**2003 BONDS ESCROW AGREEMENT**

THIS 2003 BONDS ESCROW AGREEMENT, dated as of November 1, 2013 (this “Agreement”), is by and between the Successor Agency to the Orange County Development Agency (the “Successor Agency”) and U.S. Bank National Association, acting in its capacity as escrow bank (the “2003 Bonds Escrow Bank”) pursuant to this Agreement;

W I T N E S S E T H :

WHEREAS, the Prior Agency has previously issued $38,465,000 aggregate principal amount of Orange County Development Agency Tax Allocation Refunding Bonds, (Santa Ana Heights Project Area), Series 2003 (the “2003 Bonds”); and

WHEREAS, on June 28, 2011, the California Legislature adopted ABx1 26 (the “Dissolution Act”) and ABx1 27 (the “Opt-in Bill”); and

WHEREAS, the California Supreme Court subsequently upheld the provisions of the Dissolution Act and invalidated the Opt-in Bill resulting in the Orange County Development Agency being dissolved as of February 1, 2012; and

WHEREAS, the powers, assets and obligations of the Orange County Development Agency were transferred on February 1, 2012 to the Successor Agency to the Orange County Development Agency (the “Successor Agency”); and

WHEREAS, on or about June 27, 2012, AB1484 was adopted as a trailer bill in connection with the 2012-13 California Budget; and

WHEREAS, AB1484 specifically authorizes the issuance of refunding bonds by the Successor Agency to finance debt service spikes, including balloon maturities; and

WHEREAS, the Successor Agency has caused to be issued its Santa Ana Heights Project Area Tax Allocation Refunding Bonds, Issue of 2013 (the “2013 Bonds”) for the purpose of refunding the 2003 Bonds and providing for level debt service in connection therewith.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Successor Agency and the 2003 Bonds Escrow Bank agree as follows:

# Deposit of Moneys.

## The Successor Agency hereby deposits with the 2003 Bonds Escrow Bank $\_\_\_\_\_\_\_\_\_\_, which represents $\_\_\_\_\_\_\_\_\_\_\_ of net proceeds of the 2013 Bonds and $\_\_\_\_\_\_\_\_\_\_\_ from the 2003 Bonds Interest Account, Principal Account and Reserve Account, to be held in irrevocable escrow by the 2003 Bonds Escrow Bank separate and apart from other funds of the Successor Agency and the 2003 Bonds Escrow Bank in a fund hereby created and established and to be known as the “2003 Bonds Escrow Fund”, and to be applied solely as provided in this Agreement. Such moneys shall be held in cash, uninvested as set forth in Schedule A hereto.

## The 2003 Bonds Escrow Bank hereby acknowledges receipt of the written opinion of Causey Demgen & Moore PC, a firm of independent public accountants, dated \_\_\_\_\_\_\_\_\_\_, relating to the sufficiency of the cash deposited pursuant hereto to defease the 2003 Bonds (the “Verification Report”), and the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, dated \_\_\_\_\_\_, 2013, relating to this Agreement.

# Use and Investment of Moneys. The 2003 Bonds Escrow Bank acknowledges receipt of the moneys described in Section 1 and agrees:

## such moneys in an amount equal to $\_\_\_\_\_\_\_\_\_\_\_ shall be held in cash uninvested in a separate segregated trust account for the purpose of defeasing the 2003 Bonds; and

## to make the payments required under Section 3(a) hereof at the times set forth in Section 3(a) hereof.

# Payment of Refunded Bonds.

## Payment. The 2003 Bonds Escrow Bank shall transfer from the 2003 Bonds Escrow Fund to the paying agent for the 2003 Bonds (the “Paying Agent”) amounts sufficient (i) to pay the principal and interest on the 2003 Bonds due on and prior to \_\_\_\_\_\_, 2013 and (ii) to redeem on \_\_\_\_\_\_\_\_\_\_\_, 2013 the 2003 Bonds. Such transfers shall constitute the respective payments of the principal of and interest on the 2003 Bonds and redemption price due from the Successor Agency.

