

ESCROW DEPOSIT AND TRUST AGREEMENT

Relating to

\$67,535,000

City of Hayward

2015 Certificates of Participation (Capital Projects)

This ESCROW DEPOSIT AND TRUST AGREEMENT (this “**Agreement**”), dated as of _____ 1, 2023, is between the CITY OF HAYWARD, a chartered city and municipal corporation organized and existing under the 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 Prior Certificates described below (the “**Escrow Agent**”) and as successor trustee (the “**Prior Trustee**”) for the Prior Certificates.

BACKGROUND:

1. The Hayward Public Financing Authority (the “**Authority**”) and the City previously entered into a Lease Agreement, dated as of August 1, 2015 (the “**Prior Lease**”), for the purpose of financing acquisition and construction of a number of capital improvements, including, but not limited to, (i) a new library and community learning center, (ii) improvements to existing fire stations and (iii) complete street rehabilitation and slurry seal repairs, under which the City agreed to pay semiannual lease payments (the “**Prior Lease Payments**”) to the Authority for use and occupancy of certain of the City’s fire stations and a library and community learning center (the “**Prior Leased Property**”).

2. The Authority assigned its rights to receive the Prior Lease Payments to Prior Trustee, pursuant to an Assignment Agreement, dated as of October 1, 2015 (the “**Prior Assignment Agreement**”).

3. Pursuant to a Trust Agreement, dated as of October 1, 2015 (the “**Prior Trust Agreement**”), the Prior Trustee caused to be executed and delivered the \$67,535,000 City of Hayward 2015 Certificates of Participation (Capital Projects) (the “**Prior Certificates**”), which evidence direct, undivided fractional ownership interests in the Prior Lease Payments.

4. Section 9.2 of the Prior Lease provides that the City may prepay the Prior Lease Payments on November 1 2023, in an amount equal to the principal component of the Prior Lease Payments to be prepaid, plus accrued interest to the prepayment date, without a prepayment premium.

5. Section 9.1 of the Prior Lease authorizes the City to establish a security deposit for prepayment of the Prior Lease Payments in amount sufficient to prepay the Prior Lease Payments, after which all obligations of the City under the Prior Lease shall cease and terminate, except for the obligation to pay the Prior Lease Payments from the security deposit; and

6. Under Section 3.01 of the Prior Trust Agreement, the Prior Certificates are subject to prepayment on November 1, 2023, and any date thereafter, without premium; and

7. In order to take advantage of prevailing bond market conditions, the City wishes to refinance the Prior Lease Payments and to cause a redemption of the Prior Certificates.

8. To that end, the City has proposed to lease certain real property to the Authority in consideration of the payment by the Corporation of an upfront rental payment that is sufficient to provide funds to refinance the Prior Certificates.

9. In order to raise funds for such purpose, and pursuant to a Trust Agreement, dated as of _____ 1, 2023 (the “**Refunding Trust Agreement**”), the City proposes to cause execution and delivery of its City of Hayward 2023 Refunding Certificates of Participation (Lease Refinancing) (the “**Refunding Certificates**”).

10. 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 payment and prepayment of the Prior Lease Payments and the Prior Certificates, and to provide certain directions to the Prior Trustee with respect to the Prior Certificates.

11. As a result of the deposit and investment of funds in accordance with this Agreement, the City shall have established a security deposit for the Prior Lease Payments in accordance with Section 9.1 of the Prior Lease and Section 13.01 of the Prior 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 Prior 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 defease, pay and prepay the Prior Lease Payments and the Prior Certificates in accordance with the Prior Lease and the Prior 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 Prior Certificates as set forth below. All cash in the Escrow Fund is hereby irrevocably pledged as a special fund for the payment of the principal of and interest and premium (if any) with respect to the Prior Certificates in accordance with the Prior Trust Agreement.

If at any time the Escrow Agent receives actual knowledge that the cash in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the Prior 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 _____, 2023 (the “**Closing Date**”), the City, pursuant to the Refunding Trust Agreement, 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 Certificates.

In addition, the City hereby directs the Prior Trustee to transfer to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____, to be derived from moneys in the Reserve Fund (\$____) and the Lease Payment Fund (\$____) established and held by the Prior Trustee under the Prior Trust Agreement that are available as a result of the defeasance of the Prior 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 D; the federal securities listed on Exhibit D are non-callable “Federal Securities” as defined in the Prior Lease. The Escrow Agent shall hold the remaining \$_____ in cash, uninvested.

