

## **ESCROW DEPOSIT AGREEMENT**

**ESCROW DEPOSIT AGREEMENT** (the "Agreement"), dated as of November 1, 2020, by and between the City of Lake Worth Beach, Florida (the "Issuer") and U.S. Bank National Association (the "Escrow Agent"), a national banking association having its designated corporate trust office in Fort Lauderdale, Florida, as escrow agent hereunder.

**WHEREAS**, the Issuer has heretofore issued its [Utility System Refunding Revenue Bond, Series 2013] in the original aggregate principal amount of \$54,030,000 (the "Refunded Bond") pursuant to Resolution No. 27-2013, adopted April 16, 2013 (the "Refunded Bond Resolution"); and

**WHEREAS**, the Issuer desires to provide payment of the Refunded Bond as set forth on Schedule A attached hereto through the issuance of its Consolidated Utility Revenue Bonds, Series 2020A (the "2020A Bonds") and discharge and satisfy the pledges, liens and other obligations of the Issuer with respect to the Refunded Bond under the Refunded Bond Resolution; and

**WHEREAS**, the deposit of cash funds into an Escrow Fund (herein defined) to be invested and held by the Escrow Agent, and the discharge and satisfaction of the pledges, liens and other obligations of the Issuer under the Refunded Bond Resolution in regard to the Refunded Bond shall occur as a simultaneous transaction; and

**WHEREAS**, this Agreement is intended to effectuate such simultaneous transaction;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. The Issuer represents that the recitals stated above are true and correct and incorporated herein.

2. Receipt of the Resolution is hereby acknowledged by the Escrow Agent. The Escrow Agent also acknowledges receipt of the verification report of \_\_\_\_\_, dated \_\_\_\_\_, 2020 (the "Verification Report"). The applicable and necessary provisions of the Resolution are incorporated herein by reference. Reference herein to or citation herein of any provisions of the Resolution shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

3. The Issuer by this writing exercises its option to have the pledges, liens and obligations to the holder of the Refunded Bond defeased, discharged and satisfied.

4. There is hereby created and established with the Escrow Agent a special, segregated and irrevocable escrow fund designated the "Lake Worth Beach, Florida Utility System Refunding Revenue Bond, Series 2013 Escrow Deposit Fund" (the "Escrow Fund"). The Escrow Fund shall be held in the custody of the Escrow Agent as an escrow fund for the benefit of the holders of the Refunded Bond, separate and apart from other funds and accounts of the Issuer and the Escrow Agent. The Escrow Agent hereby accepts the Escrow Fund and acknowledges the receipt of and

deposit to the credit of the Escrow Fund of the sum of [\$\_\_\_\_\_] in immediately available funds, of which the Issuer represents \$\_\_\_\_\_ constitutes proceeds of the 2020A Bonds and \$\_\_\_\_\_ constitutes amounts held by the Issuer for the benefit of the Refunded Bond . For purposes of this Agreement, the Escrow Fund shall consist of a single fund with no sub-accounts.

5. The Escrow Agent shall, concurrently with the Issuer's deposit, use such amount to purchase on behalf of and for the account of the Issuer, certain direct non-callable obligations of the United States of America (the "Initial Escrow Securities"), in the aggregate principal or par amount of [\$\_\_\_\_\_], which are described in Schedule A hereto, and the Escrow Agent will deposit such obligations in the Escrow Fund. The remaining [\$\_\_\_\_\_] (the "Cash Deposit") shall be held as cash in the Escrow Fund. Any securities which shall be on deposit in the Escrow Fund, including the Initial Escrow Securities, shall herein be referred to as the "Escrow Securities."

6. In reliance upon the Verification Report, the Issuer represents and warrants that the interest on and the principal amounts successively maturing on the Escrow Securities in accordance with their terms (without consideration of any reinvestment of such maturing principal and interest) are sufficient such that moneys will be available to the Escrow Agent in amounts sufficient and at the times required to pay the amounts of principal of, redemption premium, if any, and interest due and to become due on the Refunded Bond as described in Schedule B attached hereto. If the Escrow Securities shall be insufficient to make such redemption payments, the Issuer shall timely deposit to the Escrow Fund, solely from legally available funds of the Issuer, such additional amounts as may be required to pay the Refunded Bond as described in Schedule B hereto. Notice of any insufficiency shall be given by the Escrow Agent to the Issuer as promptly as possible, but the Escrow Agent shall in no manner be responsible for the Issuer's failure to make such deposits.

