

---

**THIRD SUPPLEMENT TO TRUST AGREEMENT**

**by and between the**

**CITY AND COUNTY OF SAN FRANCISCO**

**and**

**U.S. BANK NATIONAL ASSOCIATION**

**as Trustee**

**Dated as of [Dated Date]**

**Relating to:**

**[\$Amount]**

**CITY AND COUNTY OF SAN FRANCISCO  
REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2019-R1  
(MULTIPLE CAPITAL IMPROVEMENT PROJECTS)**

---

### THIRD SUPPLEMENT TO TRUST AGREEMENT

THIS THIRD SUPPLEMENT TO TRUST AGREEMENT, dated as of [Dated Date] (this “Third Supplement to Trust Agreement”), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation organized and existing under its charter and the Constitution and laws of the State of California (the “City”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as Trustee (the “Trustee”);

#### WITNESSETH:

WHEREAS, the City and the Trustee have previously entered into a Property Lease, dated as of May 1, 2009 (the “Original Property lease”), pursuant to which the City has leased certain real property and all works, property, improvements, structures and fixtures thereon (collectively the “Leased Property”) to the Trustee;

WHEREAS, pursuant to a Project Lease, dated as of May 1, 2009, by and between the City and the Trustee (the “Original Project Lease”), the Trustee has leased the Leased Property back to the City;

WHEREAS, in order to provide funds to finance the acquisition, demolition, construction, reconstruction, installation, equipping, improvement and rehabilitation of a hospital and related property located at 375 Laguna Honda Boulevard (the “2009A Project”), the Trustee executed and delivered certificates of participation captioned “\$163,335,000 City and County of San Francisco Certificates of Participation, Series 2009A (Multiple Capital Improvement Projects)” (the “2009A Certificates”) under a Trust Agreement, dated as of May 1, 2009, between the City and the Trustee (the “Original Trust Agreement”);

WHEREAS, the 2009A Certificates evidence direct undivided interests in the lease payments made by the City under the Original Project Lease;

WHEREAS, in order to provide funds to finance improvements to various City streets and other capital improvements (the “2009B Project” and, together with the 2009A Project, the “2009 Project”), the Trustee subsequently executed and delivered a series of certificates of participation captioned “\$37,885,000 City and County of San Francisco Certificates of Participation, Series 2009B (Multiple Capital Improvement Projects)” (the “2009B Certificates” and, together with the 2009A Certificates, the “Refunded Certificates”) under a First Supplement to Trust Agreement dated as of September 1, 2009 (the “First Supplement to Trust Agreement”);

WHEREAS, in connection with the execution and delivery of the 2009B Certificates, the City and the Trustee have previously entered into a First Supplement to Property Lease, dated as of September 1, 2009 (the “First Supplement to Property Lease”), supplementing the Original Property Lease to provide for additional rental to be paid by the Trustee in connection with the financing of the 2009B Project and certain related matters;

WHEREAS, in connection therewith, the City and the Trustee simultaneously entered into a First Supplement to Project Lease, dated as of September 1, 2009, by and between the City and the Trustee (the “First Supplement to Project Lease”), supplementing the Original

Project Lease to provide for additional Base Rental to be paid by the City in connection with the financing of the 2009B Project and certain related matters;

WHEREAS, the 2009B Certificates were executed and delivered as Additional Certificates pursuant to Section 7.04 of the Original Trust Agreement, and evidence direct undivided interests in the lease payments made by the City under the Original Project Lease, as supplemented by the First Supplement to Project Lease, on a parity basis with the 2009A Certificates;

WHEREAS, in order to provide funds for certain street improvements of the City, the Trustee subsequently executed and delivered a series of certificates of participation captioned "\$42,835,000 City and County of San Francisco Certificates of Participation, Series 2012A (Multiple Capital Improvement Projects)" (the "2012A Certificates") under a Second Supplement to Trust Agreement dated as of June 1, 2012 (the "Second Supplement to Trust Agreement");

WHEREAS, in connection with the execution and delivery of the 2012A Certificates, the City and the Trustee have previously entered into a Second Supplement to Property Lease, dated as of June 1, 2012 (the "Second Supplement to Property Lease"), supplementing the Original Property Lease to provide for additional rental to be paid by the Trustee in connection with the financing of the 2012A Project and certain related matters;

WHEREAS, in connection therewith, the City and the Trustee simultaneously entered into a Second Supplement to Project Lease, dated as of June 1, 2012, by and between the City and the Trustee (the "Second Supplement to Project Lease"), supplementing the Original Project Lease to provide for additional Base Rental to be paid by the City in connection with the financing of the 2012A Project and certain related matters;

WHEREAS, the 2012A Certificates were executed and delivered as Additional Certificates pursuant to Section 7.04 of the Original Trust Agreement, and evidence direct undivided interests in the lease payments made by the City under the Original Project Lease, as supplemented by the First Supplement to Project Lease and the Second Supplement to Project Lease, on a parity basis with the 2009A and 2009B Certificates;

WHEREAS, the City desires to provide for the acquisition of capital equipment, including mechanical street sweepers and other capital expenditures (as further described herein, the "2019-R1 Project");

