

ESCROW DEPOSIT AGREEMENT

This ESCROW AGREEMENT (this "Agreement"), dated as of October 1, 2014, is between the CITY OF SUNNYVALE, a charter city duly organized and existing under the Constitution and laws of the State of California (the "City"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, acting as escrow bank (the "Escrow Bank") and as trustee for the within-mentioned 2003 Bonds and 2007 Bonds.

B A C K G R O U N D :

WHEREAS, the City has heretofore authorized, issued and sold \$20,575,000 principal amount of its City of Sunnyvale Solid Waste Revenue Refunding Bonds, Series 2003 (the "2003 Bonds") pursuant to the provisions of Revenue Refunding Bond Law (contained in Sections 53570 et seq. and 53580 et seq. of the California Government Code, the "Refunding Bond Law") and an Indenture of Trust dated as of January 1, 2003 (the "2003 Indenture"), by and between the City and the Escrow Bank, as trustee (the "2003 Trustee"), which are presently outstanding in the principal amount of \$5,375,000; and

WHEREAS, the City has heretofore authorized, executed and delivered an Installment Sale Agreement, dated as of November 1, 2007, between the Sunnyvale Financing Authority (the "Authority") and the City, in the original principal amount of \$8,130,000 (the "2007 Installment Sale Agreement"), under which the City purchased certain capital improvements to the City's solid waste refuse collection and disposal system (the "Solid Waste System"); and

WHEREAS, the installment payments to be paid by the City to the Authority under the 2007 Installment Sale Agreement (the "2007 Installment Payments") secured the Authority's \$8,130,000 Solid Waste Revenue Bonds, Series 2007 (the "2007 Bonds"), which were issued by the Authority under an Indenture of Trust, dated as of November 1, 2007, between the Escrow Bank, as trustee (the "2007 Trustee") and the Authority (the "2007 Indenture"), and which are presently outstanding in the principal amount of \$4,635,000; and

WHEREAS, the obligation of the City to pay debt service on the 2003 Bonds and to pay the 2007 Installment Payments is limited to "Pledged Revenues", which is defined in the 2003 Indenture and 2007 Installment Sale Agreement to mean Net Revenues of the Solid Waste System, plus payments to be made by the Cities of Mountain View and Palo Alto (the "Participants") to the City for the Solid Waste System, pursuant to a Second Memorandum of Understanding Relating to Construction and Operation of a Materials Recovery and Transfer Station and the Disposal of Municipal Solid Waste at Kirby Canyon, among the City and the Participants, dated June 9, 1992; and

WHEREAS, under the 2003 Indenture, the City has the right to redeem the 2003 Bonds on any date on or after October 1, 2013; and

WHEREAS, under the 2007 Installment Sale Agreement, the City has the right to prepay the 2007 Installment Payments on any date on and after October 1, 2013, and the Authority has the corresponding right under the 2007 Indenture to redeem the 2007 Bonds on any date on or after October 1, 2013; and

WHEREAS, under the 2007 Installment Sale Agreement, the prepayment of the 2007 Installment Payments will cause a redemption of the 2007 Bonds under the 2007 Indenture; and

WHEREAS, the 2003 Bonds, the 2007 Installment Sale Agreement and the 2007 Bonds are referred to herein together as the "Prior Solid Waste System Revenue Obligations", and the 2003 Indenture and the 2007 Indenture are referred to herein collectively as the "Prior Indentures"; and

WHEREAS, the City wishes at this time to prepay and redeem the Prior Solid Waste System Revenue Obligations in accordance with the 2003 Indenture, the 2007 Installment Sale Agreement and the 2007 Indenture in order to achieve interest savings; and

WHEREAS, in order to provide funds to refinance, prepay and redeem the Prior Solid Waste System Revenue Obligations, the City has borrowed the amount of \$_____ (the "Loan") under a Loan Agreement dated as of October 1, 2014 (the "Loan Agreement"), between the City and DNT Asset Trust (the "Lender"); and

WHEREAS, the City wishes to appoint the Escrow Bank for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered by the Escrow Bank for the purpose of providing for the prepayment and redemption of the Prior Solid Waste System Revenue Obligations in full; and

WHEREAS, in addition, the City wishes to appoint the Escrow Bank for the purpose of establishing a costs of issuance account to be funded, held and administered by the Escrow Bank for the purpose of paying costs of issuance incurred in connection with the execution and delivery of the Loan Agreement.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, the City and the Escrow Bank hereby agree as follows:

SECTION 1. *Appointment of Escrow Bank; Establishment of Escrow Fund.* The City hereby appoints the Escrow Bank to act as escrow agent for purposes of administering the funds required to prepay and redeem the Prior Solid Waste System Revenue Obligations in full in accordance with the Prior Indentures and the 2007 Installment Sale Agreement, and thereby discharge the City's and Authority's obligations under the Prior Indentures and 2007 Installment Sale Agreement.

The Escrow Bank is hereby directed to establish an escrow fund (the "Escrow Fund") to be held by the Escrow Bank as an irrevocable escrow securing the prepayment and redemption of the Prior Solid Waste System Revenue Obligations in accordance with the Prior Indentures and the 2007 Installment Sale Agreement. If at any time the Escrow Bank receives actual knowledge that the cash in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the Prior Solid Waste System Revenue Obligations, the Escrow Bank shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Bank has no liability for any such insufficiency.

SECTION 2. *Deposit of Amounts in Escrow Fund.* On October __, 2014 (the "Closing Date"), the City shall cause to be transferred to the Escrow Bank for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the following sources: (a) from the proceeds of the Loan in the amount of \$_____, which amount shall be transferred by wire transfer of immediately available funds to the Escrow Bank from the Lender under the Loan Agreement; (b) from amounts held by the Escrow Bank, in its capacity as 2003 Trustee, in the Reserve Account established under Section 3.03 of the 2003 Indenture in the amount of \$_____; and (c) from amounts held by the Escrow Bank, in its capacity as 2007 Trustee, in the Reserve Account established under Section 3.03 of the 2007 Indenture in the amount of \$_____.

