

Draft
ESCROW DEPOSIT AND TRUST AGREEMENT

Relating to

\$31,820,000
2007 Refunding Certificates of Participation
(Civic Center and Capital Projects)

This ESCROW DEPOSIT AND TRUST AGREEMENT (this “**Agreement**”), dated as of ____ 1, 2016, is between the CITY OF HAYWARD, a municipal corporation organized and existing under the Constitution and laws of the State of California (the “**City**”), and 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, acting as escrow agent for the 2007 Certificates described below (the “**Escrow Agent**”) and as trustee (the “**2007 Trustee**”) for the 2007 Certificates.

B A C K G R O U N D :

1. The City previously entered into a Lease Agreement, dated as of August 1, 2007 (the “**2007 Lease Agreement**”) with the Hayward Public Financing Authority (the “**Authority**”), pursuant to which the City agreed to make certain lease payments in the aggregate principal amount of \$31,820,000 (the “**2007 Lease Payments**”) and caused execution and delivery of 2007 Refunding Certificates of Participation (Civic Center and Capital Projects) (the “**2007 Certificates**”), pursuant to a Trust Agreement, dated as of August 1, 2007 (the “**2007 Trust Agreement**”), among the City, the Authority and the 2007 Trustee.

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

3. In order to take advantage of prevailing bond market conditions, the City wishes to refinance the 2007 Certificates.

4. In order to refinance the 2007 Lease Payments and prepay the 2007 Certificates, the City has caused The Bank of New York Mellon Trust Company, N.A., as trustee (the “**2016 Trustee**”) under a Trust Agreement, dated as of ____ 1, 2016, by and among the City, the Authority and the 2016 Trustee (the “**2016 Trust Agreement**”), to execute and deliver (i) 2016 Refunding Certificates of Participation (Civic Center and Capital Projects - 2007 Refunding), Series A (the “**Series A Refunding Certificates**”) and (ii) 2016 Federally Taxable Refunding Certificates of Participation (Civic Center and

Capital Projects - 2007 Refunding), Series B (the “**Series B Refunding Certificates**”; together with the Series A Refunding Certificates, the “**Refunding Certificates**”).

5. Proceeds of the Series B Certificates will be used to prepay the portion of the 2007 Lease Payments and the related portion of the 2007 Certificates that are attributable to the advance refunding of the 199 Lease Agreement.

6. The City wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the prepayment in full of the 2007 Lease Payments and the prepayment in full of the principal and interest and premium (if any) with respect to the outstanding 2007 Certificates, and to provide certain directions to the 2007 Trustee with respect to the 2007 Certificates.

7. As a result of the deposit and investment of funds in accordance with this Agreement, the 2007 Lease Payments will be deemed paid and prepaid under Section 9.1 of the 2007 Lease Agreement, and the 2007 Certificates will be discharged and defeased in accordance with the provisions of Section 13.01 of the 2007 Trust Agreement and prepaid in accordance with the provisions of Section 3.01(a) of the 2007 Trust Agreement.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, the City and The Bank of New York Mellon Trust Company, N.A., as Escrow Agent and 2007 Trustee, hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent; Establishment of Escrow Fund.* The City hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to prepay the 2007 Lease Payments and defease and prepay the 2007 Certificates in accordance with the 2007 Trust Agreement. The Escrow Agent is directed to establish an escrow fund (the “**Escrow Fund**”) to be held by the Escrow Agent in trust as an irrevocable escrow securing the payment of the 2007 Lease Payments and the 2007 Certificates as set forth below. All cash and securities in the Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the 2007 Lease Payments in accordance with the 2007 Lease Agreement and the payment of the principal of and interest and premium (if any) with respect to the 2007 Certificates in accordance with the 2007 Trust Agreement.

If at any time the Escrow Agent receives actual knowledge that the cash and securities in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the 2007 Certificates, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 2. *Deposit and Investment of Amounts in Escrow Fund.* On _____, 2016 (the “**Closing Date**”), the City will cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the proceeds of the Refunding Bonds, as follows: (i) \$_____ of Series A Certificates proceeds and (ii) \$_____ of Series B Certificates proceeds.

In addition, the City hereby directs the 2007 Trustee to transfer to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____, to be derived from moneys related to the 2007 Certificates that are available as a result of the defeasance of the 2007 Certificates.

On the Closing Date, the Escrow Agent shall invest \$_____ of the amounts deposited in the Escrow Fund in the federal securities listed on Exhibit A; the federal securities listed on Exhibit A are non-callable "Federal Securities" as defined in the 2007 Lease Agreement. The Escrow Agent shall hold the remaining \$_____ in cash, uninvested.

