

## **ESCROW AGREEMENT**

**Relating to  
\$7,250,000  
City of Fullerton  
2013 Taxable Judgment Obligation Bonds**

This ESCROW AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2020, is between the CITY OF FULLERTON, a general law city and municipal corporation 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 (the "Escrow Agent") and as trustee for the 2013 Bonds described below.

### **B A C K G R O U N D :**

1. The City has previously issued its \$7,250,000 aggregate principal amount of City of Fullerton 2013 Taxable Judgment Obligation Bonds (the "2013 Bonds") under an Indenture of Trust dated as of September 1, 2013 (the "2013 Bond Indenture"), between the City and U.S. Bank National Association as trustee (the "2013 Bond Trustee"), for the purpose of satisfying the obligations of the City in respect of a judgment rendered on December 4, 2012, in the case of *Hanson vs. City of Fullerton*, Case No. 30-2008-00102055, and under a Settlement Agreement and Mutual General Release of All Claims, which was executed by the City on June 20, 2012.

2. The City has the right under the 2013 Bond Indenture, at its option, to redeem the 2013 Bonds on any date on or after April 1, 2023, from any available source of funds, at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

3. In order to provide funds to pay and redeem the 2013 Bonds maturing on April 1 in each of the years 2028 and 2033 (the "Callable 2013 Bonds"), the City has issued its City of Fullerton Taxable Judgment Obligation Refunding Bonds, Series 2020 in the aggregate principal amount of \$\_\_\_\_\_ (the "2020 Bonds") under an Indenture of Trust dated as of \_\_\_\_\_, 2020 (the "2020 Bond Indenture"), between the City and U.S. Bank National Association, as trustee (the "2020 Bond Trustee").

4. The City wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered as set forth herein for the purpose of providing for payment and redemption of the Callable 2013 Bonds in full on April 1, 2023.

### **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 purpose of administering

the funds required for the refunding of the Callable 2013 Bonds as provided herein. The Escrow Agent is hereby directed to establish an escrow fund (the "Escrow Fund") to be held by the Escrow Agent as an irrevocable escrow. If at any time the Escrow Agent receives actual knowledge that the cash in the Escrow Fund will not be sufficient to make any payment required by Section 4, 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 \_\_\_\_\_, 2020 (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. Such amount shall be derived from the proceeds of the 2020 Bonds.

SECTION 3. *Investment of Amounts in Escrow Fund.* On the Closing Date, the Escrow Agent shall invest the amount of \$\_\_\_\_\_ held by it in the Escrow Fund in the following United States Treasury Securities of the type indicated:

<u>Type of Security</u>	<u>Maturity Date</u>	<u>Par Amount</u>	<u>Interest Rate</u>
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The Escrow Agent shall hold the remaining amount of \$\_\_\_\_\_ in the Escrow Fund in cash, uninvested.

SECTION 4. *Application of Amounts in Escrow Fund.* The Escrow Agent shall transfer amounts in the Escrow Fund to the 2013 Bond Trustee to pay and redeem all of the outstanding 2013 Bonds in accordance with the following schedule:

<u>Date</u>	<u>Interest Payment</u>	<u>Redeemed Principal</u>	<u>Total Payment</u>
April 1, 2021			
October 1, 2021			
April 1, 2022			
October 1, 2022			
April 1, 2023			

Following the payment and redemption of the 2013 Bonds in full on April 1, 2023, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to the 2020 Bond Trustee to be deposited into the Interest Account established under Section 4.02(a) of the 2020 Bond Indenture and applied to pay interest next coming due and payable on the 2020 Bonds.

SECTION 5. *Irrevocable Election.* The City hereby irrevocably elects to redeem the 2013 Bonds in full on April 1, 2023, in accordance with Section 2.03(a) of the 2013 Bond Indenture. The 2013 Bond Trustee shall give notice of redemption of the 2013 Bonds in accordance with Section 2.03(c) of the 2013 Bond Indenture, at the expense of the City.

SECTION 6. *Transfer of 2013 Bond Funds.* Upon the redemption of the Callable 2013 Bonds in full on April 1, 2023, any amounts held in the funds and accounts

established under the 2013 Bond Indenture by the Escrow Agent, in its capacity as 2013 Bond Trustee, shall be applied to pay interest next coming due and payable on the 2020 Bonds.

SECTION 7. *Resignation of Escrow Agent.* The Escrow Agent may at any time resign by giving written notice of such resignation to the City, and the City shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the City does not appoint a successor, the Escrow Agent may at the expense of the City petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Escrow Agent. After receiving a notice of resignation of Escrow Agent, the City may appoint a temporary Escrow Agent to replace the resigning Escrow Agent until the City appoints a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the City, shall immediately and without further act be superseded by the successor Escrow Agent so appointed.

SECTION 8. *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, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to (a) the purchase, substitution or withdrawal of any securities after the date hereof, and (b) the redemption of the Callable 2013 Bonds. 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 amounts 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 gross 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 9. *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 liable for any loss from any investment made by it in accordance with the terms of this Agreement. 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 amounts therein to pay the principal of and interest on the Callable 2013 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, 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 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.

The Escrow Agent 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 Agent 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 Agent e-mail or facsimile instructions (or instructions by a similar electronic method) 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 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 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 Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the City periodic transaction statements which include detail for all investment transactions made by the Escrow Agent hereunder; provided that the Escrow Agent is not obligated to provide an accounting for any fund or account that (a) has a balance of \$0.00 and (b) has not had any activity since the last reporting date.

SECTION 10. *Amendment.* This Agreement may be amended by the parties hereto, but only if there shall have been filed with the City and the Escrow Agent a written opinion of Bond Counsel stating that such amendment will not materially adversely affect the interests of the owners of the 2013 Bonds.

SECTION 11. *Termination of Agreement.* Upon payment in full of the principal of and interest on the Callable 2013 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 12. *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 13. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**CITY OF FULLERTON**

By: \_\_\_\_\_  
City Manager

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

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