SECTION 3. *Investment of Amounts in Escrow Fund.* The Escrow Bank shall hold funds in the Escrow Fund in cash, uninvested.

SECTION 4. *Application of Amounts in Escrow Fund.* On November 14, 2014, the Escrow Bank shall apply the amounts on deposit in the Escrow Fund to prepay and redeem the Prior Solid Waste System Revenue Obligations in accordance with the following schedule:

2003 Bonds

<u>Redemption Date</u>	<u>Accrued Interest</u>	<u>Redeemed Principal</u>	<u>Total Payment</u>
November 14, 2014	\$ _____	\$ 5,375,000	\$ _____

2007 Installment Sale Agreement and 2007 Bonds

<u>Redemption Date</u>	<u>Accrued Interest</u>	<u>Redeemed Principal</u>	<u>Total Payment</u>
November 14, 2014	\$ _____	\$4,635,000	\$ _____

Following the payment and redemption of the Prior Solid Waste System Revenue Obligations in full on November 14, 2014, the Escrow Bank shall transfer any amounts remaining on deposit in the Escrow Fund to the City to be applied to pay interest next coming due and payable on the Loan.

SECTION 5. *Irrevocable Election to Prepay and Redeem Prior Solid Waste System Revenue Obligations.* The City hereby irrevocably elects to prepay and redeem all of the Prior Solid Waste System Revenue Obligations on November 14, 2014, in accordance with the provisions of the Prior Indenture and the 2007 Installment Sale Agreement. Notice of redemption of the 2003 Bonds and the 2007 Bonds has been given by the Escrow Bank, in its capacity as 2003 Trustee and 2007 Trustee, in accordance with the Prior Indentures, at the direction and expense of the City.

SECTION 6. *Costs of Issuance Account.* There is hereby established a separate Account to be known as the "Costs of Issuance Account", to be held by the Escrow Bank in trust. On the Closing Date, the Escrow Bank shall deposit the amount of \$ _____ into the Costs of Issuance Account from funds received from the Lender. The Escrow Bank shall disburse moneys in the Costs of Issuance Account from time to time to pay Costs of Issuance upon submission of a Request of the City stating (a) the person to whom payment is to be made, (b) the amounts to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Costs of Issuance Account, and (e) that such amounts have not been the subject of a prior Request of the City; in each case together with a statement or invoice for each amount requested thereunder. All disbursements shall be made by check or wire transfer in accordance with the payment instructions set forth in each Request of the City or the invoices accompanying such Request of the City and the Escrow Bank may rely on such payment instructions though given by the City with no duty to investigate or inquire as to the authenticity of the invoice or the payment instructions contained therein. On December 1, 2014, the Escrow Bank shall transfer any amounts remaining in the Costs of Issuance Account to the City, to be applied to pay a portion of the interest next coming due and payable on the Loan.

Pending disbursements to pay Costs of Issuance, the Escrow Bank shall hold funds in the Costs of Issuance Account in cash, uninvested.

SECTION 7. *Compensation to Escrow Bank.* The City shall pay the Escrow Bank full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, redemption expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Bank has no lien upon or right of set off against the cash and securities at any time on deposit in the Escrow Fund.

The City shall indemnify, defend and hold harmless the Escrow Bank and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Bank for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Bank directly or indirectly relating to, or arising from, claims against the Escrow Bank by reason of its participation in the transactions contemplated hereby, except to the extent caused by the Escrow Bank's gross negligence or willful misconduct. The provisions of this Section 7 shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Bank.

SECTION 8. *Immunities and Liability of Escrow Bank.* The Escrow Bank undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Bank. The Escrow Bank shall not have any liability hereunder except to the extent of its gross negligence or willful misconduct. In no event shall the Escrow Bank be liable for any special, indirect or consequential damages. The Escrow Bank shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Bank may consult with legal counsel of its own choice and the Escrow Bank shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Bank shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and securities to pay the principal, interest and redemption premium with respect to the Prior Solid Waste System Revenue Obligations.

Whenever in the administration of this Agreement the Escrow Bank deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and shall be full protection for any action taken or not taken by the Escrow Bank in good faith reliance thereon.

The Escrow Bank may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon

any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Bank in connection with this Agreement and believed by the Escrow Bank to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Bank to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow 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 shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Escrow Bank and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

The Escrow Bank may at any time resign by giving 30 days written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Bank from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to each of the City, the resigning Escrow Bank and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Bank may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Bank may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Bank shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Bank shall be the successor of the Escrow Bank hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The Escrow Bank agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Bank shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Bank e-mail or facsimile instructions (or instructions by a similar electronic method) 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 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 instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Bank, including without limitation the risk of the Escrow Bank acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 9. *Termination of Agreement.* Upon payment and redemption in full of the Prior Solid Waste System Revenue Obligations and the payment and redemption in full of the Prior Solid Waste System Revenue Obligations, and upon payment of all fees, expenses and charges of the Escrow Bank as described above, this Agreement shall terminate and the Escrow Bank shall be discharged from any further obligation or responsibility hereunder.

SECTION 10. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CITY OF SUNNYVALE

By _____
Director of Finance/ Authority Treasurer

Attest:

City Clerk

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

By _____
Authorized Officer

Acknowledged:

**U.S. BANK NATIONAL ASSOCIATION,
as 2003 Trustee and 2007 Trustee**

By _____
Authorized Officer