## Unclaimed Moneys. Any moneys which remain unclaimed for two years after the date such moneys have become due and payable hereunder shall be repaid by the 2003 Bonds Escrow Bank to the Successor Agency and deposited by the Successor Agency in the Debt Service Fund. Any moneys remaining in the 2003 Bonds Escrow Fund established hereunder after \_\_\_\_\_\_\_\_\_\_\_\_, 2013 (aside from unclaimed monies) of the 2003 Bonds which are in excess of the amount needed to pay owners of the 2003 Bonds payments of principal and interest with respect to the 2003 Bonds or to pay any amounts owed to the 2003 Bonds Escrow Bank shall be immediately transferred by the 2003 Bonds Escrow Bank to the Successor Agency and deposited by the Successor Agency in the Debt Service Fund relating to the 2013 Bonds.

## Priority of Payments. The holders of the 2003 Bonds shall have a first lien on the moneys in the 2003 Bonds Escrow Fund which are allowable and sufficient to pay the 2003 Bonds until such moneys are used and applied as provided in this Agreement, as verified by the Verification Report. Any cash held in the 2003 Bonds Escrow Fund are irrevocably pledged only to the holders of the 2003 Bonds.

## Termination of Obligation. Upon deposit of the moneys set forth in Section 1 hereof with the 2003 Bonds Escrow Bank pursuant to the provisions of Section 1 hereof, all obligations of the Successor Agency with respect to the 2003 Bonds shall cease and terminate, except only the obligation to make payments therefor from the moneys provided for hereunder.

# Performance of Duties. The 2003 Bonds Escrow Bank agrees to perform the duties set forth herein.

# Reinvestment. Upon written direction of the Successor Agency, the 2003 Bonds Escrow Bank may reinvest any uninvested amounts held as cash under this Agreement in noncallable nonprepayable obligations which are direct obligations issued by the United States Treasury or obligations which are unconditionally guaranteed as to full and timely payment by the United States of America provided (i) the amounts of and dates on which the anticipated transfers from the 2003 Bonds Escrow Fund to the Paying Agent for the payment of the principal of, redemption price of, and interest on the 2003 Bonds will not be diminished or postponed thereby, (ii) the 2003 Bonds Escrow Bank shall receive the unqualified opinion of nationally recognized municipal bond counsel to the effect that such reinvestment will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds or the 2003 Bonds, (iii) the 2003 Bonds Escrow Bank shall receive from a firm of independent certified public accountants a certification that, immediately after such reinvestment, the principal of and interest on obligations in the 2003 Bonds Escrow Fund will, together with other cash on deposit in the 2003 Bonds Escrow Fund available for such purposes, be sufficient without reinvestment to pay, when due, the principal or redemption price of and interest on the 2003 Bonds; and (iv) the 2003 Bonds Escrow Bank shall receive an opinion of nationally recognized bond counsel that such reinvestment is permissible under this Agreement.

# Indemnity. The Successor Agency 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 2003 Bonds Escrow Bank and its respective successors, assigns, 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 2003 Bonds Escrow Bank at any time (whether or not also indemnified against the same by the Successor Agency 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 its Agreement, the establishment hereunder of the 2003 Bonds Escrow Fund, the acceptance of the funds and securities deposited therein, and any payment, transfer or other application of moneys or securities by the 2003 Bonds Escrow Bank in accordance with the provisions of this Agreement; provided, however, that the Successor Agency shall not be required to indemnify the 2003 Bonds Escrow Bank against the 2003 Bonds Escrow Bank’s own negligence or willful misconduct or the negligent or willful misconduct of the 2003 Bonds Escrow Bank’s respective successors, assigns, agents and employees or the breach by the 2003 Bonds Escrow Bank of the terms of this Agreement. In no event shall the Successor Agency or the 2003 Bonds 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 Agreement.

# Responsibilities of the 2003 Bonds Escrow Bank. The 2003 Bonds 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 Agreement, the establishment of the 2003 Bonds Escrow Fund, the acceptance of the moneys or securities deposited therein, to accomplish the refunding and defeasance of the 2003 Bonds or any payment, transfer or other application of moneys or obligations by the 2003 Bonds Escrow Bank in accordance with the provisions of this Agreement or by reason of any non-negligent act, non-negligent omission or non-negligent error of the 2003 Bonds 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 Successor Agency and the 2003 Bonds Escrow Bank assumes no responsibility for the correctness thereof. The 2003 Bonds Escrow Bank makes no representation as to the sufficiency of the monies deposited to accomplish the refunding and defeasance of the 2003 Bonds or to the validity of this Agreement as to the Successor Agency and, except as otherwise provided herein, the 2003 Bonds Escrow Bank shall incur no liability with respect thereto. The 2003 Bonds Escrow Bank shall not be liable in connection with the performance of its duties under this Agreement except for its own negligence, willful misconduct or default, and the duties and obligations of the 2003 Bonds Escrow Bank shall be determined by the express provisions of this Agreement. The 2003 Bonds Escrow Bank may consult with counsel, who may or may not be counsel to the Successor Agency, 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 2003 Bonds 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 Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Successor Agency. The Successor Agency acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Successor Agency the right to receive brokerage confirmations of security transactions as they occur, the Successor Agency specifically waives receipt of such confirmations to the extent permitted by law. The 2003 Bonds Escrow Bank will furnish the Successor Agency periodic cash transaction statements which include detail for all investment transactions made by the 2003 Bonds Escrow Bank hereunder.

# Irrevocable Instructions as to Notice. The 2003 Bonds Escrow Bank hereby acknowledges that upon the funding of the 2003 Bonds Escrow Fund as provided in this Agreement, the receipt of the opinions described in Section 1(b) of this Agreement and the giving of irrevocable instructions to provide notice as provided in the Irrevocable Instructions and Request to 2003 Bonds Escrow Bank attached hereto as Schedule B (constituting all of the conditions precedent to the defeasance of the 2003 Bonds), the 2003 Bonds shall be paid in accordance with the terms of the 2003 Bonds Indenture and all obligations of the Successor Agency with respect to the 2003 Bonds shall cease and terminate.

# Amendments. This Agreement is made for the benefit of the Successor Agency and the holders from time to time of the 2003 Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such holders, the 2003 Bonds Escrow Bank and the Successor Agency; provided, however, but only after the receipt by the 2003 Bonds Escrow Bank of an opinion of nationally recognized bond counsel that the exclusion from gross income of interest on the 2013 Bonds and the 2003 Bonds will not be adversely affected for federal income tax purposes, that the Successor Agency and the 2003 Bonds Escrow Bank may, without the consent of, or notice to, such holders, amend this Agreement or enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Agreement for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Agreement; (ii) to grant to, or confer upon, the 2003 Bonds Escrow Bank for the benefit of the holders of the 2003 Bonds any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the 2003 Bonds Escrow Bank; and (iii) to include under this Agreement additional funds, securities or properties. The 2003 Bonds Escrow Bank shall be entitled to rely conclusively upon an unqualified opinion of nationally recognized municipal bond attorneys with respect to compliance with this Section 9, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the holders of the 2003 Bonds or that any instrument executed hereunder complies with the conditions and provisions of this Section 9. In the event of any conflict with respect to the provisions of this Agreement, this Agreement shall prevail and be binding.

# Term. This Agreement shall commence upon its execution and delivery and shall terminate on the later to occur of either (i) the date upon which the 2003 Bonds has been paid in accordance with this Agreement or (ii) the date upon which no unclaimed moneys remain on deposit with the 2003 Bonds Escrow Bank pursuant to Section 3(b) of this Agreement.

# Compensation. The 2003 Bonds Escrow Bank shall receive its reasonable fees and expenses as previously agreed to; provided, however, that under no circumstances shall the 2003 Bonds Escrow Bank be entitled to any lien nor will it assert a lien whatsoever on any moneys or obligations in the 2003 Bonds Escrow Fund for the payment of fees and expenses for services rendered by the 2003 Bonds Escrow Bank under this Agreement.

# Resignation or Removal of 2003 Bonds Escrow Bank.

## The 2003 Bonds Escrow Bank may resign by giving notice in writing to the Successor Agency, a copy of which shall be sent to DTC. The 2003 Bonds Escrow Bank may be removed (1) by (i) filing with the Successor Agency an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of the 2003 Bonds then remaining unpaid, (ii) sending notice at least 60 days prior to the effective date of said removal to DTC, and (iii) the delivery of a copy of the instruments filed with the Successor Agency to the 2003 Bonds Escrow Bank or (2) by a court of competent jurisdiction for failure to act in accordance with the provisions of this Agreement upon application by the Successor Agency or the holders of 5% in aggregate principal amount of the 2003 Bonds then remaining unpaid.

## If the position of 2003 Bonds Escrow Bank becomes vacant due to resignation or removal of the 2003 Bonds Escrow Bank or any other reason, a successor 2003 Bonds Escrow Bank may be appointed by the Successor Agency. The holders of a majority in principal amount of the 2003 Bonds then remaining unpaid may, by an instrument or instruments filed with the Successor Agency, appoint a successor 2003 Bonds Escrow Bank who shall supersede any 2003 Bonds Escrow Bank theretofore appointed by the Successor Agency. If no successor 2003 Bonds Escrow Bank is appointed by the Successor Agency or the holders of such 2003 Bonds then remaining unpaid, within 45 days after any such resignation or removal, the holder of any such 2003 Bonds certificate or any retiring 2003 Bonds Escrow Bank may apply to a court of competent jurisdiction for the appointment of a successor 2003 Bonds Escrow Bank. The responsibilities of the 2003 Bonds Escrow Bank under this 2003 Bonds Escrow Agreement will not be discharged until a new 2003 Bonds Escrow Bank is appointed and until the cash and investments held under this 2003 Bonds Escrow Agreement are transferred to the new 2003 Bonds Escrow Bank.

# Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the Successor Agency or the 2003 Bonds 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 Agreement.

# Counterparts. This 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.

# Governing Law. This Agreement shall be construed under the laws of the State of California.

# 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 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 2003 Bonds 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 Agreement, and no interest shall accrue for the period from and after such nominal date.

# Assignment. This Agreement shall not be assigned by the 2003 Bonds Escrow Bank or any successor thereto without the prior written consent of the Successor Agency.

# Standard & Poor’s. The Successor Agency agrees to provide Standard & Poor’s, a Division of the McGraw-Hill Companies, 55 Water Street, 45th Floor, New York, New York 10041, prior notice of each amendment entered into pursuant to Section 9 hereof and a copy of such proposed amendment, and to forward a copy (as soon as possible) of (i) each amendment hereto entered into pursuant to Section 9 hereof, and (ii) any action relating to severability or contemplated by Section 13 hereof.

# Reorganization of 2003 Bonds Escrow Bank. Notwithstanding anything to the contrary contained in this Agreement, any company into which the 2003 Bonds 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 the 2003 Bonds Escrow Bank is a party, or any company to which the 2003 Bonds Escrow Bank may sell or transfer all or substantially all of its corporate trust business shall be the successor to the 2003 Bonds Escrow Bank without execution or filing of any paper or any paper or further act, if such company is eligible to serve as 2003 Bonds Escrow Bank.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_\_\_, 2013.

SUCCESSOR AGENCY TO THE ORANGE COUNTY DEVELOPMENT AGENCY

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

Public Finance Manager of the County of Orange, California acting in her capacity as designee of the Successor Agency to the Orange County Development Agency

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Clerk

U. S. BANK NATIONAL ASSOCIATION,   
as 2003 Bonds Escrow Bank

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

Authorized Officer

SCHEDULE A

|  |  |  |
| --- | --- | --- |
| Dates | Debt Service Payment  on 2003 Bonds | Cash Balance |
|  |  |  |
| Cash Deposit on \_/\_/2013 |  | $ |
| Payment on \_/\_/2013 | $ |  |
|  |  |  |

SCHEDULE B

**IRREVOCABLE INSTRUCTIONS AND REQUEST**

**TO 2003 BONDS TRUSTEE AND 2003 BONDS ESCROW BANK**

$38,465,000

Orange County Development Agency

Tax Allocation REFUNDING bonds (sANTA aNA hEIGHTS PROJECT AREA), SERIES 2003

WRITTEN REQUEST OF THE SUCCESSOR AGENCY TO THE   
ORANGE COUNTY DEVELOPMENT AGENCY TO  
U.S. BANK NATIONAL ASSOCIATION,  
REGARDING REDEMPTION NOTICE

1. Successor Agency Certifications

In connection with the submission of this written request to U.S. Bank National Association (the “2003 Bonds Trustee”), pursuant to Section 2.3 of the Indenture of Trust dated as of November 1, 2003 for 2003 Bonds (the “2003 Bonds Indenture”), by and between the Successor Agency to the Orange County Development Agency (the “Successor Agency”) and U.S. Bank National Association, in connection with the issuance of its $38,465,000 Orange County Development Agency Tax Allocation Bonds Issue of 2003 (the “2003 Bonds”), the undersigned, a duly appointed officer of the Successor Agency, hereby certifies that I have reviewed the 2003 Bonds Indenture and the sections thereof relating to the refunding and redemption of the 2003 Bonds and I have made an examination of the provisions of the 2003 Bonds Indenture and of related facts as is necessary in my opinion in connection with the submission of this written request.

2. Written Request

On behalf of the Successor Agency, I hereby inform you that the Successor Agency has irrevocably elected and directed the 2003 Bonds Trustee to redeem on \_\_\_\_\_\_\_\_\_\_, 2013 the 2003 Bonds, under the terms and conditions set forth in the 2003 Bonds Indenture, and that, upon deposit of the obligations and moneys required to be deposited by the Successor Agency with U.S. Bank National Association (the “2003 Bonds Escrow Bank”) pursuant to that certain 2003 Bonds Escrow Agreement dated as of November 1, 2013 between the Successor Agency and the 2003 Bonds Escrow Bank and satisfaction of the requirements of Section 9.3 of the 2003 Bonds Indenture which is occurring on the date hereof, the pledge of the Pledged Tax Revenue and all other obligations of the Successor Agency to the owners of the 2003 Bonds shall cease and terminate as provided in Section 9.3 of the 2003 Bonds Indenture. I further irrevocably instruct the 2003 Bonds Trustee, to do as follows with respect to the 2003 Bonds:

(a) To send, postage prepaid, via first class United States mail, not less than 30 days prior to \_\_\_\_\_\_\_\_\_\_\_, 2013, with respect to the 2003 Bonds, a notice of redemption to the owners of the 2003 Bonds.

(b) To send, via registered or certified mail or overnight delivery service, not less than 30 nor more than 45 days prior to \_\_\_\_\_\_\_\_\_\_, 2013, with respect to the 2003 Bonds, a notice of redemption of the applicable issue of 2003 Bonds, to The Depository Trust Company, 55 Water Street, New York, New York 10041, in the form and as required by Section 6.3 of the 2003 Bonds Indenture.

**SUCCESSOR AGENCY TO THE ORANGE COUNTY DEVELOPMENT AGENCY**

Public Finance Manager of the County of Orange, California, acting in her capacity as designee of the Successor Agency to the Orange County Development Agency

Receipt acknowledged and

consented to:

**U.S. BANK NATIONAL ASSOCIATION,** as Trustee

and as 2003 Bonds Escrow Bank

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Officer