At the written direction of the City, the Escrow Agent shall invest and reinvest any proceeds received from any of the Federal Securities acquired pursuant to this Section 2 (the “**Original Federal Securities**”), and the cash originally deposited into the Escrow Fund, for a period ending not later than the date on which such proceeds or cash are required for the purposes specified in Section 3 and maturing in an amount at least equal to their purchase price, in Federal Securities; provided, however, that with respect to any such reinvestment, such written directions of the City shall be accompanied by an opinion of a certified public accountant as to the sufficiency of the amounts in the Escrow Fund following any such reinvestment and an opinion of bond counsel that investment in accordance with such directions will not affect, for Federal income tax purposes, the exemption from Federal income taxes of the interest with respect to the Prior Certificates or, if applicable, the Refunding Certificates. In the event that the City shall fail to file any such written directions with the Escrow Agent concerning the reinvestment of any such proceeds, such proceeds shall be held uninvested by the Escrow Agent.

The City may at any time direct the Escrow Agent to substitute noncallable Federal Securities for any or all the Federal Securities then deposited in the Escrow Fund, provided that any such direction and substitution shall be accompanied by an opinion of a certified public accountant as to the sufficiency of the amounts in the Escrow Fund following any such substitution and, further, to be accompanied by an opinion of bond counsel that investment in accordance with such directions will not affect, for Federal income tax purposes, the exemption from Federal income taxes of the interest with respect to the Prior Certificates or, if applicable, the Refunding Certificates. In the event that, following any such substitution of Federal Securities pursuant to this Section 2, there is an amount of moneys or Federal Securities in excess of an amount sufficient to make the payments required by Section 3 hereof, such excess shall be transferred to the Prior Trustee, for deposit into the Lease Payment Fund for the Refunding Certificates.

SECTION 3. *Application of Amounts in Escrow Fund.* The Escrow Agent is hereby instructed to withdraw from the Escrow Fund and transfer to the Prior Trustee an amount required to pay the principal of and interest and prepayment premium (if any) with respect to the Prior Certificates, in accordance with the schedule attached as Exhibit A hereto.

Following the payment and prepayment of the Prior Certificates in full, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to The Bank of New York Mellon Trust Company, N.A., as trustee for the Refunding Certificates, 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 Prior Certificates; Defeasance Notice.* The City has irrevocably elected to pay and prepay all of the outstanding Prior Certificates on the date set forth in Exhibit A, in accordance with the provisions of the Prior Trust Agreement. Pursuant to a written direction of the Authority, the Prior Trustee shall give notice of the prepayment of the Prior Certificates in accordance with the requirements of the Prior Trust Agreement, at the expense of the City, using the form set forth in Exhibit B.

The City hereby directs the Prior Trustee to file on the Closing Date the notice attached as Exhibit C 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 Prior 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, redemption expenses, legal fees and other costs and expenses relating hereto. 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 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 redemption premium (if any) with respect to the Prior 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 and the Authority. Upon receiving such notice of resignation, the City and the Authority 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 agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail (provided, that for purposes of this Agreement, an e-mail does not constitute a notice, request or other communication hereunder but rather the portable document format or similar attachment attached to such e-mail shall constitute a notice, request or other communication hereunder), facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Agent shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such

designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) 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 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 instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions 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.

The Escrow Agent shall furnish the City periodic cash transaction statements which include detail for all investment transactions effected by the Escrow Agent or brokers selected by the City. Upon the City's election, such statements will be delivered via the Escrow Agent's online service and upon electing such service, paper statements will be provided upon request. The City waives the right to receive brokerage confirmations of security transactions effected by the Escrow Agent as they occur, to the extent permitted by law. The City further understands that trade confirmations for securities transactions effected by the Escrow Agent will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

SECTION 7. *Termination of Agreement.* Upon payment in full of the principal of and interest and redemption premium (if any) on the Prior 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.

CITY OF HAYWARD

By: _____
City Manager

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

By _____
Authorized Officer

ACKNOWLEDGED AND CONSENTED TO:

**HAYWARD PUBLIC FINANCING
AUTHORITY**

By: _____
Executive Director

ATTEST:

By _____
Secretary

EXHIBIT A

ESCROW REQUIREMENTS

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Principal Prepaid</u>	<u>Total Payment</u>
11/1/23				

EXHIBIT B

FORM OF PREPAYMENT NOTICE

\$67,535,000

City of Hayward

**2015 Certificates of Participation
(Capital Projects)**

Original Date of Issuance: October 14, 2015

NOTICE IS HEREBY GIVEN, by the City of Hayward (the "City") that the captioned certificates of participation (the "2015 Certificates") have been called for prepayment under and within the meaning of the Trust Agreement, dated as of October 1, 2015 (the "2015 Trust Agreement"), on [November 1, 2023] (the "Prepayment Date"), at a prepayment price equal to the par amount thereof together with accrued interest thereon to the Prepayment Date, without premium (the "Prepayment Price").

