

**ESCROW AGREEMENT
(SERIES [_____] CERTIFICATES)**

By and Between

THE CITY AND COUNTY OF SAN FRANCISCO

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Escrow Bank**

Dated as of [MONTH] 1, 2023

Relating to

CITY AND COUNTY OF SAN FRANCISCO

[_____]

**ESCROW AGREEMENT
(SERIES _____ CERTIFICATES)**

THIS ESCROW AGREEMENT (SERIES _____ CERTIFICATES), dated as of _____ 1, 2023 (the "Escrow Agreement"), by and between the City and County of San Francisco ("City") and U.S. Bank Trust Company, National Association, as escrow bank (the "Escrow Bank"), is entered into in accordance with Ordinance No. _____ of the City, adopted by the Board of Supervisors on _____, 2023, and duly approved by the Mayor of the City on _____, 2023, to refund certain outstanding certificates of participation of the City.

WITNESSETH:

WHEREAS, the City previously caused to be issued its _____ (the "Refunded Certificates") in the original aggregate principal amount of \$ _____; and

WHEREAS, the Refunded Certificates were issued pursuant to (i) Ordinance No. _____ adopted by the Board of Supervisors of the City on _____, 20__, duly approved by the Mayor of the City on _____, 20__ (the "Refunded Certificates Ordinance") and (ii) the Trust Agreement dated as of May 1, 2009, by and between the City and U.S. Bank Trust Company National Association, as successor in interest to U.S. Bank National Association, as trustee (the "Trustee," such agreement the "Original Trust Agreement"), as amended and supplemented by the [Nth] Supplement to Trust Agreement dated as of ____ 1, 20__, by and between the City and the Trustee (the "[Nth] Supplement to Trust Agreement" and together with the Original Trust Agreement, the "Trust Agreement"); and

WHEREAS, the City has determined to issue its Refunding Certificates of Participation, Series 2023-R1 (Multiple Capital Improvement Projects) in the aggregate principal amount of \$ _____ (the "Certificates") for the purpose of providing moneys, a portion of which will be used to optionally prepay on _____, 20__ ("Prepayment Date") the outstanding Refunded Certificates, at a prepayment price equal to 100% of the outstanding aggregate principal amount thereof, together with interest accrued with respect to the Refunded Certificates through the Prepayment Date ("Prepayment Price"); and

WHEREAS, by irrevocably depositing with the Escrow Agent a specified amount of the proceeds from the sale of the Certificates and directing the Escrow Agent to invest such amounts in certain investments satisfying the criteria set forth in Section 11.01 of the Trust Agreement (the "Defeasance Securities"), the Escrow Agent will have money sufficient to pay on _____, 2023, the Prepayment Price of the \$ _____ outstanding principal amount of the Refunded Certificates to be prepaid on such date, together with accrued interest thereon; and

WHEREAS, the City has taken action to cause to be issued or delivered to the Escrow Bank for deposit in or credit to the escrow funds established and maintained by it moneys to be held and invested as described herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City and the Escrow Bank agree as follows:

SECTION 1. Deposit of Moneys. On _____, 2023 (the "Closing Date"), the City shall cause to be transferred to the Escrow Bank \$ _____ (comprised of (i) a portion of the net sale proceeds of the Certificates in the amount \$ _____, [(ii) \$ _____ representing a pro rata

portion of the \$ _____ good faith deposit (the "Good Faith Deposit") received _____, as custodian, on _____, 2023 and credited against the net sale proceeds of the Certificates,] and (iii) \$ _____ consisting of moneys held under the Trust Agreement), to be held in irrevocable escrow by the Escrow Bank separate and apart from all other securities, investments or moneys on deposit with the Escrow Bank, in a fund hereby created and established and to be known as the "Escrow Fund," and to be applied solely as provided in this Escrow Agreement. The City confirms that such moneys are at least equal to an amount sufficient to pay the Prepayment Price of the Refunded Certificates on the Prepayment Date.

The Escrow Bank shall invest \$ _____ of the moneys deposited into the Escrow Fund under this Section 1 in the following Defeasance Securities, and the Escrow Bank shall hold the remaining \$ _____ in cash, uninvested.

<u>Type</u>	<u>Maturity</u> <u>Date</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Purchase Price</u>
_____	_____, 2023	\$ _____	_____ %	\$ _____

SECTION 2. Use of Moneys. The Escrow Bank acknowledges receipt of the moneys described in Section 1 and agrees:

(a) To hold the moneys described in Section 1 hereof in the Escrow Fund and invest such moneys as described in Section 1 hereof; and

(b) to make the payments required under Section 3 hereof at the times set forth in Section 3 hereof.