7. The deposit of the Escrow Securities in the Escrow Fund shall constitute an irrevocable deposit of federal securities in trust solely for the payment of the principal of, redemption premium, if any, and interest on the Refunded Bond at such times and amounts as set forth in Schedule B hereto, and subject to the provisions of Section 9 and Section 17 hereof, the principal of and interest earnings on such Escrow Securities and the Cash Deposit shall be used solely for such purposes.

8. The Escrow Agent shall pay the registered owner of the Refunded Bond from the moneys on deposit in the Escrow Fund an amount sufficient to pay scheduled principal of and interest on and to redeem the Refunded Bond prior to its scheduled maturity date as contemplated in Schedule B attached hereto. The Escrow Securities shall be used to pay the principal of, redemption premium, if any, and interest on the Refunded Bond as the same become due and the Refunded Bond is redeemed. The liability of the Escrow Agent for the payment of the principal of, redemption premium, if any, and interest on the Refunded Bond pursuant to this Agreement shall be limited to the application of the Escrow Securities and the Cash Deposit and the interest earnings thereon available for such purposes in the Escrow Fund.

9. Moneys deposited in the Escrow Fund shall be invested only in the Escrow Securities listed in Schedule A hereto and, except as provided in Section 5 hereof and in this

Section 9, neither the Issuer nor the Escrow Agent shall otherwise invest or reinvest any moneys in the Escrow Fund.

Except as provided in Section 5 hereof and in this Section 9, the Escrow Agent may not sell or otherwise dispose of any or all of the Escrow Securities in the Escrow Fund and reinvest the proceeds thereof in other securities nor may it substitute securities for any of the Escrow Securities, except upon written direction of the Issuer and where, prior to any such reinvestment or substitution, the Escrow Agent has received from the Issuer the following:

- (a) a written verification report by an independent certified public accountant or firm of independent certified public accountants, of recognized standing, appointed by the Issuer, addressed to the Issuer and the Escrow Agent, stating that after such reinvestment or substitution the principal amount of Escrow Securities, together with the interest therein, will be sufficient to pay the Refunded Bond as described in Schedule B hereto; and
- (b) a written opinion of Bond Counsel to the effect that such investment does not violate any provision of Florida law or of the Resolution and will not adversely affect the tax-exempt status of the Refunded Bonds;

provided, that the Escrow Agent shall not release any Escrow Securities then held in the Escrow Fund for such sale, transfer, exchange, redemption or other disposition until the Escrow Agent shall be in possession of the proceeds thereof or the substituted securities.

In the event the above-referenced verification concludes that there are surplus moneys in the Escrow Fund, such surplus moneys shall be released to the Issuer upon its written direction. The Escrow Fund shall continue in effect until the date upon which the Escrow Agent makes the final payment to the paying agent for the Refunded Bond in an amount sufficient to pay the Refunded Bond as described in Schedule B hereto, whereupon the Escrow Agent shall sell upon written direction from the Issuer or redeem any Escrow Securities remaining in the Escrow Fund, and shall remit to the Issuer the proceeds thereof, together with all other money, if any, then remaining in the Escrow Fund.

10. The Issuer has been advised by counsel that, concurrently with the deposit of the Initial Escrow Securities and the Cash Deposit set forth in Section 5 hereof, the Refunded Bond are hereby deemed to have been paid and discharged within the meaning and with the effect expressed in the Resolution. The Escrow Agent shall provide the required notice of redemption of the Refunded Bond, substantially in the form attached hereto as Schedule C, in the manner provided in the Resolution. The Refunded Bond shall be redeemed on \_\_\_\_\_ at a redemption price of 100% of par, plus accrued interest.

11. Concurrently with the deposit of the Escrow Securities set forth in Section 5 hereof, the Refunded Bond shall be deemed to have been paid within the meaning and with the effect expressed in the Resolution. Within ten (10) days of the deposit of moneys into the Escrow Fund, the Escrow Agent, on behalf of the Issuer, shall cause notice to be given to the registered owner

of the Refunded Bond of said defeasance, in compliance with Section 1102 of the Master Resolution.

12. The Escrow Fund hereby created shall be irrevocable and the holders of the Refunded Bond shall have an express lien on all amounts on deposit in the Escrow Fund pursuant to the terms hereof until paid out, used and applied in accordance with this Agreement and the Resolution. Neither the Issuer nor the Escrow Agent shall cause nor permit any other lien or interest whatsoever to be imposed upon the Escrow Fund.

13. This Agreement is made for the benefit of the Issuer and the holders from time to time of the Refunded Bond and it shall not be repealed, revoked, altered or amended or supplemented in whole or in part without the written consent of such holders of the Refunded Bond and the written consent of the Escrow Agent; provided, however, that the Issuer and the Escrow Agent may, without the consent of, or notice to, such holder, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such holder and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement;
- (b) to grant, or confer upon, the Escrow Agent for the benefit of the holder of the Refunded Bond, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holder or the Escrow Agent; and
- (c) to subject to this Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified opinion of Bond Counsel with respect to compliance with this Section 13, including the extent, if any, to which any change, modification or addition affects the rights of the holder of the Refunded Bond, or that any instrument executed hereunder complies with the conditions and provisions of this Section 13.

14. In consideration of the services rendered by the Escrow Agent under this Agreement, the Issuer agrees to and shall pay to the Escrow Agent a one-time fee of \$\_\_\_\_\_, and promptly on receipt of an invoice to pay all reasonable, customary and ordinary expenses, charges, attorneys' fees, costs and expenses and other disbursements incurred by it in connection with publication of notices of redemption and appointment of a successor Escrow Agent hereunder. Additionally, should the Escrow Agent perform any extraordinary services not contemplated hereunder, it shall be entitled to extraordinary fees and reimbursement of any out of pocket and extraordinary costs and expenses, including, but not limited to, attorneys' fees, costs and expenses made in connection with such extraordinary services. The Escrow Agent shall have no lien whatsoever upon any amount in said Escrow Fund for the payment of such proper fees and expenses. The Issuer hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated), to the extent permitted by law, and solely from the Trust Estate under the Resolution, to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns, agents 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), which may be imposed on, incurred by, or asserted against, at any time, the Escrow Agent (whether or not also indemnified against the same by the Issuer or any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the Escrow Fund established hereunder, the acceptance of the funds and securities deposited hereunder, and any payment, transfer or other application of funds or securities by the Escrow Agent in accordance with the provisions of this Agreement; provided, however, that the Issuer shall not be required to indemnify the Escrow Agent against its own gross negligence or willful misconduct. In no event shall the Issuer be liable to any person by reason of the transactions contemplated hereby other than to the Escrow Agent as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Agreement or the sooner resignation or removal of the Escrow Agent.

The Escrow Agent undertakes to perform only such duties as are expressly set forth herein. The duties and responsibilities of the Escrow Agent hereunder shall be determined solely by the express provisions of this Agreement, and no further duties or responsibilities shall be implied. The Escrow Agent shall not have any liability under, nor duty to inquire into the terms and provisions of, any agreement or instructions, other than as outlined in the Agreement. The Escrow Agent shall conclusively rely and shall be fully protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Escrow Agent in its capacity as Escrow Agent hereunder shall not have any liability for any loss sustained as a result of any investment made pursuant to this Agreement or as a result of any directed liquidation of any investment prior to its maturity. The Escrow Agent shall have no duty to solicit any payments that may be due it hereunder. The Escrow Agent shall not incur any liability for following the instructions herein contained or expressly provided for, or written instructions given by the parties hereto. In the administration of this Escrow Agreement and the Escrow Fund hereunder, the Escrow Agent may execute any of its powers and perform its duties hereunder directly or through agents or attorneys, and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. Any payment obligation of the Escrow Agent shall be paid from, and is limited to funds available, established and maintained hereunder and the Escrow Agent shall not be required to expend its own funds for the performance of its duties under this Agreement. The Escrow Agent shall not be liable for any action taken or neglected to be taken in performing or attempting to perform its obligations hereunder other than for its negligence or willful misconduct. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of such loss or damage and regardless of the form of action. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; pandemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or

communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

The Escrow Agent may act without liability, upon any written notice, request, waiver, opinion, consent, certificate, receipt, authorization, power of attorney, or other instrument or document which the Escrow Agent in good faith believes to be genuine and to be what it purports to be and the Escrow Agent shall be under no duty to make an investigation or inquiry as to matters contained in any such instrument or document.

15. On or before December 1, 20\_\_\_\_, the Escrow Agent shall forward, in writing, to the Issuer, a statement in detail of the deposit and withdrawal of money from the Escrow Fund, since the date of this Agreement.

16. The Escrow Agent, at the time acting hereunder, may at any time resign and be discharged from the duties and obligations hereby created by giving not less than twenty (20) days' written notice to the Issuer and mailing notice thereof, specifying the date when such resignation will take effect to the holder of the Refunded Bond then outstanding, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holder of the Refunded Bond then outstanding or by the Issuer as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be replaced at any time upon thirty (30) days' notice by an instrument or concurrent instruments in writing, delivered to the Escrow Agent and signed by the Issuer or the holder of the Refunded Bond then outstanding. Such instrument shall provide for the appointment of a successor Escrow Agent, which appointment shall occur simultaneously with the removal of the Escrow Agent.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the holder of the Refunded Bond then outstanding by an instrument or concurrent instruments in writing, signed by such holder, or by its attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, the Issuer shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holder of the Refunded Bond then outstanding in the manner above provided, and any such temporary Escrow Agent so appointed by the Issuer shall immediately and without further act be superseded by the Escrow Agent so appointed by such holder. The Issuer shall mail notice of any such appointment made by it at the times and in the manner described in the first paragraph of this Section 16.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holder or the Issuer pursuant to the foregoing provisions of this Section 16 within twenty (20) days after written notice of resignation of the

Escrow Agent has been given to the Issuer, the holder of the Refunded Bond or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers organized under the banking laws of the United States or any State, and shall have at the time of appointment capital and surplus of not less than \$20,000,000.

In the event of replacement or resignation of the Escrow Agent, the Escrow Agent shall have no further liability hereunder and the Issuer shall pay any applicable termination fees and expenses and indemnify and hold harmless the Escrow Agent from any such liability, including costs or expenses (including legal fees, costs and expenses) incurred by Escrow Agent or its counsel.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Issuer an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of such successor Escrow Agent or the Issuer execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, and powers of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Escrow Agent shall be paid in full. Should any transfer, assignment or instrument in writing from the Issuer be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

Any corporation into which the Escrow Agent, or any successor to it in the escrow created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party shall be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

17. Except as otherwise provided herein, this Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made. Upon such termination, all moneys remaining in the Escrow Fund shall be released to the Issuer for deposit to the Revenue Fund under the Resolution.

18. The Issuer acknowledges that to the extent the regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer the right to receive individual confirmations of security transactions at no additional cost, as they occur, the Issuer specifically

waives receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the Issuer monthly cash transaction statements that include detail for all investment transactions made by the Escrow Agent hereunder.

19. This Agreement shall be governed by the applicable laws of the State of Florida, with regard to conflict of law principles.

20. If any one or more of the covenants or agreements provided in this Agreement on the part of the Issuer or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

21. 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. The transactions described herein may be conducted and related documents may be sent and stored by electronic means.

22. Any notice, authorization, request or demand required or permitted to be given in accordance with the terms of this Agreement shall be in writing and sent by registered or certified mail addressed to:

U.S. Bank National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Corporate Trust

City of Lake Worth Beach, Florida  
7 North Dixie Highway  
Lake Worth Beach, Florida 33460  
Attention: Mayor



SIGNATURE PAGE OF THE ISSUER FOR  
ESCROW DEPOSIT AGREEMENT

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Escrow Deposit Agreement to be executed by their duly authorized officers or agents and appointed officials and, in the case of the Issuer, its seal to be hereunder affixed and attested as of the date first above written.

**LAKE WORTH BEACH CITY COMMISSION**

\_\_\_\_\_  
Pam Triolo, Mayor

ATTEST:

\_\_\_\_\_  
Deborah M. Andrea, CMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Nabors, Giblin & Nickerson, P.A.

SIGNATURE PAGE OF THE ESCROW AGENT FOR  
ESCROW DEPOSIT AGREEMENT

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Escrow Deposit Agreement to be executed by their duly authorized officers and appointed officials and, in the case of the Issuer, its seal to be hereunder affixed and attested as of the date first above written.

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

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

**SCHEDULE A**

**INITIAL ESCROW SECURITIES**

<u>Maturity Date</u>	<u>Type</u>	<u>Interest Rate</u>	<u>Par Amount</u>
	SLGS		
	SLGS		

## SCHEDULE B

**REFUNDED BOND**

Date	Principal	Interest	Principal Redeemed	Total
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<hr/>				
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**SCHEDULE C**

**NOTICE OF REDEMPTION**

**City of Lake Worth Beach, Florida  
Utility System Refunding Revenue Bond, Series 2013**

NOTICE IS HEREBY GIVEN on behalf of the City of Lake Worth Beach, Florida (the "County") pursuant to that certain Resolution No. 27-2013, adopted April 16, 2013 (the "Resolution"), that the County's outstanding Utility System Refunding Revenue Bond, Series 2013 (the "Refunded Bond"), which was originally issued on April \_\_, 2013, shall be redeemed, prior to its stated maturity, on \_\_\_\_\_ (the "Redemption Date"), at a redemption price equal to 100% of the principal amount thereof, together with interest accrued thereon to the Redemption Date.

Payment of the Redemption Price of such Refunded Bond shall become due and payable on the Redemption Date and shall be paid by wire transfer of U.S. Bank, National Association, as escrow agent. Interest on such Refunded Bond will cease to accrue from and after the Redemption Date.

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

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

Dated: \_\_\_\_\_