WHEREAS, in order to provide funds for the 2019-R1 Project and the prepayment of the Refunded Certificates, the Trustee is executing and delivering a series of certificates of participation captioned "\$\_\_\_\_\_ City and County of San Francisco Refunding Certificates of Participation, Series 2019-R1 (Multiple Capital Improvement Projects)" (the "2019-R1 Certificates") under this Third Supplement to Trust Agreement;

WHEREAS, in connection with the execution and delivery of the 2019-R1 Certificates, the City and the Trustee are entering into a Third Supplement to Property Lease, dated as of [Dated Date] (the "Third Supplement to Property Lease"), supplementing the Original Property Lease to provide for additional rental to be paid by the Trustee in connection with the financing of the 2019-R1 Project and prepayment of the Refunded Certificates and certain related matters;

WHEREAS, in connection therewith, the City and the Trustee are simultaneously entering into a Third Supplement to Project Lease, dated as of [Dated Date] (the “Third Supplement to Project Lease”), supplementing the Original Project Lease to provide for additional Base Rental to be paid by the City in connection with the financing of the 2019-R1 Project and prepayment of the Refunded Certificates and certain related matters;

WHEREAS, the 2019-R1 Certificates are being executed and delivered as Additional Certificates pursuant to Section 7.04 of the Original Trust Agreement, and evidence direct undivided interests in the lease payments made by the City under the Original Project Lease, as supplemented by the First Supplement to Project Lease, the Second Supplement to Project Lease and the Third Supplement to Project Lease, on a parity basis with the 2012A Certificates;

WHEREAS, the City and the Trustee also desire by this Third Amendment to Trust Agreement to amend certain provisions of the Original Trust Agreement to cure an ambiguity and to make certain modifications that do not adversely affect the interests of the Owners of the 2012A Certificates, as permitted by Section 7.01 of the Original Trust Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree to supplement the Original Trust Agreement as follows:

**Section 1. Definitions.** Capitalized terms used herein without definition shall have the meanings as set forth in the Original Trust Agreement. The defined term “Project” shall be deemed to include the 2019-R1 Project as described in Exhibit B hereto. The following capitalized terms used herein are hereby defined as follows:

“Refunded Certificates” means the 2009A Certificates and the 2009B Certificates.

“2009A Certificates” means the City and County of San Francisco Certificates of Participation, Series 2009A (Multiple Capital Improvement Projects).

“2009B Certificates” means the City and County of San Francisco Certificates of Participation, Series 2009B (Multiple Capital Improvement Projects).

“2019-R1 Certificates” means the certificates of participation captioned “City and County of San Francisco Refunding Certificates of Participation, Series 2019-R1 (Multiple Capital Improvement Projects)” authorized hereby and at any time Outstanding hereunder.

“2019-R1 Costs of Issuance Account” means the account of that name established pursuant to Section 4 hereof.

“2019-R1 Project Account” means the account of that name established pursuant to Section 5 hereof.

“2009A Escrow Agreement” means that certain Escrow Agreement (Series 2009A), dated as of [Dated Date], by and between the Trustee and the City, relating to the prepayment and defeasance of the 2009A Certificates.

“2009B Escrow Agreement” means that certain Escrow Agreement (Series 2009B), dated as of [Dated Date], by and between the Trustee and the City, relating to the prepayment and defeasance of the 2009B Certificates.

“2009A Refunding Fund” means the fund of that name established pursuant to Section 5 hereof.

“2009B Refunding Fund” means the fund of that name established pursuant to Section 5 hereof.

**Section 2. Authorization, Designation and Description of the Additional Certificates.** The Trustee is hereby authorized and directed to execute and deliver the 2019-R1 Certificates as a series of Additional Certificates to the original purchaser or purchasers thereof. The 2019-R1 Certificates shall be designated as “City and County of San Francisco Refunding Certificates of Participation, Series 2019-R1 (Multiple Capital Improvement Projects)” which shall be executed and delivered in the aggregate principal amount of \$\_\_\_\_\_. Each 2019-R1 Certificate shall be executed and delivered in fully registered form and shall be numbered as determined by the Trustee. The 2019-R1 Certificates shall be dated [Dated Date]. The 2019-R1 Certificates shall be executed and delivered in Authorized Denominations, and shall initially be executed and delivered in book-entry form pursuant to Section 2.11 of the Original Trust Agreement.

The 2019-R1 Certificates shall be Additional Certificates under the Original Trust Agreement delivered in accordance with Section 7.04 thereof and representing Base Rental on a parity basis with the 2012A Certificates.

The 2019-R1 Certificates shall have Certificate Payment Dates of April 1 in the years and shall evidence and represent principal components in the amounts, with an interest component with respect thereto calculated on the basis of a 360-day year composed of twelve 30-day months at the rates, as follows:

| <i>Certificate Payment Date<br/>(April 1)</i> | <i>Principal Amount</i> | <i>Interest Rate</i> |
|---|-------------------------|----------------------|
|---|-------------------------|----------------------|

†

---

† Term Certificates

The interest evidenced and represented by the 2019-R1 Certificates shall be payable on each Interest Payment Date, beginning on \_\_\_\_\_, 20\_\_, and continuing to and including their Certificate Payment Dates or on prepayment prior thereto, and shall evidence and represent the sum of the portions of the Base Rental designated as interest components coming due on such date in each year.

