

ESCROW DEPOSIT AND TRUST AGREEMENT (Series 2010A Bonds)

Relating to

\$14,220,000

**Port Commission of the City and County of San Francisco
Revenue Bonds, Series 2010A (Non-AMT Tax-Exempt)**

This ESCROW DEPOSIT AND TRUST AGREEMENT (this “Agreement”), dated February __, 2020, is between the PORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, duly constituted and established under Sections 4.100 et seq. of the Charter of the City and County of San Francisco (the “Commission”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, acting as escrow agent under this Agreement (“Escrow Agent”) and trustee (“Trustee”) under the Indenture (defined below) for the Series 2010A Bonds described below.

BACKGROUND:

1. The Commission previously issued its Port Commission of the City and County of San Francisco Revenue Bonds, Series 2010A (Non-AMT Tax-Exempt), in the aggregate principal amount of \$14,220,000 (the “Series 2010A Bonds”).

2. The Series 2010A Bonds mature on March 1, 2040, and are subject to redemption on March 1, 2020 at a redemption price equal to the outstanding principal amount of the Series 2010A Bonds, plus interest accrued to the redemption date.

3. In order to provide funds to refund the Series 2010A Bonds, and thereby realize interest rate savings, the Commission and the Board of Supervisors of the City and County of San Francisco have authorized the issuance of the Port Commission of the City and County of San Francisco Refunding Revenue Bonds, Series 2020A (Non-AMT Tax Exempt) in the aggregate principal amount of \$_____ (the “2020A Refunding Bonds”).

4. The Series 2010A Bonds were issued, and the 2020A Refunding Bonds are being issued, under an Indenture of Trust, dated as of February 1, 2010 (the “Master Indenture”), as amended and supplemented by a First Supplement to Indenture of Trust, dated as of February 1, 2010, a Second Supplement to Indenture of Trust, dated as of May 1, 2014 and a Third Supplement to Indenture of Trust, dated as of February 1, 2020 (as amended, the “Indenture”).

5. The Commission 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 in full of the principal, interest and redemption premium on the outstanding Series 2010A Bonds.

6. As a result of the deposit and investment of funds in accordance with this Agreement, the Series 2010A Bonds will be discharged and defeased in accordance with the provisions of Section 10.02 of the Indenture.

7. Under Section 10.02 of the Master Indenture, discharge of the Series 2010A Bonds may be provided for by the deposit with the Escrow Agent of moneys, noncallable Governmental Obligations, noncallable Government Certificates or prerefunded municipal obligations described in paragraph (c) of the definition of Permitted Investments in Section 1.01 of the Master Indenture, or any combination thereof. The moneys and the maturing principal and interest income on such Government Obligations, Government Certificates or prerefunded municipal obligations, if any, must be sufficient and available without reinvestment to pay when due the Principal Amount, whether at maturity or upon fixed redemption dates, or purchase price of and premium, if any, and interest on the Series 2010A Bonds. The moneys, Government Obligations, Government Certificates and prerefunded municipal obligations shall be held by the Trustee irrevocably in trust for the Holders of the Series 2010A Bonds solely for the purpose of paying the Principal Amount or purchase price or redemption price of, including premium, if any, and interest on the 2010 Bonds as the same shall mature or become payable upon prior redemption. The Indenture requires the Escrow Agent to receive (a) a verification report from an Independent Auditor as to the sufficiency of moneys and investments to provide for payment of the Series 2010A Bonds in the case of a defeasance thereof and (b) an Opinion of Bond Counsel to the effect that the defeasance of the Series 2010A Bonds in accordance with this Agreement will not adversely affect the tax-exempt nature of interest on the Series 2010A Bonds. Capitalized terms used in this paragraph but not defined in this Agreement have the meaning given them in the Indenture.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, The Commission and the Escrow Agent hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent; Establishment of Escrow Fund.* The Commission hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to redeem and defease the Series 2010A Bonds in accordance with the Indenture. 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 Series 2010A Bonds as hereinafter set forth. All cash and securities in the Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the principal of and interest and premium on the Series 2010A Bonds in accordance with the Indenture.

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 Series 2010A Bonds, the Escrow Agent shall notify the

Commission of such fact and the Commission 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; Investment of Amounts.* On the date hereof (the "Closing Date"), the Commission shall 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 2020A Refunding Bonds.

In addition, the Commission hereby directs the Trustee to transfer to the Escrow Agent for deposit in the Escrow Fund the following additional amounts: **[update with available moneys in funds/accounts]**.

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 Escrow Agent shall hold the remaining \$_____ in cash, uninvested.

If the Escrow Agent learns that the Department of the Treasury or the Bureau of Public Debt 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 Commission with respect to funds which were to be invested in SLGS. 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 Commission. In the absence of investment instructions from the Commission, the Escrow Agent shall hold such funds uninvested. The Escrow Agent may conclusively rely upon the Commission'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 Trustee an amount required to pay the principal of and interest and redemption premium on the Series 2010A Bonds, in accordance with the schedule attached as Exhibit B hereto.

Following the payment and redemption of the Series 2010A Bonds in full, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to the Trustee for deposit in the Series 2020 Interest Account of the Debt Service Fund established under the Indenture, to be applied to pay interest next coming due and payable on the 2020A Refunding Bonds.