If the Escrow Agent learns that the Department of the Treasury or the Bureau of Fiscal Service will not, for any reason, accept a subscription of state and local government series securities ("**SLGS**") that is to be submitted pursuant to this Agreement, the Escrow Agent shall promptly request alternative written investment instructions from the City with respect to funds which were to be invested in SLGS. The City shall promptly deliver such instructions, which shall direct investment in non-callable Federal Securities that comply with the requirements of Section 9.1(b) of the 2007 Lease Agreement, along with a verification report and defeasance opinion of bond counsel. The Escrow Agent shall follow such instructions and, upon the maturity of any such alternative investment, the Escrow Agent shall hold such funds uninvested and without liability for interest until receipt of further written instructions from the City. In the absence of investment instructions from the City, the Escrow Agent shall not be responsible for the investment of such funds or interest thereon. The Escrow Agent may conclusively rely upon the City's selection of an alternative investment as a determination of the alternative investment's legality and suitability and shall not be liable for any losses related to the alternative investments or for compliance with any yield restriction applicable thereto.

SECTION 3. *Application of Amounts in Escrow Fund.* The Escrow Agent is hereby instructed to withdraw from the Escrow Fund and transfer to the 2007 Trustee an amount required to pay the principal of and interest and prepayment premium (if any) on the 2007 Certificates, in accordance with the schedule attached as Exhibit B hereto, which payment shall also constitute payment of the 2007 Lease Payments.

Following the payment and prepayment of the 2007 Lease Payments and the 2007 Certificates in full, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to the 2016 Trustee for deposit in the Lease Payment Fund established under the Refunding Trust Agreement, to be applied to pay interest next coming due and payable with respect to the Refunding Certificates.

SECTION 4. *Irrevocable Election to Prepay 2007 Certificates; Defeasance Notice.* The City has irrevocably elected to pay and prepay all of the unpaid 2007 Lease Payments and all of the outstanding 2007 Certificates on the date set forth in Exhibit B, in accordance with the provisions of the 2007 Trust Agreement. The City hereby directs the 2007 Trustee to give notice of the prepayment of the 2007 Certificates in accordance with the requirements of the 2007 Trust Agreement, at the expense of the City, using the form set forth in Exhibit C.

The City further hereby directs the 2007 Trustee to file on the Closing Date the notice attached as Exhibit D on the Municipal Securities Rulemaking Board's EMMA system. The sole remedy for failure to file such notice on EMMA shall be an action by

the holders of the 2007 Certificates in mandamus for specific performance or similar remedy to compel performance.

SECTION 5. *Compensation to Escrow Agent.* The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, prepayment expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the cash and securities at any time on deposit in the Escrow Fund.

SECTION 6. *Immunities and Liability of Escrow Agent.* The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not have any liability hereunder except to the extent of its negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special, indirect or consequential damages. The Escrow Agent shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Agent may consult with legal counsel of its own choice and the Escrow Agent shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Agent shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and securities to pay the principal, interest and prepayment premium with respect to the 2007 Certificates.

Whenever in the administration of this Agreement the Escrow Agent deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and shall be full protection for any action taken or not taken by the Escrow Agent in good faith reliance thereon.

The Escrow Agent may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Agent in connection with this Agreement and believed by the Escrow Agent to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care.

The Escrow Agent may at any time resign by giving 30 days written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Agent from its obligations hereunder by

written instrument, a copy of which instrument shall be delivered to the resigning Escrow Agent and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Agent shall be the successor of the Escrow Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The City shall indemnify, defend and hold harmless the Escrow Agent and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Agent for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent directly or indirectly relating to, or arising from, claims against the Escrow Agent by reason of its participation in the transactions contemplated hereby except to the extent caused by the Escrow Agent's negligence or willful misconduct. The provisions of the foregoing sentence shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

The Escrow Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("**Instructions**") given pursuant to this Agreement and delivered using Electronic Means ("**Electronic Means**" means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Escrow Agent, or another method or system specified by the Escrow Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Escrow Agent 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, whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Agent Instructions using Electronic Means and the Escrow Agent in its discretion elects to act upon such Instructions, the Escrow Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Escrow Agent cannot determine the identity of the actual sender of such Instructions and that the Escrow Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Agent and that the City 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. The Escrow Agent shall not be liable for any losses, costs or expenses arising

directly or indirectly from the Escrow Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Escrow Agent, including without limitation the risk of the Escrow Agent 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 Escrow Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (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 Escrow Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

SECTION 7. *Termination of Agreement.* Upon payment in full of the principal of and interest and prepayment premium on the 2007 Certificates and all fees, expense and charges of the Escrow Agent as described above, this Agreement shall terminate and the Escrow Agent shall be discharged from any further obligation or responsibility hereunder.