The principal evidenced and represented by the 2019-R1 Certificates shall be payable on April 1, 20\_\_ and each April thereafter, continuing to and including [April 1, 2035] and shall evidence and represent the sum of the portions of the Base Rental Payments designated as principal components coming due on each April 1.

The 2019-R1 Certificates with Certificate Payment Dates of April 1, 20\_\_ and April 1, 20\_\_ shall be subject to mandatory sinking account installment prepayment as set forth in Section 7(c).

**Section 3. Application of Sale Proceeds of the 2019-R1 Certificates.** Upon the Closing Date with respect to the 2019-R1 Certificates, an amount of proceeds from the sale thereof equal to \$\_\_\_\_\_ (calculated as the principal amount represented by the 2019-R1 Certificates (\$\_\_\_\_\_), [plus/less] a [net/aggregate] original issue [premium/discount] of \$\_\_\_\_\_, less an underwriter's discount of \$\_\_\_\_\_), shall be delivered to the Trustee and deposited by the Trustee as follows:

(1) The Trustee shall deposit into the 2019-R1 Costs of Issuance Account the sum of \$\_\_\_\_\_. Such amount shall be held in the 2019-R1 Costs of Issuance Account separate from any other moneys in the Costs of Issuance Fund.

(2) The Trustee shall deposit into the 2019-R1 Project Account the sum of \$\_\_\_\_\_. Such amount shall be held in the 2019-R1 Project Account separate from any other moneys in the Project Fund and applied to fund costs of the 2019-R1 Project in accordance with Section 5(a) below.

(3) The Trustee shall deposit into the 2009A Refunding Fund the sum of \$\_\_\_\_\_, together with \$\_\_\_\_\_ on deposit in the funds and accounts maintained for the 2009A Certificates and released in connection with their prepayment. Such amount shall be applied to prepay the outstanding 2009A Certificates in accordance with Section 5(b) below.

(4) The Trustee shall deposit into the 2009B Refunding Fund the sum of \$\_\_\_\_\_, together with \$\_\_\_\_\_ on deposit in the funds and accounts maintained for the 2009B Certificates and released in connection with their prepayment. Such amount shall be applied to prepay the outstanding 2009B Certificates in accordance with Section 5(c) below.

**Section 4. Establishment and Application of 2019-R1 Costs of Issuance Account.** There is hereby established in trust a special account designated as the "2019-R1 Costs of Issuance Account," which shall be held by the Trustee and which shall be kept separate and apart from all other funds and money held by the Trustee. The Trustee shall administer such account as provided herein.

There shall be deposited in the 2019-R1 Costs of Issuance Account that portion of the proceeds of the 2019-R1 Certificates required to be deposited therein pursuant to Section 3 hereof. The Trustee shall disburse money from the 2019-R1 Costs of Issuance Account on such dates and in such amounts as are necessary to pay Costs of Issuance with respect to the 2019-R1 Certificates, in each case, promptly after receipt of, and in accordance with, a Written Request of a City Representative in the form attached to the Original Trust Agreement as Exhibit B. Any amounts remaining in the 2019-R1 Costs of Issuance Account on the earlier of the date on which a City Representative has notified the Trustee in writing that all Costs of Issuance with

respect to the 2019-R1 Certificates have been paid or the date twelve months from the Closing Date shall be transferred by the Trustee to the 2019-R1 Project Account or such other fund or account that has been approved in writing by a City Representative, and the 2019-R1 Costs of Issuance Account shall then be closed

**Section 5. Establishment and Application of 2019-R1 Project Account, 2009A Refunding Fund and 2009B Refunding Fund.**

(a) 2019-R1 Project Account. There is hereby established in trust a special account designated as the “2019-R1 Project Account,” which shall be held by the Trustee and which shall be kept separate and apart from all other funds and money held by the Trustee. The Trustee shall administer such account as provided herein.

The Trustee shall, from time to time, disburse money from the 2019-R1 Project Account to pay Project Costs with respect to the 2019-R1 Project, as hereinafter provided, in each case promptly after receipt of, and in accordance with, a Written Request of the City in the form attached to the Original Trust Agreement as Exhibit C. Each officer of the City required to execute such Written Request shall have full authority to execute such Written Request without any further approval of the Board of Supervisors of the City.

In making such payments, the Trustee may rely upon the representations made in the requisition of the City therefor in the form set forth in Exhibit C to the Original Trust Agreement. If for any reason the City should decide prior to the payment of any item in said requisition not to pay such item, then it shall give written notice of such decision to the Trustee and thereupon the Trustee shall not make such payment, and the Trustee shall have no liability to the City or the designated payee as a result of such nonpayment. In no event shall the Trustee be responsible for the adequacy or the performance of any construction and similar contracts relating to the 2019-R1 Project or for the use or application of money properly disbursed pursuant to requests made under this Section.

If, after payment by the Trustee of all requisitions theretofore tendered to the Trustee under the provisions of this Section, and delivery to the Trustee of a Written Certificate of the City to the effect that all Project Costs with respect to the 2019-R1 Project have been paid and that the 2019-R1 Project has been substantially completed in the form of Exhibit D to the Original Trust Agreement, there remains any balance of money in the 2019-R1 Project Account, all money so remaining shall be transferred as directed by the City after consultation with Bond Counsel.

