

ESCROW DEPOSIT AND TRUST AGREEMENT

\$35,380,000
CITY OF SUNNYVALE
WASTEWATER REVENUE BONDS, SERIES 2010

This ESCROW DEPOSIT AND TRUST AGREEMENT, dated as of December __, 2017 (the "**Agreement**"), is by and between the City of Sunnyvale, a municipal corporation and charter city organized and existing under the 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 agent for the Prior Bonds defined below (the "Escrow Agent") and as trustee (the "Prior Bonds Trustee") for the Prior Bonds defined below.

BACKGROUND:

1. The City owns and operates a public utility enterprise for the collection, treatment, disposal and reuse of wastewater within the service area of the City (the "Wastewater System").

2. In order to finance and refinance improvements to the Wastewater System, the City has previously issued its bonds captioned "City of Sunnyvale Wastewater Revenue Bonds, Series 2010" in the original principal amount of \$35,380,000 (the "Prior Bonds") under an Indenture of Trust dated as of June 1, 2010 (the "Prior Bonds Indenture"), between the City and the Prior Trustee.

3. Under the Prior Bonds Indenture, the Prior Bonds are subject to redemption on any date on or after April 1, 2020, at a redemption price equal to the principal amount of the Prior Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

4. In order to provide funds to defease, pay and redeem the Prior Bonds and thereby discharge the indebtedness represented by the Prior Bonds in accordance with the Prior Bonds Indenture, the City Council has authorized the issuance of its bonds captioned "City of Sunnyvale Wastewater Revenue Refunding Bonds, Series 2017A," in the aggregate principal amount of \$_____ (the "Series A Bonds"), and its bonds captioned "City of Sunnyvale Taxable Wastewater Revenue Refunding Bonds, Series 2017A-T," in the aggregate principal amount of \$_____ (the "Taxable Series A-T Bonds" and, together with the Series A Bonds, the "Refunding Bonds") under an Indenture of Trust dated as of December 1, 2017 (the "Refunding Bonds Indenture"), between the City and U.S. Bank National Association (the "Refunding Bonds Trustee").

5. The City wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the payment and redemption of the Prior Bonds in full in accordance with the Prior Bonds Indenture.

6. As a result of the deposit and investment of funds in accordance with this Agreement, the Prior Bonds will be discharged and defeased in accordance with the provisions of Section 9.03 of the Prior Bonds Indenture.

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 Agent hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent; Establishment of Escrow Fund.* The City hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to defease, pay and redeem the Prior Bonds in full in accordance with the Prior Bonds Indenture.

The Escrow Agent is hereby directed to establish an escrow fund to be known as the "City of Sunnyvale Wastewater Revenue Bonds, Series 2010, Escrow Fund" (the "Escrow Fund") to be held by the Escrow Agent as an irrevocable escrow securing the defeasance, payment and redemption of the Prior Bonds in accordance with the Prior Bonds Indenture. If at any time the Escrow Agent receives actual knowledge that the cash and securities in the Escrow Fund will not be sufficient to make any payment required by Section 5, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 2. *Deposit of Amounts in Escrow Fund.* On December ____, 2017 (the "Closing Date"), the City shall cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the proceeds of the Refunding Bonds.

In addition, on the Closing Date, the Escrow Agent, in its capacity as Prior Bonds Trustee, shall withdraw all funds held in the funds and accounts established under the Prior Bonds Indenture, in the combined amount of \$_____, for deposit into the Escrow Fund, for a total deposit equal to \$_____.

SECTION 3. *Investment of Amounts in Escrow Fund.* On the Closing Date, the Escrow Agent shall invest \$_____ of the amounts deposited in the Escrow Fund in the federal securities listed on Exhibit A and hold the remaining \$_____ in cash, uninvested.

SECTION 4. *Irrevocable Election to Redeem the Prior Bonds.* The City hereby irrevocably elects to redeem the Prior Bonds in full on April 1, 2020 (the "Redemption Date"), in accordance with Section 2.02(a) of the Prior Bonds Indenture.