SECTION 8. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 10. *Amendments.* Subject to Section 10, this Agreement may not be amended except in writing by the parties hereto and with an opinion of nationally recognized bond counsel to the effect that the amendment will not result in loss of the exemption from federal income taxes of interest on any of the 2007 Certificates or the Refunding Certificates.

CITY OF HAYWARD

By: _____
City Manager

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.**, as Escrow
Agent and as 2007 Trustee

By _____
Authorized Officer

EXHIBIT A
ESCROW SECURITIES

Type of Security	Purchase Date	Maturity Date	First Int Pmt Date	Par Amount	Rate
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EXHIBIT B

ESCROW REQUIREMENTS

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Principal Payment Due</u>	<u>Principal Redeemed</u>	<u>Total Payment</u>
8/1/16				
2/1/17				
8/1/17				

EXHIBIT C

FORM OF NOTICE OF PREPAYMENT

\$31,820,000
2007 Refunding Certificates of Participation
(Civic Center and Capital Projects)

NOTICE IS HEREBY GIVEN, by the City of Hayward (the "City") that all of the captioned certificates of participation (the "2007 Certificates") have been defeased and discharged under and within the meaning of the Trust Agreement, dated as of August 1, 2007, relating to the 2007 Certificates (the "2007 Trust Agreement"), and that the City has irrevocably elected to prepay the outstanding 2007 Certificates on August 1, 2017, at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium.

The 2007 Certificates consist of the following:

<u>Maturity Date</u>	<u>Principal</u>	<u>Interest Rate</u>	<u>CUSIP</u>
<u>October 1</u>	<u>Amount</u>		
2016			
2017			
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			

On August 1, 2017, there will become due on each of the 2007 Certificates the prepayment price thereof, with accrued and unpaid interest thereof to August 1, 2017, and after August 1, 2017, interest thereon shall cease to accrue. Funds for the payment of the 2007 Certificates have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow agent, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2007 Certificates has been verified by Causey Demgen & Moore, certified public accountants.

Holders of the Bonds are requested to present their Bonds, at the following addresses:

First Class/Registered/Certified

The Bank of New York Mellon
Global Corporate Trust
P.O. Box 396
East Syracuse, New York
13057

Express Delivery Only

The Bank of New York Mellon
Global Corporate Trust
111 Sanders Creek Parkway
East Syracuse, New York 13057

By Hand Only

The Bank of New York Mellon
Global Corporate Trust
Corporate Trust Window
101 Barclay Street 1st Floor East
New York, New York 10286

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Corporate Trust Department, Bondholder Relations, telephone number (800) 254-2826.

Payment of interest on the 2007 Certificates shall be made by check or, at the option of any owner of at least \$1,000,000 aggregate principal amount of 2007 Certificates, by wire transfer to a bank account in the United States of America.

**Note: The City and the Escrow Agent shall not be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to the correctness of the CUSIP numbers indicated in the notice or as printed on any Bond. They are included solely for the convenience of the holders.*

Dated: ____, 2017

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

EXHIBIT D

FORM OF NOTICE OF DEFEASANCE

**\$31,820,000
2007 Refunding Certificates of Participation
(Civic Center and Capital Projects)**

NOTICE IS HEREBY GIVEN, by the City of Hayward (the "City") that the captioned certificates of participation (the "2007 Certificates") have been defeased and discharged under and within the meaning of the Trust Agreement, dated as of August 1, 2007, relating to the 2007 Certificates (the "2007 Trust Agreement"). Funds for the payment of the 2007 Certificates have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow agent, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2007 Certificates has been verified by Causey, Demgen & Moore, certified public accountants.

As a consequence of the foregoing actions and in accordance with the 2007 Trust Agreement, all obligations of The Bank of New York Mellon Trust Company, N.A., as trustee for the 2007 Certificates, the Hayward Public Financing Authority and the City with respect to the 2007 Certificates has ceased and terminated, except the obligation to use moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The outstanding 2007 Certificates consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
October 1			
2016			
2017			
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			

The City has irrevocably elected to prepay all of the outstanding 2007 Certificates on August 1, 2017, at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium.

Additional information regarding the foregoing actions may be obtained from The Bank of New York Mellon Trust Company, N.A., Corporate Trust Department, Bondholder Relations, telephone number (800) 254-2826.

**Note: The City and the Escrow Agent shall not be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to the correctness of the CUSIP numbers indicated in the notice or as printed on any Bond. They are included solely for the convenience of the holders.*

Dated: _____, 2016

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