Notwithstanding any other provision of this Third Supplement to Trust Agreement or the Original Trust Agreement, including in particular, Section 4.16 of the Original Trust Agreement, the City may, in its sole discretion and at any time, direct the Trustee to transfer moneys on deposit in the 2019-R1 Project Account representing investment earnings on amounts therein to the Base Rental Fund if the City determines, in its sole discretion, that such moneys will not be needed for the improvement of the 2019-R1 Project. The Trustee shall make such transfer upon the receipt of a request executed by a City Representative directing it to make such transfer.

(b) 2009A Refunding Fund. The Trustee shall establish, maintain and hold hereunder a separate fund known as the “2009A Refunding Fund,” which shall be maintained and accounted for by the Trustee so long as any moneys are on deposit therein. The moneys in

the 2009A Refunding Fund shall be held by the Trustee and applied to prepay the outstanding 2009A Certificates pursuant to the 2009A Escrow Agreement. Any balance remaining in the 2009A Refunding Fund following such application of moneys shall be transferred to the 2019-R1 Project Account, whereupon the 2009A Refunding Fund shall be closed.

(c) 2009B Refunding Fund. The Trustee shall establish, maintain and hold hereunder a separate fund known as the “2009B Refunding Fund,” which shall be maintained and accounted for by the Trustee so long as any moneys are on deposit therein. The moneys in the 2009B Refunding Fund shall be held by the Trustee and applied to prepay the outstanding 2009B Certificates pursuant to the 2009B Escrow Agreement. Any balance remaining in the 2009B Refunding Fund following such application of moneys shall be transferred to the 2019-R1 Project Account, whereupon the 2009B Refunding Fund shall be closed.

Such applications of moneys under subsections (b) and (c) above shall constitute the advance rental prepayment by the Trustee under the Original Project Lease, as supplemented by the First Supplement to Project Lease.

**Section 6. 2019-R1 Reserve Requirement.** The Reserve Requirement for the 2019-R1 Certificates shall be zero dollars (\$0.00). Amounts on deposit in the Reserve Fund, including without limitation the 2012A Reserve Account therein, shall not be available to support payments with respect to the 2019-R1 Certificates.

**Section 7. Prepayment of 2019-R1 Certificates.** The 2019-R1 Certificates shall be subject to prepayment prior to their stated Certificate Payment Dates only as set forth below:

(a) Optional Prepayment of 2019-R1 Certificates. The 2019-R1 Certificates with a Certificate Payment Date on or after [\_\_\_\_], are subject to optional prepayment prior to their respective Certificate Payment Dates in whole or in part on any date on or after [\_\_\_\_], at the option of the City, in the event the City exercises its option under Section 7 of the Project Lease to prepay the principal component of the Base Rental payments, at the following prepayment prices (expressed as a percentage of the principal component to be prepaid), plus accrued interest to the date fixed for prepayment, without premium.

In the event the City gives notice to the Trustee of its intention to exercise such option, but fails to deposit with the Trustee on or prior to the prepayment date an amount equal to the prepayment price, the City will continue to pay the Base Rental payments as if no such notice were given.

(b) Sinking Account Installment Prepayment of 2019-R1 Certificates. The 2019-R1 Certificates with a Certificate Payment Date of April 1, 20\_\_, are subject to sinking account installment prepayment prior to their Certificate Payment Date in part, by lot, on each April 1, beginning April 1, 20\_\_, in the amounts set forth below, from scheduled payments of the principal component of Base Rental payments, at the principal amount of the 2019-R1 Certificates to be prepaid, plus accrued interest to the prepayment date, without premium:



*Prepayment Date  
(April 1)*

*Sinking Account  
Installment Amount*

The 2019-R1 Certificates with a Certificate Payment Date of April 1, 20\_\_, are subject to sinking account installment prepayment prior to their Certificate Payment Date in part, by lot, on each April 1, beginning April 1, 20\_\_, in the amounts set forth below, from scheduled payments of the principal component of Base Rental payments, at the principal amount of the 2019-R1 Certificates to be prepaid, plus accrued interest to the prepayment date, without premium:

*Prepayment Date  
(April 1)*

*Sinking Account  
Installment Amount*

(c) Special Prepayment of 2019-R1 Certificates. The 2019-R1 Certificates are subject to mandatory prepayment prior to their respective Certificate Payment Dates in whole or in part on any date, at the Prepayment Price (plus accrued but unpaid interest to the prepayment date), without premium, from amounts deposited in the Base Rental Fund pursuant to Section 4.09 or Section 4.10 of the Original Trust Agreement following an event of damage, destruction or condemnation of the Leased Property or any portion thereof or loss of the use or possession of the Leased Property or any portion thereof due to a title defect. Such mandatory prepayment of Base Rental shall be applied pro rata among all series of Certificates.