SECTION 3. Prepayment of the Refunded Certificates. On the Prepayment Date, the Escrow Bank shall transfer from the Escrow Fund amounts sufficient to pay the Prepayment Price of the Refunded Certificates on the Prepayment Date. Such transfers shall constitute the respective payments of the principal and interest with respect to the Refunded Certificates and Prepayment Price due from the City. The holders of the Refunded Certificates shall have a first lien on the moneys in the Escrow Fund which are allowable and sufficient to pay their Refunded Certificates until such moneys are used and applied as provided in this Escrow Agreement. Any cash or securities held in the Escrow Fund are irrevocably pledged only to the holders of the Refunded Certificates. Upon deposit of the moneys set forth in Section 1 hereof with the Escrow Bank pursuant to the provisions of Section 1 hereof, the holders of the Refunded Certificates shall cease to be entitled to any lien, benefit or security under the Trust Agreement.

SECTION 4. Performance of Duties. The Escrow Bank agrees to perform the duties set forth herein.

SECTION 5. Indemnity. The City hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Bank and its respective successors, assigns, directors, officers, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Bank at any time (whether or not also indemnified against the same by the City or

any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the funds deposited therein and any payment, transfer or other application of moneys by the Escrow Bank in accordance with the provisions of this Escrow Agreement; provided, however, that the City shall not be required to indemnify the Escrow Bank against the Escrow Bank's own negligence or willful misconduct or the negligent or willful misconduct of the Escrow Bank's respective agents and employees. In no event shall the City or the Escrow Bank be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section 5. The indemnities contained in this Section 5 shall survive the termination of this Escrow Agreement or the earlier removal or resignation of the Escrow Bank.

SECTION 6. Responsibilities of the Escrow Bank. The Escrow Bank and its respective successors, assigns, agents and servants shall not be held to any personal liability whatsoever, in tort, contract or otherwise, in connection with the execution and delivery of this Escrow Agreement, the establishment of the Escrow Fund, the acceptance of the moneys deposited therein, the sufficiency of the funds deposited in the Escrow Fund to accomplish the defeasance of the Refunded Certificates or any payment, transfer or other application of moneys or obligations by the Escrow Bank in accordance with the provisions of this Escrow Agreement or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Bank made in good faith in the conduct of its duties. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the City, and the Escrow Bank assumes no responsibility for the correctness thereof. The Escrow Bank makes no representation as to the sufficiency of the funds deposited in the Escrow Fund to accomplish the refunding of the Refunded Certificates on the Prepayment Date or to the validity of this Escrow Agreement as to the City and, except as otherwise provided herein, the Escrow Bank shall incur no liability with respect thereto. The Escrow Bank shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence, willful misconduct, and the duties and obligations of the Escrow Bank shall be determined by the express provisions of this Escrow Agreement. The Escrow Bank undertakes to perform such duties and only such duties as are specifically and expressly set forth in this Escrow Agreement, and no implied covenants or obligations shall be read into this Escrow Agreement against the Escrow Bank. The Escrow Bank may consult with counsel, who may or may not be counsel to the City, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection with respect to any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Bank shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the City.

The liability of the Escrow Bank to make the payments required by this Escrow Agreement shall be limited to the moneys in the Escrow Fund.

No provision of this Escrow Agreement shall require the Escrow Bank to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

The Escrow Bank shall not be liable for the accuracy of any calculations provided herein.

Any company into which the Escrow Bank 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 to which the Escrow Bank may sell or transfer all or substantially all of its corporate trust business shall be the successor to the Escrow Bank without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

The City shall pay the Escrow Bank full compensation for its duties under this Escrow Agreement, including out-of-pocket costs such as publication costs, prepayment or prepayment expenses, legal fees and other costs and expenses relating hereto. Under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes.

The Escrow Bank 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, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

The Escrow Bank may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

Anything in this Escrow Agreement to the contrary notwithstanding, in no event shall the Escrow Bank be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Bank has been advised of the likelihood of such loss or damage and regardless of the form of action. The permissive rights of the Escrow Bank to do things enumerated in this Escrow Agreement shall not be construed as a duty, and the Escrow Bank shall not be answerable for other than its negligence or willful misconduct.

The Escrow Bank shall be entitled to request and receive written instructions, including funds transfer instructions ("Instructions") given pursuant to this Escrow 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 Escrow Bank, or another method or system specified by the Escrow Bank as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Escrow Bank 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 Bank Instructions using Electronic Means and the Escrow Bank in its discretion elects to act upon such Instructions, the Escrow Bank's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Escrow Bank cannot determine the identity of the actual sender of such Instructions and that the Escrow Bank shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Bank have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Bank 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 Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Bank'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 Bank, including without limitation

the risk of the Escrow Bank 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 Bank 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 Bank immediately upon learning of any compromise or unauthorized use of the security procedures.