SECTION 4. *Irrevocable Election to Redeem Series 2010A Bonds; Defeasance Notices.* The Commission has irrevocably elected to pay and redeem all of the outstanding Series 2010A Bonds on the date set forth in Exhibit B, in accordance with the provisions of the Indenture.

The Escrow Agent shall provide notice of redemption in the form attached as Exhibit C to the owners of the Series 2010A Bonds, in accordance with the Indenture, not less than 30 or more than 60 days prior to the redemption date.

The Commission further hereby directs the Escrow Agent to file on the Closing Date the notice attached as Exhibit D on the Municipal Securities Rulemaking Board's EMMA system.

SECTION 5. *Compensation to Escrow Agent.* The Commission 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 and, in addition, all fees, costs and expenses relating to the purchase, substitution 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 redemption premium with respect to the Series 2010A Bonds.

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 Commission 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 Commission. Upon receiving such notice of resignation, the Commission 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 Commission 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: S.W.I.F.T., 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 Commission shall provide to the Escrow Agent an incumbency certificate listing officers with the Commission to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Commission whenever a person is to be added or deleted from the listing. If the Commission 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 Commission 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 Commission shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Agent and that the Commission 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 Commission. 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 Commission 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 Commission; (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 redemption premium on the Series 2010A Bonds 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.

**PORT COMMISSION OF THE CITY AND
COUNTY OF SAN FRANCISCO**

By: _____
Executive Director

ATTEST:

By: _____
Commission Secretary

**U.S. BANK NATIONAL
ASSOCIATION**, as Escrow Agent and
Trustee

By: _____
Authorized Officer

EXHIBIT A
ESCROW SECURITIES

<u>Type of Security</u>	<u>CUSIP</u>	<u>Purchase Date</u>	<u>Maturity Date</u>	<u>Par Amount</u>	<u>Rate</u>	<u>Price</u>	<u>Interest Class</u>
-------------------------	--------------	----------------------	----------------------	-------------------	-------------	--------------	-----------------------

EXHIBIT B
ESCROW REQUIREMENTS

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Redeemed Principal</u>	<u>Redemption Premium</u>	<u>Total Payment</u>
3/1/20				

EXHIBIT C

FORM OF NOTICE OF REDEMPTION

\$14,220,000
Port Commission of the City and County of San Francisco
Revenue Bonds, Series 2010A (Non-AMT Tax-Exempt)

NOTICE IS HEREBY GIVEN, by the Port Commission of the City and County of San Francisco (the "Commission") with respect to the captioned bonds (the "Series 2010A Bonds"), that all of the outstanding Series 2010A Bonds, which were issued under an Indenture of Trust (as amended and supplemented, the "Indenture") between the Commission and U.S. Bank National Association, as trustee (the "Trustee"), are being called for redemption on March 1, 2020 at a redemption price equal to the par amount thereof together with accrued interest thereon to the redemption date, without premium. Interest on the Series 2010A Bonds will not accrue after the redemption date.

The outstanding Series 2010A Bonds consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP*</u>
----------------------	-------------------------	----------------------	---------------

* The Commission, the Trustee and the escrow agent referred to below shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any Series 2010A Bonds; the CUSIP numbers are included solely for the convenience of the owners of the Series 2010A Bonds.

Funds for the payment of the redemption price of the Series 2010A Bonds have been deposited with U.S. Bank National Association, as escrow agent, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the Series 2010A Bonds has been verified by _____, certified public accountants.

The Series 2010A Bonds must be surrendered by the owners at the principal corporate trust office of the Trustee.

Dated: _____, 2020

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent

EXHIBIT D

FORM OF NOTICE OF DEFEASANCE

NOTICE OF FULL DEFEASANCE

\$14,220,000

**Port Commission of the City and County of San Francisco
Revenue Bonds, Series 2010A (Non-AMT Tax-Exempt)**

NOTICE IS HEREBY GIVEN, by the Port Commission of the City and County of San Francisco (the "Commission") that the captioned bonds (the "Series 2010A Bonds") have been defeased and discharged under and within the meaning of the Indenture of Trust under which the Series 2010A Bonds were issued (as amended and supplemented, the "Indenture") between the Commission and U.S. Bank National Association, as trustee (the "Trustee"). Funds for the payment of the Series 2010A Bonds have been deposited with U.S. Bank National Association, as escrow agent, under an Escrow Deposit and Trust Agreement (Series 2010A Bonds) (the "Escrow Agreement"). The sufficiency of the funds and investments for the purpose of paying the principal of and interest on the Series 2010A Bonds has been verified by _____, certified public accountants. As a consequence of the foregoing actions and in accordance with the Indenture, the Series 2010A Bonds are no longer secured by a pledge of revenues under the Indenture, and the Series 2010A Bonds are now payable solely from the moneys set aside in escrow under the Escrow Agreement and, if necessary, from other legally available funds of the Commission.

The Refunded Series 2010A Bonds consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
----------------------	-------------------------	----------------------	--------------

* The Commission, the Trustee and the escrow agent referred to above shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any Series 2010A Bonds; the CUSIP numbers are included solely for the convenience of the owners of the Series 2010A Bonds.

The Commission intends to redeem all of the outstanding Series 2010A Bonds on March 1, 2020.

Dated: _____, 2020

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent