or property, any moneys held by the Trustee in trust for the payment of the principal or interest represented by any Certificates and remaining unclaimed for 2 years after the principal represented by all of the Certificates has become due and payable (whether at maturity or upon call for prepayment or by acceleration as provided in this Trust Agreement), if such moneys were so held at such date, or 2 years after the date of deposit of such moneys if deposited after said date when all of the Certificates became due and payable, shall be repaid (without liability for interest) to the City free from the trusts created by this Trust Agreement, and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the City as aforesaid, the Trustee shall (at the request of and at the cost of the City) mail, by first class mail postage prepaid, to the Owners of Certificates which have not yet been paid, at the respective addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Certificates so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof.

SECTION 13.06. *Governing Law.* This Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 13.07. *Binding Effect; Successors.* This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Trust Agreement either the Authority, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Trust Agreement contained by or on behalf of the Authority, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 13.08. *Authority and City Representatives.* Whenever under the provisions of this Trust Agreement the Authority or the City is required or permitted to take some action, including but not limited to the giving of any approval or the execution of some request, direction or other instrument, such action shall be made on behalf of the Authority by an Authority Representative and on behalf of the City by a City Representative, and any party hereto shall be fully authorized to rely upon any such action by an Authority Representative or a City Representative.

SECTION 13.09. *Execution in Counterparts.* This Trust 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 agreement.

SECTION 13.10. *Delivery of Canceled Certificates.* Whenever in this Trust Agreement provision is made for the surrender to or cancellation by the Trustee of any Certificates, the Trustee shall cancel and, unless directed in writing by the City Representative, destroy such Certificates and, upon the City's request, shall deliver a certificate of destruction with respect thereto to the City.

SECTION 13.11. *Headings.* The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Trust Agreement.

SECTION 13.13. *Waiver of Notice.* Whenever in this Trust Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice are not conditions precedent to the validity of any action taken in reliance upon such waiver.

SECTION 13.14. *Separability of Invalid Provisions.* In case any one or more of the provisions contained in this Trust Agreement or in the Certificates shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Trust Agreement, and this Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority and the City hereby declare that they would have entered into this Trust Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Certificates pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Trust Agreement may be held illegal, invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Trust Agreement as of the date and year first above written.

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.,
as Trustee**

By: _____
Authorized Officer

CITY OF HAYWARD

By: _____
Director of Finance

Attest:

City Clerk

**HAYWARD PUBLIC FINANCING
AUTHORITY**

By: _____
Treasurer

Attest:

Secretary

APPENDIX A

DEFINED TERMS

Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in this Appendix A have the respective meanings given them in this Appendix when used in this Trust Agreement and when used in the Lease.

“Additional Payments” means the amounts payable by the City under Section 4.4 of the Lease.

“Assignment Agreement” means the Assignment Agreement, dated as of _____ 1, 2016, between the Authority as assignor and the Trustee as assignee, as originally executed or as thereafter amended under 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 of California.

“Authority Representative” means the Executive Director, Treasurer or Secretary of the Authority, or any other person authorized by resolution of the Board of Directors of the Authority to act on behalf of the Authority under or with respect to the Lease and this Trust Agreement.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

“Business Day” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State of California, or in any state in which any Office of the Trustee is located.

“Certificates” means the Series A Certificates and the Series B Certificates.

“City” means the City of Hayward, a municipal corporation duly organized and existing under the laws of the State of California.

“City Representative” means the City Manager, the Director of Finance of the City or any other person authorized by resolution of the City Council of the City to act on behalf of the City under or with respect to this Trust Agreement and the Lease.

“Closing Date” means the day when the Certificates, duly executed by the Trustee, are delivered to the Original Purchaser.

“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 Certificates, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee

(which shall include legal fees and the first annual administration fee of the Trustee), financing discounts, legal fees and charges, insurance fees and charges (including premium for the Policy and the Reserve Policy), financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Certificates, and any charges and fees in connection with the foregoing.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 4.03.

“Depository” means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under Section 2.05.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Event of Default” means an event of default under the Lease, as defined in Section 8.1 thereof.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Certificates at a yield in excess of the yield on the Lease Payments.

“Federal Securities” means: (a) any 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 of the United States of America);; or (b) any obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed by the United States of America.

“Fiscal Year” means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period by the City as its fiscal year under written notice filed with the Trustee.

“Fitch” means Fitch Ratings, of New York, New York, and its successors.