SECTION 7. Irrevocable Instructions as to Notice. The Escrow Bank shall mail a notice of optional prepayment with respect to the Refunded Certificates no later than _____, 2023 in the form attached hereto as Exhibit A, in accordance with the provisions of the Trust Agreement, and file such notice with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System ("EMMA"). The Escrow Bank is hereby further instructed to mail and to file with EMMA within five (5) business days of the Closing Date a notice of defeasance of the Refunded Certificates in the form attached hereto as Exhibit B. The sole remedy for the Escrow Bank's failure to file such notice on EMMA shall be an action by the holders of the Refunded Certificates in mandamus for specific performance or similar remedy to compel performance. The Escrow Bank hereby acknowledges that upon the funding of the Escrow Fund as provided in this Escrow Agreement, it is in receipt of the items constituting all of the conditions precedent to the prepayment of the Refunded Certificates under the Trust Agreement, the Refunded Certificates shall be paid in accordance with the Trust Agreement and after the Escrow Bank's receipt of the documents required to be delivered to it in connection with the defeasance of the Refunded Certificates pursuant to the Trust Agreement, the Refunded Certificates shall cease to be entitled to any lien, benefit or security under the Trust Agreement.

SECTION 8. Amendments. This Escrow Agreement is made for the benefit of the City and the holders from time to time of the Refunded Certificates and it shall not be repealed, revoked, altered or amended without the written consent of all such holders, the Escrow Bank and the City; provided, however, but only after the receipt by the Escrow Bank of an opinion of nationally recognized bond counsel that the exclusion from gross income of interest on the Certificates and the Refunded Certificates will not be adversely affected for federal income tax purposes, the City and the Escrow Bank may, without the consent of, or notice to, such holders, amend this Escrow Agreement or enter into such agreements supplemental to this Escrow Agreement as shall not materially adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Escrow Agreement for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Escrow Agreement; (ii) to grant to, or confer upon, the Escrow Bank for the benefit of the holders of the Refunded Certificates any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Bank; and (iii) to include under this Escrow Agreement additional funds, securities or properties. The Escrow Bank shall be entitled to rely conclusively upon an unqualified opinion of nationally recognized bond counsel with respect to compliance with this Section 8, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the holders of the Refunded Certificates or that any instrument executed hereunder complies with the conditions and provisions of this Section 8.

SECTION 9. Term. This Escrow Agreement shall commence upon its execution and delivery and shall terminate on the later to occur of either: (i) the date upon which the Refunded Certificates have been paid in accordance with this Escrow Agreement; or (ii) the date upon which no unclaimed moneys remain on deposit with the Escrow Bank and all amounts owed to the Escrow Bank shall have been paid in full. Any unclaimed money which remains in the Escrow Funds for two years

from the date upon which the Refunded Certificates have been paid in accordance with this Escrow Agreement shall be remitted by the Escrow Bank (without liability for interest) to the City.

SECTION 10. Compensation. The Escrow Bank shall receive its reasonable fees and expenses as previously agreed to; provided, however, that under no circumstances shall the Escrow Bank be entitled to any lien nor will it assert a lien whatsoever on any moneys or obligations in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Bank under this Escrow Agreement.

SECTION 11. Resignation or Removal of Escrow Bank.

(a) The Escrow Bank may resign and be discharged from its duties and obligations hereunder at any time by giving 30 days prior written notice in writing to the City. The Escrow Bank may be removed: (1) by: (i) the filing with the City of an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of each series of Refunded Certificates then remaining unpaid; and (ii) the delivery of a copy of the instruments filed with the City to the Escrow Bank; or (2) by a court of competent jurisdiction for failure to act in accordance with the provisions of this Escrow Agreement upon application by the City or the holders of 5% in aggregate principal amount of the Refunded Certificates then remaining unpaid.

(b) No resignation or removal of the Escrow Bank shall become effective until a successor Escrow Bank has been appointed hereunder and until the cash held under this Escrow Agreement is transferred to the new Escrow Bank. The City or the holders of a majority in principal amount of the Refunded Certificates then remaining unpaid may, by an instrument or instruments filed with the City, appoint a successor Escrow Bank who shall supersede any Escrow Bank theretofore appointed by the City. If no successor Escrow Bank is appointed by the City or the holders of such Refunded Certificates then remaining unpaid, within 45 days after notice of any such resignation or removal, the holder of any such Refunded Certificates or any retiring Escrow Bank may apply to a court of competent jurisdiction for the appointment of a successor Escrow Bank.

SECTION 12. Severability. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the City or the Escrow Bank to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

SECTION 13. Counterparts. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

SECTION 14. Governing Law. This Escrow Agreement shall be construed under the laws of the State of California.