At the written direction of the City, notice of redemption of the Prior Bonds shall be given by the Escrow Agent, in its capacity as Prior Bonds Trustee, in accordance with Section 2.02(c) of the Prior Bonds Indenture, at the expense of the City, using a redemption notice in the form set forth in Exhibit B. Notice of redemption of the Prior Bonds shall be given by the Escrow Agent no later than March 2, 2020.

The City further hereby directs the Escrow Agent to file on the Closing Date the notice attached as Exhibit C on the Municipal Securities Rulemaking Board's EMMA system with respect to the defeasance of the Prior Bonds. The sole remedy for the Escrow Agent's failure to file such notice with EMMA shall be an action in mandamus by the

holders of the Prior Bonds for specific performance, or a similar remedy to compel performance.

SECTION 5. *Application of Amounts in Escrow Fund.* The Escrow Agent shall apply an amount on deposit in the Escrow Fund to pay and redeem the Prior Bonds on the Redemption Date, in accordance with the following schedule:

Redemption Date	Interest	Principal Redeemed	Total
4/01/2018	\$ _____	\$ _____	\$ _____
10/1/2018	\$ _____	\$ _____	\$ _____
4/01/2019	\$ _____	\$ _____	\$ _____
10/1/2019	\$ _____	\$ _____	\$ _____
4/01/2020	\$ _____	\$ _____	\$ _____

Following the payment and redemption of the Prior Bonds in full on the Redemption Date, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to the Refunding Bonds Trustee to be deposited in the Bond Service Fund established for the Refunding Bonds under Section 4.02 of the Refunding Bonds Indenture and applied to pay interest next coming due and payable on the Refunding Bonds.

SECTION 6. *Compensation to Escrow Agent.* The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, redemption expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the cash and securities at any time on deposit in the Escrow Fund.

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

SECTION 7. *Immunities and Liability of Escrow Agent.* The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not have any liability hereunder except to the extent of its gross negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special, indirect or consequential damages. The Escrow Agent shall not be permitted to make any investments of amounts held by it in the Escrow Fund. The Escrow Agent may consult with legal counsel of its own choice and the Escrow Agent shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion

or advice of such counsel. The Escrow Agent shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and securities to pay the principal and interest represented by the Prior Bonds.

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

The Escrow Agent may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Agent in connection with this Agreement and believed by the Escrow Agent to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care. The Escrow Agent 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 Agent 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 Agent 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 Agent from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to each of the City, the resigning Escrow Agent and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor.

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

SECTION 8. *Furnishing of Statements.* The Escrow Agent shall furnish the City periodic cash transaction statements which include detail for all investment transactions effected by the Escrow Agent or brokers selected by the City. Upon the City's election, such statements will be delivered via the Escrow Agent's online service and upon electing such service, paper statements will be provided only upon request. The City waives the right to receive brokerage confirmations of security transactions effected by the Escrow Agent as they occur, to the extent permitted by law. The City further understands that trade confirmations for securities transactions effected by the Escrow Agent will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

SECTION 9. *Electronic Communications.* The Escrow Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means ("Electronic Means" 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 Agent, or another method or system specified by the Escrow Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Escrow Agent 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 Agent Instructions using Electronic Means and the Escrow Agent in its discretion elects to act upon such Instructions, the Escrow Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Escrow Agent cannot determine the identity of the actual sender of such Instructions and that the Escrow Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Agent 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 Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Escrow Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the 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 Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

SECTION 10. *Termination of Agreement.* Upon payment and redemption in full of the Prior Bonds, and upon payment of all fees, expenses and charges of the Escrow Agent

as described above, this Agreement shall terminate and the Escrow Agent shall be discharged from any further obligation or responsibility hereunder.