**Section 8. 2019-R1 Rebate Account.** There is hereby established within the Rebate Fund a special account designated the “2019-R1 Rebate Account,” which shall be held by the Trustee and which shall be kept separate and apart from all other accounts and money held by the Trustee. Amounts received by the Trustee as Additional Rental with respect to any rebate requirement for the 2019-R1 Certificates as set forth in written instructions of a City Representative in accordance with the provisions of the Tax Certificate shall be deposited in the 2019-R1 Rebate Account. Amounts on deposit in the 2019-R1 Rebate Account shall only be applied to payments made to the United States of America in accordance with written instructions of a City Representative or returned to the City as directed in writing by a City Representative.

**Section 9. Addition of Article XII.** The Original Trust Agreement is hereby amended and supplemented by adding thereto an additional Article as follows:

## ARTICLE XII

### SERIES 2019-R1 CERTIFICATES

**Section 12.01. Applicability of Provisions.** The provisions of this Article shall be applicable only to the Series 2019-R1 Certificates. Sections 4.17 and 8.06 of this Trust Agreement shall not be applicable to the Series 2019-R1 Certificates.

**Section 12.02. Tax Covenants.** Notwithstanding any other provision of this Trust Agreement, absent an Opinion of Counsel that the exclusion from gross income of interest on the 2019-R1 Certificates will not be adversely affected for federal income tax purposes, the City covenants to comply with all applicable requirements of the Code necessary to preserve such exclusion from gross income and specifically covenants, without limiting the generality of the foregoing, as follows:

(a) *Private Activity.* The City will not take or omit to take any action or make any use of the proceeds of the 2019-R1 Certificates or of any other moneys or property which would cause the Certificates to be “private activity bonds” within the meaning of Section 141 of the Code.

(b) *Arbitrage.* The City will not make any use of the proceeds of the Certificates or of any other amounts or property, regardless of the source, or take or omit to take any action which would cause the 2019-R1 Certificates to be “arbitrage bonds” within the meaning of Section 148 of the Code.

(c) *Federal Guarantee.* The City will not make any use of the proceeds of the 2019-R1 Certificates or take or omit to take any action that would cause the 2019-R1 Certificates to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(d) *Information Reporting.* The City will take or cause to be taken all necessary action to comply with the informational reporting requirement of Section 149(e) of the Code.

(e) *Miscellaneous.* The City will not take any action inconsistent with its expectations stated in any Tax Certificate executed with respect to the 2019-R1 Certificates. The City will comply with the covenants and requirements stated in any Tax Certificate executed with respect to the 2019-R1 Certificates.

This Section and the covenants set forth herein shall not be applicable to, and nothing contained herein shall be deemed to prevent the City from issuing Certificates the interest on which has been determined by the City to be subject to federal income taxation.

### **Section 12.03. Rebate Fund.**

(a) *Maintenance of Rebate Fund.* The Trustee shall maintain within the Rebate Fund, when needed, separate accounts (solely from amounts deposited by the

City) designated the “Rebate Account” and the “Alternative Penalty Account.” Absent an Opinion of Counsel that the exclusion from gross income for federal income tax purposes of interest on the 2019-R1 Certificates will not be adversely affected, the City shall cause to be deposited in each such account of the Rebate Fund such amounts as are required to be deposited therein pursuant to this Section and the Tax Certificate. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust for payment to the United States Treasury. All amounts on deposit in the Rebate Fund shall be governed by this Section 12.03 and the Tax Certificate, unless and to the extent that the City delivers to the Trustee an Opinion of Counsel that the exclusion from gross income for federal income tax purposes of interest on the 2019-R1 Certificates will not be adversely affected if such requirements are not satisfied. Notwithstanding any other provision of this Trust Agreement, the Trustee shall be deemed conclusively to have complied with this Section 12.03 and the Tax Certificate if it follows the directions set forth in any Written Request of the City or Certificate of the City and shall be fully protected in so doing. The Trustee shall have no independent responsibility to, or liability resulting from its failure to, enforce compliance by the City with the terms of this Section 12.03 or the Tax Certificate.

(b) *Rebate Account.* The following requirements shall be satisfied with respect to the Rebate Account:

(i) *Annual Computation.* Within 55 days of the end of each Certificate Year, the City shall calculate or cause to be calculated the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Rebate Regulations (taking into account any applicable exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code), and taking into account whether the election pursuant to Section 148(f)(4)(C)(vii) of the Code (the “1½% Penalty”) has been made), for this purpose treating the last day of the applicable Certificate Year as a computation date, within the meaning of Section 1.148 1(b) of the Rebate Regulations (the “Rebatable Arbitrage”). The City shall obtain expert advice as to the amount of the Rebatable Arbitrage to comply with this Section 12.03.

(ii) *Annual Transfer.* Within 55 days of the end of each applicable Certificate Year, upon receipt of the Written Request of the City, an amount shall be deposited to the applicable Rebate Account by the Trustee from [payments] specified by the City in the aforesaid Request, if and to the extent required so that the balance in the Rebate Account shall equal the amount of Rebatable Arbitrage so calculated in accordance with (i) of this Subsection (b). In the event that immediately following the transfer required by the previous sentence, the amount then on deposit to the credit of a Rebate Account exceeds the amount required to be on deposit therein, upon receipt of a Written Request of the City, the Trustee shall withdraw the excess from the applicable Rebate Account and then credit the excess to the [Base Rental Fund].