The 2015 Certificates to be prepaid on the Prepayment Date consist of the following:

<u>Maturity Date</u> <u>(November 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>CUSIP†</u>
2024	\$3,710,000	4.000%	KP1
2025	3,855,000	4.000	KQ9
2026	4,010,000	3.000	KR7
2027	4,130,000	3.000	KS5
2028	4,255,000	3.000	KT3
2029	4,380,000	3.125	KU0
2030	4,520,000	3.250	KV8
2031	4,665,000	3.250	KW6
2032	4,820,000	5.000	KX4
2033	5,060,000	5.000	KY2
2034	5,310,000	3.500	KZ9

†: Base CUSIP 421209

On the Prepayment Date, the Prepayment Price will become due and payable upon each 2015 Certificate called for prepayment and interest with respect thereto will cease to accrue from and after the Prepayment Date.

The CUSIP number of the 2015 Certificates has been assigned by an independent service and is included in this notice solely for the convenience of the Owners and neither The Bank of New York Mellon Trust Company, N.A., as trustee for the 2015 Certificates (the "2015 Trustee"), the City or the Authority shall be liable for any inaccuracies in such numbers.

Payment of the Prepayment Price of the 2015 Certificates called for prepayment will become due and payable on the Prepayment Date upon presentation and surrender thereof in the following manner:

[to come]

[payment/surrender information to come from BNY]

IMPORTANT NOTICE

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

Dated: _____, 2023
**THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A.,
as 2015 Trustee**

EXHIBIT C

FORM OF NOTICE OF DEFEASANCE

\$67,535,000

City of Hayward

**2015 Certificates of Participation
(Capital Projects)**

Original Date of Issuance: October 14, 2015

NOTICE IS HEREBY GIVEN, by the City of Hayward (the “City”) that the captioned certificates of participation (the “2015 Certificates”) have been defeased and discharged under and within the meaning of the Trust Agreement, dated as of October 1, 2015, relating to the 2015 Certificates (the “2015 Trust Agreement”). Funds for the payment of the principal and interest due with respect to the 2015 Certificates on [November 1, 2023] and to pay and prepay the 2015 Certificates maturing on and after November 1, 2023 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 2015 Certificates has been verified by an independent certified public accountant.

The City has irrevocably elected to prepay on [November 1, 2023] all of the outstanding 2015 Certificates maturing on and after November 1, 2024, (the “Prepayment Date”), at a Prepayment Price equal to the par amount thereof together with accrued interest thereon to the Prepayment Date, without premium.

As a consequence of the foregoing actions and in accordance with the 2015 Trust Agreement, all obligations of The Bank of New York Mellon Trust Company, N.A., as successor trustee for the 2015 Certificates and the City with respect to the 2015 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 2015 Certificates consist of the following:

<u>Maturity Date</u> <u>(November 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>CUSIP†</u>
2023	\$3,530,000	5.000%	KN6
2024	3,710,000	4.000	KP1
2025	3,855,000	4.000	KQ9
2026	4,010,000	3.000	KR7
2027	4,130,000	3.000	KS5
2028	4,255,000	3.000	KT3
2029	4,380,000	3.125	KU0
2030	4,520,000	3.250	KV8
2031	4,665,000	3.250	KW6
2032	4,820,000	5.000	KX4
2033	5,060,000	5.000	KY2
2034	5,310,000	3.500	KZ9

†: Base CUSIP 421209

The CUSIP number of the 2015 Certificates has been assigned by an independent service and is included in this notice solely for the convenience of the Owners and neither The Bank of New York Mellon Trust Company, N.A., as trustee for the 2015 Certificates nor the City shall be liable for any inaccuracies in such numbers.

Please call Bondholder Services at _____ with any questions.

Dated: _____

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

EXHIBIT D

DESCRIPTION OF NONCALLABLE FEDERAL SECURITIES

<u>Type</u>	<u>Maturity Date</u>	<u>Par Amount</u>	<u>Rate</u>	<u>Cost</u>
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