SECTION 11. *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 12. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CITY OF SUNNYVALE

By _____
City Manager

Attest

City Clerk

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

By _____
Authorized Officer

EXHIBIT A

ESCROW SECURITIES

Type of Security	Delivery Date	Maturity Date	Par Amount	Coupon	
	12/___/2017	4/01/2020			

EXHIBIT B

FORM OF NOTICE OF REDEMPTION

NOTICE OF FULL REDEMPTION

\$35,380,000

**CITY OF SUNNYVALE
WASTEWATER REVENUE BONDS, SERIES 2010**

Original Date of Issue: June 29, 2010

NOTICE IS HEREBY GIVEN, by the City of Sunnyvale (the "City"), with respect to the captioned bonds (the "2010 Bonds"), that it has elected to optionally redeem all of the outstanding 2010 Bonds on April 1, 2020 (the "Redemption Date"). The redemption price of the 2010 Bonds equals the par amount thereof together with accrued interest thereon to the Redemption Date, without redemption premium. Interest on the 2010 Bonds will not accrue after the Redemption Date.

The 2010 Bonds being optionally redeemed consist of the following:

Maturity Date (April 1)	Principal Amount	Interest Rate	CUSIP†
2020	\$1,060,000	5.000%	867604 AK6
2021	1,115,000	5.000	867604 AL4
2022	1,165,000	5.000	867604 AM2
2023	1,230,000	5.000	867604 AN0
2024	1,290,000	5.250	867604 AP5
2025	1,355,000	5.250	867604 AQ3
2026	1,430,000	5.250	867604 AR1
2027	1,510,000	5.250	867604 AS9
2040 T	13,325,000	5.250	867604 AT7

T: Term Bonds

† The City and the Trustee shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any 2010 Bond; the CUSIP numbers are included solely for the convenience of the owners of the 2010 Bonds.

The 2010 Bonds must be surrendered by the owners thereof at the corporate trust office of the Trustee, listed below, for payment of the redemption price.

Registered/Certified Mail:
U.S. Bank National Association
Global Corporate Trust Services
111 Fillmore Ave E
St. Paul, MN 55107

Dated: _____, 2020

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

EXHIBIT C

FORM OF NOTICE OF DEFEASANCE

NOTICE OF DEFEASANCE

\$35,380,000

**CITY OF SUNNYVALE
WASTEWATER REVENUE BONDS, SERIES 2010**

Original Date of Issue: June 29, 2010

NOTICE IS HEREBY GIVEN, by the City of Sunnyvale (the "City"), that the captioned bonds (the "2010 Bonds") have been defeased and discharged under and within the meaning of the Indenture of Trust dated as of June 1, 2010, between the City and U.S. Bank National Association (the "Indenture"), authorizing the issuance of the 2010 Bonds. Funds for the payment of the 2010 Bonds have been deposited with U.S. Bank National Association, as escrow agent, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2010 Bonds has been verified by Causey Demgen & Moore P.C., certified public accountants. As a consequence of the foregoing actions and in accordance with the Indenture, the 2010 Bonds are no longer secured by a pledge of revenues under the Indenture, and the 2010 Bonds are now payable solely from the moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The City has elected to optionally redeem all of the outstanding 2010 Bonds on April 1, 2020 (the "Redemption Date"). The redemption price of the 2010 Bonds equals the par amount thereof together with accrued interest thereon to the Redemption Date, without redemption premium. Interest on the 2010 Bonds will not accrue after the Redemption Date.

The 2010 Bonds being defeased consist of the following:

Maturity Date (April 1)	Principal Amount	Interest Rate	CUSIP†
2018	\$1,515,000	5.000%	867604 AH3
2019	1,010,000	5.000	867604 AJ9
2020	1,060,000	5.000	867604 AK6
2021	1,115,000	5.000	867604 AL4
2022	1,165,000	5.000	867604 AM2
2023	1,230,000	5.000	867604 AN0
2024	1,290,000	5.250	867604 AP5
2025	1,355,000	5.250	867604 AQ3
2026	1,430,000	5.250	867604 AR1
2027	1,510,000	5.250	867604 AS9
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The 2010 Bonds must be surrendered by the owners thereof at the corporate trust office of the Trustee for payment of the redemption price.

Dated: _____, 2017

U.S. BANK NATIONAL ASSOCIATION,
as Trustee