

ESCROW AGREEMENT (SERIES 2009B)

By and Among

CITY AND COUNTY OF SAN FRANCISCO

and

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

Dated as of [_____] 1, 2019

Relating to

**CITY AND COUNTY OF SAN FRANCISCO
CERTIFICATES OF PARTICIPATION, SERIES 2009B
(MULTIPLE CAPITAL IMPROVEMENT PROJECTS)**

ESCROW AGREEMENT (SERIES 2009B)

THIS ESCROW AGREEMENT (SERIES 2009B), dated as of [_____] 1, 2019 (the “Escrow Agreement”), by and among the City and County of San Francisco (the “City”) and U.S. Bank National Association, as escrow bank (the “Escrow Bank”), is entered into in accordance with Ordinance No. [_____] of the City, adopted on [_____] 1, 2019, and a Trust Agreement, dated as of May 1, 2009, as supplemented, including by a Third Supplement to Trust Agreement, dated as of [_____] 1, 2019 (as supplemented, the “Trust Agreement”), by and between the City and U.S. Bank National Association, as trustee (the “Trustee”), to prepay all or a portion of the outstanding City and County of San Francisco Certificates of Participation, Series 2009B (Multiple Capital Improvement Projects) (as prepaid, the “Refunded Certificates”), which were issued pursuant to the Trust Agreement. The Refunded Certificates are listed on Schedule A to this Escrow Agreement.

WITNESSETH:

WHEREAS, pursuant to the Trust Agreement, the City has previously caused to be issued the Refunded Certificates; and

WHEREAS, the City has determined to issue its Refunding Certificates of Participation, Series 2019-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 the Refunded Certificates on _____, 2019 (the “Redemption Date”) 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 Redemption Date (the “Prepayment Price”); 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 Fund established and maintained by it (the “Escrow Fund”) moneys to be held uninvested 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. The Trustee shall deposit with the Escrow Bank \$_____, comprised of a portion of the net sale proceeds of the Certificates, and instructs the Trustee to transfer to the Escrow Bank \$_____, 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 Redemption Date. The moneys in the Escrow Fund shall be held uninvested.

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 uninvested in the Escrow Fund; 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 Redemption Date, the Escrow Bank shall transfer from the Escrow Fund to the Trustee for the Refunded Certificates amounts sufficient to pay the Prepayment Price of the applicable series of Refunded Certificates on the Redemption 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 the 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 Redemption 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 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, redemption or redemption 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 Escrow Bank shall have the right to accept and act upon 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. Pursuant to previous instructions given by the City, the Escrow Bank mailed conditional notices of redemption with respect to the Refunded Certificates on _____, 2019. The Escrow Bank is hereby further instructed to mail and to file with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System (“EMMA”) upon the defeasance of the Refunded Certificates a notice of defeasance of the Refunded Certificates in the form attached hereto as Exhibit Z. 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 Article XI of 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, as defined in the Trust Agreement; 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 Fund 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 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 the 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

therefore 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: _____
Mayor

ATTEST:

Clerk of the Board of Supervisors

[SIGNATURES CONTINUED ON NEXT PAGE.]

[SIGNATURE PAGE CONTINUED.]

U.S. BANK NATIONAL ASSOCIATION, as Escrow
Bank and as Trustee

By: _____
Authorized Officer

SCHEDULE A

REFUNDED CERTIFICATES

**CITY AND COUNTY OF SAN FRANCISCO
CERTIFICATES OF PARTICIPATION, SERIES 2009B
(MULTIPLE CAPITAL IMPROVEMENT PROJECTS)**

BASE CUSIP 79765D

<i>CUSIP</i>	<i>MATURITY (April 1)</i>	<i>RATE</i>	<i>AMOUNT</i>	<i>PRICE</i>
WJ5	2020	5.000%	\$1,230,000	100.000
WK2	2021	5.000	1,290,000	100.000
WL0	2022	5.000	1,355,000	100.000
WM8	2023	5.000	1,425,000	100.000
WN6	2024	5.000	1,495,000	100.000
WP1	2025	5.000	1,570,000	100.000
WQ9	2026	5.000	1,650,000	100.000
WS5	2030	4.750	7,435,000	100.000
WT3	2035	4.750	11,455,000	100.000

EXHIBIT Z

NOTICE OF DEFEASANCE

**City and County of San Francisco
Certificate of Participation, Series 2009B
(Multiple Capital Improvement Projects)**

Notice is hereby given to the owners of the outstanding certificates described below (collectively, the “Refunded Certificates”): (i) that there has been deposited with U.S. Bank National Association, as Trustee under the Trust Agreement, dated as of May 1, 2009, as supplemented by the First Supplement to Trust Agreement, dated as of September 1, 2009 (as supplemented, the “Trust Agreement”), by and between the City and County of San Francisco (the “City”) and U.S. Bank National Association, moneys as permitted by the Trust Agreement that are sufficient (as evidenced by a verification report delivered to the Trustee) and available to redeem the Refunded Certificates on _____, 2019 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 that the Trust Agreement has been released to the extent it relates to such Refunded Certificates in accordance with Section 11.01 thereof, and all obligations of the City and the Trustee under the Trust Agreement with respect to all Refunded Certificates have ceased, terminated and become void except as expressly set forth therein.

The Refunded Certificates to be defeased are as follows:

<i>CUSIP</i>	<i>MATURITY (April 1)</i>	<i>RATE</i>	<i>AMOUNT</i>	<i>PRICE</i>
WJ5	2020	5.000%	\$1,230,000	100.000
WK2	2021	5.000	1,290,000	100.000
WL0	2022	5.000	1,355,000	100.000
WM8	2023	5.000	1,425,000	100.000
WN6	2024	5.000	1,495,000	100.000
WP1	2025	5.000	1,570,000	100.000
WQ9	2026	5.000	1,650,000	100.000
WS5	2030	4.750	7,435,000	100.000
WT3	2035	4.750	11,455,000	100.000

All Refunded Certificates shall be surrendered at the following address:

First Class/Registered/Certified

Express Delivery Only

By Hand Only

No representation is made as to the correctness of the CUSIP number either as printed on any Refunded Certificate 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.

Dated this __ day of _____, 2019.

CITY AND COUNTY OF SAN FRANCISCO

U.S. BANK NATIONAL ASSOCIATION, as
Trustee