“Information Services” the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system, or any successor system.

“Insurance and Condemnation Fund” means the fund by that name to be established and held by the Trustee under Section 6.01.

“Interest Payment Date” means November 1, 2016, and each May 1 and November 1 thereafter to and including the final date of maturity of the Certificates.

“Lease” means the Lease Agreement dated as of _____ 1, 2016, between the Authority as lessor and the City as lessee, as originally executed or as thereafter

amended under any duly authorized and executed amendments and supplements thereto.

“Lease Payment Date” means, with respect to any Interest Payment Date, the 15th Business Day preceding such Interest Payment Date.

“Lease Payment Fund” means the fund by that name established and held by the Trustee under Section 5.02.

“Lease Payments” means all payments required to be paid by the City under Section 4.3(a) of the Lease, including any prepayment thereof under Article IX of the Lease.

“Leased Property” means all of the land which is more particularly described in Appendix A to the Lease, consisting generally of the land and improvements constituting the Civic Center located at 777 B Street in the City. If the City exercises its option under Section 4.6 of the Lease with respect to the substitution of property or its option under Section 4.7 of the Lease with respect to the release of property, the term “Leased Property” will thereupon be modified accordingly.

“Net Proceeds” means any insurance proceeds or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Leased Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.05(a).

“Office” means the corporate trust office of the Trustee in San Francisco, California, except that with respect to presentation of Certificates for payment or for registration of transfer and exchange such term shall mean the office or agency of the Trustee at which, at any particular time, its corporate trust agency business shall be conducted.

Any such office or offices may be re-designated by the Trustee from time to time pursuant to written notice filed with the City and the Authority.

“Original Purchaser” means _____, as original purchaser of the Certificates.

“Outstanding”, when used as of any particular time with respect to Certificates, means (subject to the provisions of Section 13.05) all Certificates theretofore executed and delivered by the Trustee under this Trust Agreement except (a) Certificates theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Certificates deemed to have been paid under Section 13.01; and (c) Certificates in lieu of or in exchange for which other Certificates has been executed and delivered by the Trustee under Section 2.08.

“Owner”, when used with respect to a Certificate, means the person in whose name the ownership of such Certificate shall be registered on the Registration Books.

“Permitted Encumbrances” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article V of the Lease; (b) the Site Lease, the Lease and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor which is secured by a lien on the Leased Property; (d) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued following the Closing Date; and (e) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Leased Property for its intended purposes.

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein:

1. Federal Securities.
2. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):
 - a. Farmers Home Administration (FmHA)
Certificates of beneficial ownership
 - b. Federal Housing Administration Debentures (FHA)
 - c. General Services Administration
Participation certificates
 - d. Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations (participation certificates)
(not acceptable for certain cash-flow sensitive issues.)
 - e. U.S. Maritime Administration
Guaranteed Title XI financing
 - f. U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
3. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):
 - a. Federal Home Loan Bank System
Senior debt obligations (Consolidated debt obligations)
 - b. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates (Mortgage-backed securities)

Senior debt obligations

- c. Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations (excluded are stripped mortgage securities which are valued greater than par on the portion of unpaid principal.)
- d. Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations
- e. Resolution Funding Corp. (REFCORP) Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.
- f. Farm Credit System
Consolidated systemwide bonds and notes

4. Money market mutual funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of "AAAm-G"; "AAAm"; or "AA-m" and if rated by Moody's rated "Aaa", "Aa1" or "Aa2" (such funds may include funds for which the Trustee, its affiliates, parent or subsidiaries receives and retains a fee for services provided to the fund, including investment advisory, transfer agency, custodial or other management services).

5. Certificates of deposit secured at all times by collateral described in (1) and/or (2) above. CD's must have a one year or less maturity. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks whose short term obligations are rated "A-1+" or better by S&P and "Prime-1" by Moody's and may include the Trustee and its affiliates.

The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

6. Certificates of deposit (including those placed by a third party pursuant to an agreement between the City and the Trustee), bank deposit products, time deposits, demand deposits, trust funds, trust accounts, overnight bank deposits, interest bearing deposits, interest bearing money market accounts, banker's acceptances, savings accounts, deposit accounts or money market deposits (including those of the Trustee or any of its affiliates) which are fully insured by FDIC, including BIF and SAIF.

7. Commercial paper rated at the time of purchase "Prime-1" by Moody's and "A-1+" or better by S&P.

8. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest long-term rating categories assigned by such agencies.

9. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's and "A-1+" by S&P.

10. Repurchase or reverse repurchase agreements (including those of the Trustee or any of its affiliates) that provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the Trustee (buyer/lender), and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee in exchange for the securities at a specified date.

Repurchase or reverse repurchase agreements (“Repos”) must satisfy the following criteria:

a. Repos must be between the municipal entity and a dealer bank or securities firm

- (1) Primary dealers on the Federal Reserve reporting dealer list which fall under the jurisdiction of the SIPC and which are rated “A” or better by Standard & Poor’s Ratings Group and “A2” or better by Moody’s, or
- (2) Banks rated “A” or above by Standard & Poor’s Ratings Group and Moody’s Investor Services.

b. The written repo contract must include the following

- (1) Securities which are acceptable for transfer are:
 - (a) Direct U.S. governments
 - (b) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
- (2) The term of the repo may be up to 30 days
- (3) The collateral must be delivered to the municipal entity, Trustee or third party acting as agent for the Trustee before/simultaneous with payment (perfection by possession of certificated securities).
- (4) The Trustee has a perfected first priority security interest in the collateral.
- (5) Collateral is free and clear of third-party liens and in the case of SIPC broker was not acquired pursuant to a repo or reverse repo.
- (6) Failure to maintain the requisite collateral percentage, after a two day restoration period, will require the Trustee to liquidate collateral.
- (7) Valuation of Collateral
 - (a) The securities must be valued weekly, marked-to-market at current market price plus accrued interest

(b) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

c. Legal opinion which must be delivered to the municipal entity: Repo meets guidelines under state law for legal investment of public funds.

12. Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P. If, however, the issue is only rated by S&P (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals to satisfy this condition.

"Rebate Fund" means the fund by that name established and held by the Trustee under Section 10.05(f).

"Record Date" means the close of business on the 15th day of the month preceding each Interest Payment Date, whether or not such 15th day is a Business Day.

"Registration Books" means the records maintained by the Trustee under Section 2.11 for the registration of the ownership and transfer of ownership of the Certificates.

"Rental Period" means each period during the Term of the Lease commencing on and including August 2 in each year and extending to and including the next succeeding November 1, except that the first Rental Period begins on the Closing Date and ends on November 1, 2016.

"Reserve Fund" means the fund by that name established and held by the Trustee under Section 4.02.

"Reserve Policy" means _____.

"Reserve Policy Provider" means _____.

"Reserve Requirement" means, as of the date of calculation thereof, an amount equal to the lesser of (a) 10% of the original principal amount of the Certificates, or (b) the maximum amount of Lease Payments (excluding Lease Payments with respect to which the City shall have posted a security deposit pursuant to Section 9.1 of the Lease) coming due in the current or any future Fiscal Year, or (c) 125% of average annual Lease Payments.

"Securities Depositories" means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City designates in written notice filed with the Trustee.

“Series A Certificates” means the \$_____ aggregate principal amount of 2016 Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series A, executed and delivered and at any time Outstanding hereunder.

“Series A Certificates Proceeds Fund” means the fund established and held by the Trustee pursuant to Section 4.01(a).

“Series A Certificates” means the \$_____ aggregate principal amount of 2016 Federally Taxable Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series B, executed and delivered and at any time Outstanding hereunder.

“Series B Certificates Proceeds Fund” means the fund established and held by the Trustee pursuant to Section 4.01(b).

“Site Lease” means the Site Lease dated as of _____ 1, 2016, between the City and the Authority, as originally executed or as thereafter amended under any duly authorized and executed amendments and supplements thereto.

“S&P” means Standard & Poor’s Corporation, a division of the McGraw Hill Companies, of New York, New York, its successors and assigns.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

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

“Trust Agreement” means this Trust Agreement, as originally executed or as thereafter amended under any amendments or supplements hereto which are permitted to be made hereunder.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., or any successor thereto acting as Trustee hereunder.

“2007 Escrow Agreement” means the Escrow Deposit and Trust Agreement, dated as of _____ 1, 2016, by and between the City and The Bank of New York Mellon Trust Company, N.A., as 2007 Trustee and escrow agent.

APPENDIX B

FORM OF SERIES A CERTIFICATE OF PARTICIPATION

No. R-_____

\$_____

**2016 REFUNDING CERTIFICATE OF PARTICIPATION
(Civic Center and Capital Projects - 2007 Refunding), Series A**

Evidencing the Direct, Undivided Fractional Interest of the
Owner Thereof in Lease Payments to be Made by the

CITY OF HAYWARD

RATE OF INTEREST: _____% MATURITY DATE: NOVEMBER 1, _____ DATED DATE: _____, 2016 CUSIP: _____

REGISTERED OWNER:

PRINCIPAL AMOUNT: _____ DOLLARS

THIS IS TO CERTIFY THAT the Registered Owner identified above, or registered assigns, as the registered owner (the "Registered Owner") of this Certificate of Participation (this "Certificate") is the owner of a direct, undivided fractional interest in Lease Payments (the "Lease Payments") payable under a Lease Agreement dated as of _____ 1, 2016 (the "Lease"), between the Hayward Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority") and the City of Hayward, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), which Lease Payments and certain other rights and interests under the Lease have been assigned to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), having a corporate trust office in San Francisco, California (the "Office"), or such other or additional offices as the Trustee may designate from time to time as the corporate trust office.

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Lease, on the Maturity Date identified above, or any earlier prepayment date, the Principal Amount identified above representing a direct, undivided fractional share of the portion of the Lease Payments designated as principal, and to receive on November 1, 2016, and semiannually thereafter on May 1 and November 1 of each year (the "Interest Payment Dates") until payment in full of said principal, the Registered Owner's direct, undivided fractional share of the Lease Payments designated as interest coming due during the period immediately preceding each of the Interest Payment Dates.

Interest represented hereby shall be payable from the Interest Payment Date next preceding the date of execution of this Certificate unless (a) this Certificate is executed on an Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (b) unless this Certificate is executed on or before October 15, 2016, in which event interest is payable from the Dated Date identified above. The Registered Owner's share of the portion of the Lease Payments designated as interest is the result of the multiplication of the aforesaid share of the portion of the Lease Payments designated as principal by the Rate of Interest per annum identified above, calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal represented hereby is payable in lawful money of the United States of America, upon presentation and surrender hereof at the Trust Office of the Trustee, and interest represented hereby is payable by check mailed by first class mail by the Trustee on each Interest Payment Date to the Registered Owner at such Owner's address as it appears on the registration books of the Trustee as of the close of business on the 15th day of the month preceding such Interest Payment Date.

This Certificate has been executed and delivered by the Trustee under the terms of a Trust Agreement dated as of _____ 1, 2016, between the Trustee, the Authority and the City (the "Trust Agreement"). The Trustee is concurrently executing and delivering under the Trust Agreement the 2016 Federally Taxable Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series B.

The City has certified that it is authorized to enter into the Lease and the Trust Agreement under the laws of the State of California, for the purpose of leasing certain real property (the "Leased Property") used for the municipal purposes of the City. Reference is hereby made to the Lease and the Trust Agreement (copies of which are on file at the Trust Office of the Trustee) for a description of the terms on which the Certificates are delivered, the rights thereunder of the owners of the Certificates, the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Lease, to all of the provisions of the Lease and the Trust Agreement the Registered Owner of this Certificate, by acceptance hereof, assents and agrees.

The City is obligated under the Lease to pay the Lease Payments for the Leased Property from any source of available funds, subject to certain exceptions as set forth in the Lease. As more fully described in the Lease, the Lease Payments are subject to abatement during any period in which by reason of damage or destruction to the Leased Property in whole or in part, or by reason of eminent domain proceedings with respect to the Leased Property in whole or in part, there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof; such abatement shall be in an amount 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 portions of the Leased Property. The obligation of the City to pay the Lease Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay the Lease Payments does not constitute a debt of the City, the State of California or any of its political subdivisions, and does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

The Certificates maturing on or before November 1, 20__, are not subject to optional prepayment before their respective stated maturities. The Certificates maturing on or after November 1, 20__, are subject to prepayment prior to their respective stated maturities, at the option of the City, in whole, or in part among maturities on such basis as designated by the City and by lot within any one maturity, on November 1, 20__, or on any date thereafter, upon payment of a prepayment price of 100% of the principal amount of the Certificates to be prepaid, together with accrued interest to the date fixed for prepayment.

The Certificates are subject to mandatory prepayment, in whole or in part, on any business day, from certain proceeds of insurance or eminent domain proceedings credited towards the prepayment of the Lease Payments under the Lease and the Trust Agreement, at a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest represented thereby to the date fixed for prepayment, without premium.

As provided in the Trust Agreement, the Trustee shall mail notice of prepayment of the Certificates by first class mail, postage prepaid, not less than 30 nor more than 60 days before the prepayment date, to the registered owners of the Certificates to be prepaid, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for prepayment or the cessation of accrual of interest represented thereby. If this Certificate is called for prepayment and payment is duly provided therefor as specified in the Trust Agreement, interest represented hereby shall cease to accrue from and after the date fixed for prepayment. The notice may be conditional as described in the Trust Agreement.

This Certificate is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such transfer a new Certificate or Certificates, of authorized denomination or denominations, representing the same aggregate principal amount and representing the same rate of interest, will be delivered to the transferee in exchange herefor. The City, the Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, whether or not this Certificate shall be overdue, and the City, the Authority and the Trustee shall not be affected by any notice to the contrary.

The Trustee is not required to register the transfer or exchange of any Certificate during the period in which the Trustee is selecting certificates for prepayment or any Certificate selected for prepayment.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal amount of the Certificates then outstanding, and may be amended without such consent under certain circumstances; provided that no such amendment shall extend the fixed maturity of any Certificate or reduce the interest or principal represented thereby, without the express consent of the owner of such Certificate.

The Trustee has no obligation or liability to the owners of the Certificate to make any payment of the interest, principal or premium (if any) represented by the Certificates, other than as provided in the Trust Agreement from the Lease Payments and amounts credited thereto received or held by the Trustee. The recitals herein shall be taken as statements of the Authority and the City and not of the Trustee. The Trustee has executed this Certificate solely in its capacity as Trustee under the Trust Agreement and not in its individual or personal capacity.

Unless this Certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC") to the Trustee for registration of transfer, exchange or payment, and any Certificate executed and delivered is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by The Bank of New York Mellon Trust Company, N.A., as Trustee, acting under the Trust Agreement.

Execution Date: _____

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee**

By: _____
Authorized Signatory

FORM OF ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within registered Certificate and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution (banks, stockbrokers, saving and loan associations and credit unions with membership in an approved signature medallion program) pursuant to Securities and Exchange Commission Rule 17Ad-15.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Certificate in every particular without alteration or enlargement or any change whatsoever.

APPENDIX C

FORM OF SERIES B CERTIFICATE OF PARTICIPATION

No. R-_____

\$_____

2016 FEDERALLY TAXABLE REFUNDING CERTIFICATE OF PARTICIPATION

(Civic Center and Capital Projects - 2007 Refunding), Series B

Evidencing the Direct, Undivided Fractional Interest of the Owner Thereof in Lease Payments to be Made by the

CITY OF HAYWARD

RATE OF INTEREST: _____% MATURITY DATE: NOVEMBER 1, _____ DATED DATE: _____, 2016 CUSIP: _____

REGISTERED OWNER:

PRINCIPAL AMOUNT: _____ DOLLARS

THIS IS TO CERTIFY THAT the Registered Owner identified above, or registered assigns, as the registered owner (the "Registered Owner") of this Certificate of Participation (this "Certificate") is the owner of a direct, undivided fractional interest in Lease Payments (the "Lease Payments") payable under a Lease Agreement dated as of _____ 1, 2016 (the "Lease"), between the Hayward Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority") and the City of Hayward, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), which Lease Payments and certain other rights and interests under the Lease have been assigned to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), having a corporate trust office in San Francisco, California (the "Office"), or such other or additional offices as the Trustee may designate from time to time as the corporate trust office.

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Lease, on the Maturity Date identified above, or any earlier prepayment date, the Principal Amount identified above representing a direct, undivided fractional share of the portion of the Lease Payments designated as principal, and to receive on November 1, 2016, and semiannually thereafter on May 1 and November 1 of each year (the "Interest Payment Dates") until payment in full of said principal, the Registered Owner's direct, undivided fractional share of the Lease Payments designated as interest

coming due during the period immediately preceding each of the Interest Payment Dates.

Interest represented hereby shall be payable from the Interest Payment Date next preceding the date of execution of this Certificate unless (a) this Certificate is executed on an Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (b) unless this Certificate is executed on or before October 15, 2016, in which event interest is payable from the Dated Date identified above. The Registered Owner's share of the portion of the Lease Payments designated as interest is the result of the multiplication of the aforesaid share of the portion of the Lease Payments designated as principal by the Rate of Interest per annum identified above, calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal represented hereby is payable in lawful money of the United States of America, upon presentation and surrender hereof at the Trust Office of the Trustee, and interest represented hereby is payable by check mailed by first class mail by the Trustee on each Interest Payment Date to the Registered Owner at such Owner's address as it appears on the registration books of the Trustee as of the close of business on the 15th day of the month preceding such Interest Payment Date.

This Certificate has been executed and delivered by the Trustee under the terms of a Trust Agreement dated as of _____ 1, 2016, between the Trustee, the Authority and the City (the "Trust Agreement"). The Trustee is concurrently executing and delivering under the Trust Agreement the 2016 Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series A.

The City has certified that it is authorized to enter into the Lease and the Trust Agreement under the laws of the State of California, for the purpose of leasing certain real property (the "Leased Property") used for the municipal purposes of the City. Reference is hereby made to the Lease and the Trust Agreement (copies of which are on file at the Trust Office of the Trustee) for a description of the terms on which the Certificates are delivered, the rights thereunder of the owners of the Certificates, the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Lease, to all of the provisions of the Lease and the Trust Agreement the Registered Owner of this Certificate, by acceptance hereof, assents and agrees.

The City is obligated under the Lease to pay the Lease Payments for the Leased Property from any source of available funds, subject to certain exceptions as set forth in the Lease. As more fully described in the Lease, the Lease Payments are subject to abatement during any period in which by reason of damage or destruction to the Leased Property in whole or in part, or by reason of eminent domain proceedings with respect to the Leased Property in whole or in part, there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof; such abatement shall be in an amount 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 portions of the Leased Property. The obligation of the City to pay the Lease Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay the Lease Payments does not constitute a debt of the City, the State of California or any of its political subdivisions, and does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

The Certificates are not subject to optional prepayment before their respective stated maturities.

The Certificates are subject to mandatory prepayment, in whole or in part, on any business day, from certain proceeds of insurance or eminent domain proceedings credited towards the prepayment of the Lease Payments under the Lease and the Trust Agreement, at a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest represented thereby to the date fixed for prepayment, without premium.

As provided in the Trust Agreement, the Trustee shall mail notice of prepayment of the Certificates by first class mail, postage prepaid, not less than 30 nor more than 60 days before the prepayment date, to the registered owners of the Certificates to be prepaid, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for prepayment or the cessation of accrual of interest represented thereby. If this Certificate is called for prepayment and payment is duly provided therefor as specified in the Trust Agreement, interest represented hereby shall cease to accrue from and after the date fixed for prepayment. The notice may be conditional as described in the Trust Agreement.

This Certificate is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such transfer a new Certificate or Certificates, of authorized denomination or denominations, representing the same aggregate principal amount and representing the same rate of interest, will be delivered to the transferee in exchange herefor. The City, the Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, whether or not this Certificate shall be overdue, and the City, the Authority and the Trustee shall not be affected by any notice to the contrary.

The Trustee is not required to register the transfer or exchange of any Certificate during the period in which the Trustee is selecting certificates for prepayment or any Certificate selected for prepayment.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal amount of the Certificates then outstanding, and may be amended without such consent under certain circumstances; provided that no such amendment shall extend the fixed maturity of any Certificate or reduce the interest or principal represented thereby, without the express consent of the owner of such Certificate.

The Trustee has no obligation or liability to the owners of the Certificate to make any payment of the interest, principal or premium (if any) represented by the Certificates, other than as provided in the Trust Agreement from the Lease Payments and amounts credited thereto received or held by the Trustee. The recitals herein shall be taken as statements of the Authority and the City and not of the Trustee. The Trustee has executed this Certificate solely in its capacity as Trustee under the Trust Agreement and not in its individual or personal capacity.

Unless this Certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC") to the Trustee for registration of transfer, exchange or payment, and any Certificate executed and delivered is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by The Bank of New York Mellon Trust Company, N.A., as Trustee, acting under the Trust Agreement.

Execution Date: _____

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee**

By: _____
Authorized Signatory

FORM OF ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within registered Certificate and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution (banks, stockbrokers, saving and loan associations and credit unions with membership in an approved signature medallion program) pursuant to Securities and Exchange Commission Rule 17Ad-15.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Certificate in every particular without alteration or enlargement or any change whatsoever.

