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**ESCROW AGREEMENT**

**by and between the**

**HUNTINGTON BEACH PUBLIC FINANCING AUTHORITY**

**and**

**U.S. BANK NATIONAL ASSOCIATION**

**Dated as of August 1, 2020**

**Huntington Beach Public Financing Authority  
Lease Revenue Refunding Bonds, 2010 Series A**

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## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** (this “Escrow Agreement”), executed and entered into and dated as of August 1, 2020, is by and between the HUNTINGTON BEACH PUBLIC FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the “Authority”), and U.S. BANK NATIONAL ASSOCIATION, as escrow bank (the “Escrow Bank”) and as Prior Trustee (as defined herein).

### RECITALS

**WHEREAS**, there are currently outstanding Huntington Beach Public Financing Authority Lease Revenue Refunding Bonds, 2010 Series A (the “Prior Bonds”), in the aggregate principal amount of \$7,410,000; and

**WHEREAS**, the Prior Bonds were issued pursuant to the Indenture, dated as of June 1, 2010 (the “Prior Indenture”), by and between the Authority and U.S. Bank National Association, as trustee (the “Prior Trustee”); and

**WHEREAS**, the Prior Bonds are payable from certain lease payments to be made by the City of Huntington Beach (the “City”) under the Lease Agreement, dated as of June 1, 2010, by and between the City and the Authority (the “Lease Agreement”), pursuant to which the Authority leased certain real property and the improvements thereto to the City; and

**WHEREAS**, the Escrow Bank is the trustee under the Prior Indenture; and

**WHEREAS**, the Authority and the City have determined that savings will be realized by providing the funds necessary to pay, when due, the principal of and interest on the Prior Bonds to September 1, 2020 (the “Redemption Date”) and to redeem the callable Prior Bonds on the Redemption Date at a redemption price (the “Redemption Price”) equal to the principal of the Prior Bonds plus the accrued but unpaid interest on the Prior Bonds to the Redemption Date, without premium; and

**WHEREAS**, in order to provide the funds necessary to redeem the Prior Bonds, the Authority has issued \$[ ] aggregate principal amount of Huntington Beach Public Financing Authority (Orange County, California) Lease Revenue Refunding Bonds, 2020 Series A (Tax-Exempt) (the “Series 2020A Bonds”) pursuant to the Indenture, dated as of August 1, 2020 (the “Indenture”), by and among the Authority, the City and U.S. Bank National Association, as trustee (the “Trustee”); and

**WHEREAS**, the Prior Bonds are subject to redemption on the Redemption Date and the City has determined to provide for the call for redemption on the Redemption Date of the Prior Bonds outstanding on the Redemption Date;

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

**Section 1. Definitions.** Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Prior Indenture.

**Section 2. The Escrow Fund.** (a) There is hereby established a fund (the “Escrow Fund”) to be held as an irrevocably pledged escrow by the Escrow Bank, which the Escrow Bank shall keep separate and apart from all other funds of the Authority and the Escrow Bank and to be applied solely as provided in this Escrow Agreement.

Pending application as provided in this Escrow Agreement, amounts on deposit in the Escrow Fund are hereby pledged and assigned solely to the payment of (i) the principal and interest evidenced by the Prior Bonds coming due on and prior to the Redemption Date, and (ii) the Redemption Price on the Redemption Date, which amounts shall be held in trust by the Escrow Bank for the Owners of the Prior Bonds.

(b) Upon the execution and delivery of the Series 2020A Bonds, there shall be deposited in the Escrow Fund \$[ ] received from the proceeds of the sale of the Series 2020A Bonds as provided in Section 2.03 of the Indenture. [The Escrow Bank, as Prior Trustee, has informed the City that, as of the date hereof, there is no less than \$[ ] on deposit in the Reserve Fund established under the Prior Indenture. The Authority has determined that \$[ ] may be released as a result of the refunding of the Refunded Bonds. On the date hereof, the Prior Trustee is directed by the Authority to transfer such moneys to the Escrow Bank and the Escrow Bank shall deposit such moneys in the Escrow Fund.]

(c) Upon the deposit of moneys pursuant to Section 2(b), the Authority has determined or caused to be determined that the moneys on deposit in the Escrow Fund will be at least equal to an amount sufficient to make the payments required by Section 4 hereof.

**Section 3. Use and Investment of Moneys.** (a) The Escrow Bank hereby acknowledges deposit of the moneys described in Section 2(b) and is directed by the Authority, and agrees to invest \$[ ] of such moneys in the Exhibit A Securities upon receipt of certification by a nationally recognized firm of independent certified public accountants that the Exhibit A Securities will mature in such principal amounts and earn interest in such amounts and, in each case, at such times, so that sufficient moneys will be available from maturing principal and interest on the Exhibit A Securities, together with any uninvested moneys then held by the Escrow Bank in the Escrow Fund, to make all payments required by Section 4 hereof. Except as provided in Section 3(b) or Section 3(c), the balance of the moneys described in Section 2 shall be held uninvested in the Escrow Fund.

(b) Upon the written request of an Authorized Representative of the Authority, but subject to the conditions and limitations herein set forth, the Escrow Bank shall purchase substitute Defeasance Obligations for the Defeasance Obligations then held in an Escrow Fund with the proceeds derived from the sale, transfer, redemption or other disposition of Defeasance Obligations then on deposit in such Escrow Fund and any uninvested money then held by the Escrow Bank hereunder in accordance with the provisions of this Section. Such sale, transfer, redemption or other disposition of Defeasance Obligations then on deposit in such Escrow Fund and substitution of other Defeasance Obligations shall be effected by the Escrow Bank upon the written request of an Authorized Representative of the Authority but only by a simultaneous transaction and only upon receipt of (i) certification by a nationally recognized firm of independent certified public accountants that the Defeasance Obligations to be substituted, together with the Defeasance Obligations which will continue to be held in such Escrow Fund, will mature in such

principal amounts and earn interest in such amounts and, in each case, at such times so that sufficient moneys will be available from maturing principal and interest on such Defeasance Obligations held in such Escrow Fund, together with any uninvested moneys, to make all payments required by Section 4 hereof, which have not previously been made, and (ii) receipt by the Escrow Bank of an opinion of counsel of recognized standing in the field of law relating to municipal bonds to the effect that the sale, transfer, redemption or other disposition and substitution of Defeasance Obligations will not adversely affect the exclusion of interest evidenced by any Prior Bonds or by any Prior Bonds from gross income for purposes of federal income taxation.

(c) Upon the written request of an Authorized Representative of the Authority, but subject to the conditions and limitations herein set forth, the Escrow Bank will apply any moneys received from the maturing principal of or interest or other investment income on any Defeasance Obligations held in an Escrow Fund, or the proceeds from any sale, transfer, redemption or other disposition of Defeasance Obligations pursuant to Section 3(b) not required for the purposes of said Section (i) to the extent such moneys will not be required at any time for the purpose of making a payment required by Section 4 hereof, as certified by a nationally recognized firm of independent certified public accountants delivered to the Escrow Bank, such moneys shall be transferred to the Trustee for deposit in the Interest Account of the Payment Fund established under the Indenture upon the written request of an Authorized Representative of the Authority as received by the Escrow Bank, free and clear of any trust, lien, pledge or assignment securing the Prior Bonds or otherwise existing hereunder, and (ii) to the extent such moneys will be required for such purpose at a later date, shall, to the extent practicable, be invested or reinvested in Defeasance Obligations maturing at times and in amounts sufficient, as certified by a nationally recognized firm of independent certified public accountants delivered to the Escrow Bank, to make such payment required by Section 4 hereof.

(d) All Defeasance Obligations purchased pursuant to this Escrow Agreement shall be deposited in and held for the credit of the Escrow Fund. Except as provided in this Section 3, no moneys or Defeasance Obligations deposited with the Escrow Bank pursuant to this Escrow Agreement nor principal of, or interest payments or other investment income on, any such Defeasance Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Prior Bonds as provided by Section 4 hereof.

(e) The Owners of the Prior Bonds shall have a first and exclusive lien on the moneys and Defeasance Obligations in the Escrow Fund until such moneys and Defeasance Obligations are used and applied as provided in this Escrow Agreement.

(f) The Escrow Bank shall not be held liable for investment losses resulting from compliance with the provisions of this Escrow Agreement

**Section 4. Payment of Prior Bonds.** From the maturing principal of the Defeasance Obligations held in the Escrow Fund and the investment income and other earnings thereon and any uninvested money then held in the Escrow Fund, the Escrow Bank shall, on the Redemption Date, pay the Redemption Price in accordance with the terms of the Prior Indenture.

To the extent that the amount on deposit in the Escrow Fund on the Redemption Date is in excess of the amount necessary to make the required payments with respect to the Prior Bonds, as

shown in the then applicable escrow verification of the nationally recognized firm of independent certified public accountants, such excess shall be transferred to the Trustee for deposit in the Interest Account of the Payment Fund established under the Indenture.

**Section 5. Irrevocable Designation of Redemption and Instructions to Mail Notices.**

The Authority hereby irrevocably designates the Prior Bonds for prior redemption on the Redemption Date as indicated in Section 4 hereof. The Authority has instructed the Prior Trustee to provide conditional notice of optional redemption of the Prior Bonds in accordance with Section 4.03 of the Prior Indenture. The Authority hereby waives the right to rescind such notice and deems such notice irrevocable.

**Section 6. Performance of Duties.** The Escrow Bank agrees to perform the duties set forth herein and agrees that the irrevocable instructions to the Escrow Bank herein provided are in a form satisfactory to it.

**Section 7. Escrow Bank's Authority to Make Investments.** The Escrow Bank shall have no power or duty to invest any funds held under this Escrow Agreement except as provided in Section 3 hereof. The Escrow Bank shall have no power or duty to transfer or otherwise dispose of the moneys held hereunder except as provided in this Escrow Agreement.

**Section 8. Indemnity.** To the extent permitted by law, the Authority 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, agents, officers, directors, 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, expenses 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 Authority 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 and securities deposited therein, the purchase of any securities to be purchased thereto, the retention of such securities or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Escrow Bank in accordance with the provisions of this Escrow Agreement; provided, however, that the Authority shall not be required to indemnify the Escrow Bank against the Escrow Bank's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Bank's respective successors, assigns, agents and employees or the material breach by the Escrow Bank of the terms of this Escrow Agreement. In no event shall the Authority 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. The indemnities contained in this Section shall survive the termination of this Escrow Agreement.

**Section 9. Responsibilities of 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 Funds, the acceptance of the moneys or any securities deposited therein, the purchase of the securities to be purchased pursuant hereto, the retention of

such securities or the proceeds thereof, the sufficiency of the securities or any uninvested moneys held hereunder to accomplish the redemption of the Prior Bonds, or any payment, transfer or other application of moneys or securities 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 Authority, and the Escrow Bank assumes no responsibility for the correctness thereof. The Escrow Bank makes no representation as to the sufficiency of the securities to be purchased pursuant hereto and to any uninvested moneys to accomplish the redemption of the Prior Bonds pursuant to the Prior Indenture or to the validity of this Escrow Agreement as to the Authority and, except as otherwise provided herein, the Escrow Bank shall incur no liability in respect thereof. 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 or default, 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 Authority, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of 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 (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of counsel of recognized standing in the field of law relating to municipal bonds) may be deemed to be conclusively established by a written certification of the Authority. Whenever the Escrow Bank shall deem it necessary or desirable that a matter specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of counsel of recognized standing in the field of law relating to municipal bonds be proved or established prior to taking, suffering, or omitting any such action, such matter may be established only a certificate signed by a nationally recognized firm of certified public accountants or such opinion of counsel of recognized standing in the field of law relating to municipal bonds.

No provision of this Escrow Agreement shall require the Escrow Bank to risk or advance its own funds. The Escrow Bank shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Bank may execute any of its powers or duties hereunder through attorneys, agents or receivers and shall not be answerable for the actions of such attorneys, agents or receivers if selected by it with reasonable care.

The Escrow Bank agrees to accept and act upon instructions or directions pursuant to this Escrow 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 Authority 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 Authority 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 10. Amendments.** The Authority and the Escrow Bank may (but only with the consent of the Owners of all of the Prior Bonds and the Insurer) amend this Escrow Agreement or enter into agreements supplemental to this Escrow Agreement.

**Section 11. Term.** This Escrow Agreement shall commence upon its execution and delivery and shall terminate on the date upon which the Prior Bonds have been paid in accordance with this Escrow Agreement.

**Section 12. Compensation.** The Authority shall from time to time pay or cause to be paid to the Escrow Bank the agreed upon compensation for its services to be rendered hereunder, and reimburse the Escrow Bank for all of its reasonable advances in the exercise and performance of its duties hereunder; provided, however, that under no circumstances shall the Escrow Bank be entitled to any lien whatsoever on any moneys or obligations in the Escrow Fund for the payment of fees and expenses for services rendered or expenses incurred by the Escrow Bank under this Escrow Agreement or otherwise.

**Section 13. Severability.** If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Authority 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 14. Counterparts.** This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as an original but all of which shall constitute and be but one and the same instrument.

**Section 15. Governing Law.** This Escrow Agreement shall be construed under the laws of the State of California.

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

By: \_\_\_\_\_  
Authorized Officer

**HUNTINGTON BEACH PUBLIC  
FINANCING AUTHORITY**

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

ATTEST:

\_\_\_\_\_  
Robin Estanislau,  
Secretary

**EXHIBIT A**

**DEFEASANCE OBLIGATIONS**

<u>Type</u>	<u>Maturity</u>	<u>Par Amount</u>	<u>Interest Rate</u>	<u>Price</u>	<u>Cost</u>
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