(iii) *Payment to the Treasury.* The Trustee shall pay, as directed by Written Request of the City, to the United States Treasury, out of amounts in the Rebate Account,

(A) Not later than 60 days after the end of (A) the fifth Certificate Year, and (B) each applicable fifth Certificate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage as set forth in a Certificate of the City delivered to the Trustee calculated as of the end of such Certificate Year; and

(B) Not later than 60 days after the payment of all the 2019-R1 Certificates, an amount equal to 100% of the Rebatable Arbitrage as set forth in a Certificate of the City delivered to the Trustee calculated as of the end of such applicable Certificate Year, and any income attributable to the Rebatable Arbitrage, as set forth in a Certificate of the City delivered to the Trustee computed in accordance with Section 148(f) of the Code.

In the event that, prior to the time of any payment required to be made from a Rebate Account, the amount in such Rebate Account is not sufficient to make such payment when such payment is due, the City shall calculate or cause to be calculated the amount of such deficiency and deposit with the Trustee an amount received from any legally available source equal to such deficiency prior to the time such payment is due. Each payment required to be made pursuant to this subsection (b) shall be made to the Internal Revenue Service Center, Ogden, Utah 84207 on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038 T (which form shall be completed and provided by the City to the Trustee), or shall be made in such other manner as provided under the Code, in each case as specified in a Written Request of the City delivered to the Trustee.

(c) *Alternative Penalty Account.*

(i) *Six Month Computation.* If the 1½% Penalty has been elected, within 85 days of each particular Six Month Period, the City shall determine or cause to be determined whether the 1½% Penalty is payable (and the amount of such penalty) as of the close of the applicable Six Month Period. The City shall obtain expert advice in making such determinations.

(ii) *Six Month Transfer.* Within 85 days of the close of each Six Month Period, upon receipt of the Written Request of the City, the Trustee shall deposit in the applicable Alternative Penalty Account from any source of funds (specified by the City in the aforesaid Request), if and to the extent required, so that the balance in the Alternative Penalty Account equals the amount of 1½% Penalty (as specified in such Request) due and payable to the United States Treasury determined by the City as provided in subsection (c)(i) above. In the event that immediately following the transfer provided in the previous sentence, the amount then on deposit to the credit of an Alternative

Penalty Account exceeds the amount required to be on deposit therein to make the payments required by subsection (c)(iii) below, the Trustee, pursuant to a Certificate of the City, may withdraw the excess from such Alternative Penalty Account and credit the excess to the [Base Rental Fund].

(iii) *Payment to the Treasury.* The Trustee shall pay, as directed by Written Request of the City, to the United States Treasury, out of amounts in the Alternative Penalty Account, not later than 90 days after the close of each Six Month Period the 1½% Penalty (as specified by the City in the aforesaid Request), if applicable and payable, computed by the City in accordance with Section 148(f)(4) of the Code. In the event that, prior to the time of any payment required to be made from the Alternative Penalty Account, the amount in such account is not sufficient to make such payment when such payment is due, the City shall calculate the amount of such deficiency and deposit with the Trustee an amount received from any legally available source of funds equal to such deficiency for transfer into the Alternative Penalty Account prior to the time such payment is due. Each payment required to be made pursuant to this subsection (c)(iii) shall be made to the Internal Revenue Service, Ogden, Utah 84207 on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038 T (which form shall be completed and provided by the City to the Trustee) or shall be made in such other manner as provided under the Code.

(d) *Disposition of Unexpended Funds.* Any funds remaining in the accounts of the Rebate Fund after redemption and payment of the 2019-R1 Certificates and the payments of all amounts described in subsection (b)(iii) or (c)(iii) (whichever is applicable) or provision made therefor satisfactory to the Trustee, including accrued interest and payment of all applicable fees to the Trustee, may, upon written request, be withdrawn by the Trustee and remitted to the City and utilized in any manner by the City.

(e) *Survival of Defeasance.* Notwithstanding anything in this Section to the contrary, the obligation to comply with the requirements of this Section shall survive the defeasance of the 2019-R1 Certificates.

(f) *Trustee.* The Trustee shall have no responsibility to monitor or calculate any amounts payable to the U.S. Treasury pursuant to this Section and shall be deemed conclusively to have complied with its obligations hereunder if it follows the written instructions of the City given pursuant to this Section.

#### **Section 10. Amendment to Original Trust Agreement.**

(a) The definition of “Reserve Requirement” in the Original Trust Agreement is amended and restated in its entirety to read as follows:

“Reserve Requirement” means, for the 2012A Certificates, as of any date of calculation, the least of (i) the maximum annual principal and interest payable with respect to the 2012A Certificates in the then current Fiscal Year or any

future Fiscal Year, (ii) 125% of average annual principal and interest payable with respect to the 2012A Certificates payable in each Fiscal Year between the date of calculation and the last Certificate Payment Date of the 2012A Certificates or (iii) 10% of the principal amount of 2012A Certificates originally executed and delivered. For any Certificates other than the 2012A Certificates, including the 2019-R1 Certificates, the Reserve Requirement shall be zero dollars (\$0.00) or such greater amount as may be designated in a supplement to the Original Trust Agreement executed in connection with the execution and delivery of such series of Certificates.

(b) Section 11.01(b)(ii) of the Original Trust Agreement is hereby amended and restated in its entirety to read as follows:

(ii) by depositing with the Trustee, in trust, cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with Government Obligations) which, together with the amounts then on deposit in the Base Rental Fund and the Reserve Fund and dedicated to this purpose is fully sufficient to pay on the Certificate Payment Date or earlier prepayment date thereof all principal of, premium, if any, and interest due with respect thereto; or

**Section 11. Original Trust Agreement Still in Effect.** This Third Supplement to Trust Agreement and all the terms and provisions herein contained shall form part of the Original Trust Agreement as fully and with the same effect as if all such terms and provisions had been set forth in the Original Trust Agreement, as amended and supplemented by the First Supplement to Trust Agreement and Second Supplement to Trust Agreement. The Original Trust Agreement is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby and by the First Supplement to Trust Agreement and Second Supplement to Trust Agreement.

**Section 12. Governing Law.** This Third Supplement to Trust Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 13. Counterparts.** This Third Supplement to Trust Agreement may be signed in several counterparts, each of which will constitute an original, but all of which shall constitute one and the same instrument.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Third Supplement to Trust Agreement as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Clerk of the Board of Supervisors

APPROVED AS TO FORM BY:

DENNIS J. HERRERA,  
CITY ATTORNEY

By: \_\_\_\_\_  
Deputy City Attorney

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**EXHIBIT A**

**FORM OF CERTIFICATE OF PARTICIPATION**

**CITY AND COUNTY OF SAN FRANCISCO  
REFUNDING CERTIFICATE OF PARTICIPATION, SERIES 2019-R1  
(MULTIPLE CAPITAL IMPROVEMENT PROJECTS)**

**Evidencing a Proportionate Interest of the  
Owner Hereof in the Right to Receive  
Base Rental Payments to be Made by the**

**CITY AND COUNTY OF SAN FRANCISCO**

| <i>Certificate<br/>Payment Date</i> | <i>Interest Rate</i> | <i>Original<br/>Certificate Date</i> | <i>CUSIP</i> |
|-------------------------------------|----------------------|--------------------------------------|--------------|
| April 1, 20__                       |                      | _____, 2019                          |              |

REGISTERED OWNER:

PRINCIPAL AMOUNT:

THIS IS TO CERTIFY THAT the registered owner identified above or registered assigns, as the registered owner of this Certificate of Participation (the "Certificate"), is the owner of a proportionate interest in the right to receive Base Rental payments payable under a Project Lease dated as of May 1, 2009, as supplemented by a First Supplement to Project Lease dated as of September 1, 2009, by a Second Supplement to Project Lease dated as of June 1, 2012, and by a Third Supplement to Project Lease dated as of [Dated Date] (collectively, the "Project Lease"), by and between the City and County of San Francisco (the "City"), a municipal corporation, as lessee, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Project Lease and unless sooner paid in full, on the Certificate Payment Date identified above, the principal amount identified above, representing a portion of the Base Rental payments designated as principal coming due on or prior to such date, and to receive on \_\_\_\_\_ 1, 20\_\_ and on each April 1 and October 1 thereafter (each, a "Payment Date"), until payment in full of such principal sum, the registered owner's proportionate share of the Base Rental payments designated as interest coming due on or prior to each of such dates. Such proportionate share of the portion of the Base Rental designated as interest is the result of the multiplication of the aforesaid portion of the Base Rental designated as principal by the interest rate specified above. Such proportionate share of the portion of the Base Rental designated as interest shall be computed on the basis of a 360-day year composed of 12 months of 30 days each.

Interest with respect to this Certificate shall accrue from the Certificate Payment Date next preceding the date of execution hereof, unless (i) this Certificate is executed after the close



of business on the 15th day of the month next preceding any Payment Date (the “Record Date”) and before the close of business on the immediately following Payment Date, in which event interest shall accrue with respect hereto from such Payment Date, or (ii) this Certificate is executed on or before the Record Date immediately preceding the first Payment Date, in which event interest with respect hereto shall accrue from its Original Certificate Date set forth above; provided, however, that if at the time of execution of this Certificate, interest with respect hereto is in default, interest with respect hereto shall accrue from the Payment Date to which interest has previously been paid or made available for payment or from its Original Certificate Date if no interest has been paid or made available for payment.

Amounts due hereunder in respect of principal and premium, if any, are payable in lawful money of the United States of America at the Principal Office of the Trustee (or any successor Trustee or paying agent). Amounts representing interest are payable by check mailed by first class mail to the owner of this Certificate at such owner’s address as it appears on the registration books of the Trustee as of the Record Date, provided that the payment with respect to the Certificates to each Owner of at least \$1,000,000 aggregate principal amount of Certificates shall be made to such Owner by wire transfer to such wire address in the United States that such Owner may request in writing for all Payment Dates following the 15th day after the Trustee’s receipt of such notice. Payments of defaulted interest, if any, with respect to this Certificate shall be paid by check to the registered owner of this Certificate as of a special record date to be fixed by the Trustee, notice of which special record date shall be given to the owner of this Certificate not less than 10 days prior thereto.

The City is authorized to enter into the Project Lease pursuant to the laws of the State. The City has entered into the Project Lease for the purpose of leasing certain facilities (the “Leased Property”) in connection with the performance of the City’s governmental functions.

This Certificate has been executed and delivered by the Trustee pursuant to the terms of the Trust Agreement, dated as of May 1, 2009, as supplemented by a First Supplement to Trust Agreement dated as of September 1, 2009, by a Second Supplement to Trust Agreement dated as of June 1, 2012, and by a Third Supplement to Trust Agreement dated as of [Dated Date] (collectively, the “Trust Agreement”), by and between the City and the Trustee. Under the Trust Agreement, the Trustee is authorized to execute and deliver the City and County of San Francisco Refunding Certificates of Participation, Series 2019-R1 (Multiple Capital Improvement Projects) in the aggregate principal amount of \$\_\_\_\_\_. This Certificate constitutes an Additional Certificate under the Trust Agreement delivered on parity with certain outstanding certificates of participation.

Reference is hereby made to the Project Lease and the Trust Agreement (copies of which are on file at the offices of the Trustee) for a description of the terms on which the Certificates are delivered, and the rights thereunder of the registered owners of the Certificates and the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Project Lease, to all of the provisions of which the registered owner of this Certificate, by acceptance hereof, assents and agrees.

The obligation of the City to pay Base Rental does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Base Rental does not constitute an indebtedness of the City, the State, or any of its political subdivisions within

the meaning of any constitutional or statutory debt limitation or restriction. The City's obligation to pay Base Rental shall be abated during any period in which, by reason of material damage, destruction, condemnation, noncompletion or title defect, there is substantial interference with the City's right of use and occupancy of the Leased Property or any portion thereof. Failure of the City to pay Base Rental during any such period shall not constitute a default under the Project Lease, the Trust Agreement or this Certificate.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal amount of Certificates (as defined in the Trust Agreement) then outstanding. The Trust Agreement may be amended without such consent under certain circumstances provided that the interests of the owners of the Certificates are not adversely affected. No amendment shall impair the right of any owner to receive in any case such owner's proportionate share of any Base Rental payment in accordance with such owner's Certificate.

Registration of this Certificate is transferable by the registered owner hereof, in person or by his attorney duly authorized in writing, at the aforesaid offices of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such registration of transfer a new Certificate or Certificates, of authorized denomination or denominations, for the same principal amount of Certificates (as defined in the Trust Agreement) will be issued to the transferee in exchange therefor. The City and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Certificate shall be overdue, and shall not be affected by any notice to the contrary.

The Certificates are subject to optional prepayment, special prepayment, and mandatory sinking account prepayment as provided in the Trust Agreement.

Notice of any prepayment shall be given to the respective owners of Certificates designated for prepayment at their addresses appearing on the registration books of the Trustee as of the close of business on the day before such notice is given. The Trustee shall give notice by first-class mail, postage prepaid, at least 30 days but not more than 45 days prior to the prepayment date. Such notice shall set forth, in the case of each Certificate to be prepaid only in part, the portion of the principal thereof which is to be prepaid. Such notice may be conditional and may be canceled as provided in the Trust Agreement. Neither failure to receive such notice nor any defect in any notice so given shall affect the sufficiency of the proceedings for the prepayment of such Certificates.

If this Certificate is called for prepayment and the principal amount of this Certificate plus accrued interest due with respect hereto are duly provided therefor as specified in the Trust Agreement, then interest shall cease to accrue with respect hereto from and after the date fixed for prepayment.

The Trustee has no obligation or liability to the Certificate owners to make payments of principal or interest with respect to the Certificates, except from amounts on deposit for such purposes with the Trustee. The Trustee's sole obligations are to administer the various funds and accounts established under the Trust Agreement in accordance therewith, and, to the extent provided in the Trust Agreement, to enforce the rights of the Trustee under the Project Lease.

The Trustee has executed this Certificate solely in its capacity as Trustee under the Trust Agreement.

The recitals of fact contained herein shall be taken as those of the City and not the Trustee, and the Trustee does not warrant the accuracy of any recitals hereof.

This Certificate shall not be entitled to any benefit under the Trust Agreement or become valid for any purpose until it has been duly executed and delivered by the Trustee.

THE CITY HAS CERTIFIED, RECITED AND DECLARED that all things, conditions and acts required by the Constitution and laws of the State and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the execution and the delivery of this Certificate, do exist, have happened and have been performed in due time, form and manner, as required by law.

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

IN WITNESS WHEREOF, this Certificate has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

DATE OF EXECUTION: [Closing Date]

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this Certificate shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM\_ as tenants in common

TEN ENT\_ as tenants by the entireties

JT TEN\_ as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT \_\_\_\_\_ Custodian \_\_\_\_\_

(Cust) (Minor)

under Uniform Gifts to Minors Act \_\_\_\_\_

(State)

**ADDITIONAL ABBREVIATIONS MAY ALSO BE USED  
THOUGH NOT IN THE LIST ABOVE**

**ASSIGNMENT**

For value received the undersigned hereby sells, assigns and transfers unto

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

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

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

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

\_\_\_\_\_  
Note: Signature(s) must be guaranteed by an eligible guarantor.

**EXHIBIT B**  
**DESCRIPTION OF THE 2009-R1 PROJECT**

[TO COME]