SECTION 15. Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Escrow Agreement, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Escrow Bank are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions

are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Escrow Agreement, and no interest shall accrue for the period after such nominal date.

SECTION 16. Assignment. This Escrow Agreement shall not be assigned by the Escrow Bank or any successor thereto without the prior written consent of the City, except such assignment in connection with a merger, conversion or consolidation as described in Section 6 hereof shall not require such prior written consent of the City.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers and attested as of the date and year first written above.

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Benjamin Rosenfield
Controller

[SIGNATURES CONTINUED ON NEXT PAGE.]

Escrow Agreement Series [] Certificates

[SIGNATURE PAGE CONTINUED.]

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Escrow Bank

By: _____
Authorized Officer

EXHIBIT A

NOTICE OF FULL OPTIONAL PREPAYMENT

**City and County of San Francisco
Certificates of Participation
Series [____], (____)**

NOTICE IS HEREBY GIVEN, that the City and County of San Francisco (the “City”) has called for prepayment on _____, 2023 (the “Prepayment Date”) all of the certificates of participation listed below (collectively, the “Certificates”) at a prepayment price of 100% (the “Prepayment Price”), together with accrued interest to the Prepayment Date. On the Prepayment Date, there will become due and payable the Prepayment Price of the Certificates, together with interest accrued thereon to the Prepayment Date. From and after the Prepayment Date, interest shall cease to accrue on the Certificates and the Certificates shall be surrendered.

**CITY AND COUNTY OF SAN FRANCISCO CERTIFICATES OF PARTICIPATION
SERIES [____]**

CUSIP NUMBER (Base: _____)	MATURITY DATE (_____)	AMOUNT
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Payment of the Prepayment Price on the Certificates called for prepayment, together with accrued interest thereon to the Prepayment Date, will be paid only upon presentation and surrender thereof in the following manner (if delivery is by mail, registered mail with return receipt request is recommended):

Office of the Treasurer-Tax Collector
1 Dr. Carlton B. Goodlett Place
Room 140
San Francisco, California 94102

IMPORTANT NOTICE

Withholding of 24% of gross prepayment proceeds of any payment made within the United States may be required by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the “Act”), unless the Escrow Bank has the correct taxpayer identification number (social security or employer identification number) or exemption certificate of the payee. Please furnish a properly completed Form W-9 or exemption certificate or equivalent when presenting your securities.

The City and the Escrow Bank shall not be held responsible for the selection or use of CUSIP numbers, nor is any representation made as to their correctness as indicated in the notice or as printed on any bond. They are included solely for convenience of the Owners.

Dated: _____, 2023.

City and County of San Francisco
By: U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION as Escrow Bank.

EXHIBIT B

NOTICE OF DEFEASANCE

**City and County of San Francisco
Certificates of Participation
Series [____], (____)**

Notice is hereby given to the owners of the outstanding certificates of participation described below (the “Refunded Certificates”): (i) that there has been deposited with U.S. Bank Trust Company, National Association, as escrow bank (the “Escrow Bank”) pursuant to the Escrow Agreement (____), dated as of _____ 1, 2023, by and between the City and County of San Francisco (the “City”) and the Escrow Bank moneys, as permitted by both the ordinance of the Board of Supervisors of the City pursuant to which the Refunded Certificates were issued (the “Refunded Certificates Ordinance”) and the trust agreement pursuant to which the Refunded Certificates were issued (the “Trust Agreement”), that are sufficient (as evidenced by a verification report delivered to the Escrow Bank) and available to prepay the Refunded Certificates on _____, 2023, at a prepayment price equal to 100% of the aggregate principal amount of the Refunded Certificates plus accrued interest with respect thereto; and (ii) that the Refunded Certificates are deemed to be paid and all obligations of the City under the Refunded Certificates Ordinance and the Trust Agreement with respect to all Refunded Certificates have ceased and terminated, except as expressly set forth therein. The Refunded Certificates that have been defeased are as follows:

CITY AND COUNTY OF SAN FRANCISCO CERTIFICATES OF PARTICIPATION

SERIES [____]

CUSIP NUMBER
(Base: _____)

MATURITY DATE
(_____)

AMOUNT

All Refunded Certificates shall be surrendered at the following address:

Delivery Instructions:

Office of the Treasurer-Tax Collector
1 Dr. Carlton B. Goodlett Place
Room 140
San Francisco, California 94102

No representation is made as to the correctness of the CUSIP number either as printed on any Refunded Certificates or as contained herein and any error in the CUSIP number shall not affect the validity of the proceedings for Prepayment of the Refunded Certificates.

In accordance with the Trust Agreement, all liability of the City in respect of such Refunded Certificates shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or prepayment price of, such Refunded Certificates shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

Dated this ____ day of _____, 2023.

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION