

**ESCROW AGREEMENT**

by and between

**CITY OF FRESNO**

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

Dated as of \_\_\_\_\_ 1, 2023

relating to the

City of Fresno  
Airport Revenue Refunding Bonds  
Series 2013A (Non-AMT) and Series 2013B (AMT)

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## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of \_\_\_\_\_ 1, 2023, is entered into by and between the CITY OF FRESNO (the “City”), a municipal corporation and charter city duly organized and existing under and by virtue of the Constitution and laws of the State of California, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee and as escrow bank (the “Escrow Agent”).

### WITNESSETH:

WHEREAS, the Escrow Agent, as successor trustee and the City are parties to the Indenture of Trust, dated as of June 15, 2000, as amended and supplemented, including as amended and supplemented by the Fourth Supplemental Indenture, dated as of \_\_\_\_\_ 1, 2023 (the “Indenture”);

WHEREAS, the City has heretofore issued \$10,810,000 Airport Revenue Refunding Bonds, Series 2013A (Non-AMT) and \$22,820,000 Airport Revenue Refunding Bonds, Series 2013B (AMT)) (collectively, the “Refunded Bonds”), which will be refunded pursuant to the Indenture;

WHEREAS, the City has determined that it is in its best interests to refund the Refunded Bonds and has issued its Airport Revenue Bonds, Series 2023A (AMT) and Series 2023B (Non-AMT) (the “Refunding Bonds”) pursuant to the Indenture, for the purpose of providing funds to refund the Refunded Bonds;

WHEREAS, the proceeds of the Refunding Bonds will be deposited in the Escrow Fund created hereunder to refund the Refunded Bonds, and such proceeds shall be in such amount and shall be invested so as to insure the full and timely payment of the Refunding Requirements (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual agreements herein contained, in order to secure the payment of the Refunding Requirements as heretofore provided, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns, as follows:

#### **Section 1. Definitions.**

As used in this Escrow Agreement the following terms have the following meanings:

“Defeasance Securities” has the meaning set forth in the Indenture.

“Escrow Agent” means The Bank of New York Mellon Trust Company, N.A., or any successor thereto appointed under this Escrow Agreement.

“Escrow Fund” means the fund by that name created pursuant to Section 2 hereof.

“Escrowed Securities” means those certain Defeasance Securities listed in Exhibit C to this Escrow Agreement.

“Refunded Bonds” means City of Fresno Airport Revenue Refunding Bonds, Series 2013A (Non-AMT) and City of Fresno Airport Revenue Refunding Bonds, Series 2013B (AMT).

“Refunding Bonds” means the City of Fresno Airport Revenue Bonds, Series 2023A (AMT) and Series 2023B (Non-AMT) issued pursuant to the Indenture.

“Refunding Requirements” means all installments of principal and interest on the Refunded Bonds, to and including the redemption date of the Refunded Bonds, as such payments become due, as shown in Exhibit B to this Escrow Agreement.

“State” means the State of California.

All other capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Indenture.

## **Section 2. Creation and Purpose of Escrow.**

A. There is hereby created and established with the Escrow Agent a special and irrevocable trust fund designated as the “City of Fresno Airport Revenue Refunding Bonds, Series 2013” (the “Escrow Fund”).

B. The Escrow Agent shall deposit in the Escrow Fund the amounts set forth on Exhibit A hereto, which is hereby incorporated herein by reference. The Escrow Agent further agrees, except as provided in Sections 4 and 5 hereof, to hold the Escrowed Securities and the money (whether constituting the initial deposit in the Escrow Fund or investment income on the Escrowed Securities) in the Escrow Fund at all times as separate trust account wholly segregated from all other securities, investments or money held by it and shall hold the Escrow Fund in trust for the purposes described herein. All securities and money in the Escrow Fund are hereby irrevocably pledged, subject to the provisions of Sections 4 and 5 hereof, to secure the payment of the Refunded Bonds, as provided herein; provided, that any money held in the Escrow Fund that is not used for the payment of the Refunded Bonds shall be repaid to the City free from the trust created by the Escrow Agreement.

C. The funds held in the Escrow Fund shall not be subject to withdrawal other than to satisfy the Refunding Requirements.

D. The City has determined, as verified by the report of [Verification Agent], an Independent Certified Public Accountant, dated \_\_\_\_\_, 2023 (the “Verification Report”), that the Escrowed Securities are such that, if interest thereon and principal thereof are paid when due, the proceeds from the collection of such interest and

principal, together with any uninvested cash held hereunder, will be sufficient to meet the Refunding Requirements.

E. The Escrow Agent shall hold all Escrowed Securities, whether acquired as initial investments, subsequent investments or reinvestments hereunder, and the money received from time to time as principal and interest thereon, in trust, for the payment of the Refunding Requirements and shall collect the principal of and interest on the Escrowed Securities held by it hereunder promptly as such principal and interest become due.

F. The City intends that the Refunded Bonds be discharged as set forth in Section 12.01 of the Indenture.

### **Section 3. Bondholder Notices.**

The Escrow Agent is hereby irrevocably instructed to mail, as soon as practicable, a notice of redemption of the Refunded Bonds.

### **Section 4. Accounting for Escrow; Substitutions.**

A. The moneys and the Escrowed Securities from time to time accounted for in the Escrow Fund shall not be subject to withdrawal by the City nor otherwise subject to their order except as otherwise provided in Sections 2 and 8 hereof.

### **Section 5. Investments and Reinvestments.**

The Escrow Agent shall have no other obligation by virtue of this Escrow Agreement, general trust law or otherwise, to make any investment or reinvestment of any moneys in escrow at any time except as expressly directed by the City and upon receipt of (i) the written direction of the City, (ii) receipt by the City and the Escrow Agent of a new Verification Report, prepared by an Independent Certified Public Accountant, verifying the sufficiency of the escrow to pay all current interest when due on the outstanding Refunded Bonds in full to and including their redemption date or maturity dates and to pay when due all maturing principal on the Refunded Bonds in full on their respective redemption date or maturity dates (taking into account the cancellation of Refunded Bonds purchased by the City for cancellation, including Refunded Bonds placed in escrow with the Trustee for purchase from the proceeds of the sale of Escrowed Securities), and (iii) receipt of an opinion of nationally recognized bond counsel that such investment will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Refunded Bonds.

### **Section 6. Sufficiency of Escrow.**

Moneys deposited in the Escrow Fund, including the investment earnings thereon and any uninvested cash, shall be in an amount, as determined by the City, which at all times shall be sufficient to meet the Refunding Requirements not theretofore met.

**Section 7. Transfers for Payment of Refunded Bonds.**

The Escrow Agent shall from time to time, to the extent of moneys in the Escrow Fund, pay the Refunding Requirements when due, as provided herein and in the Indenture.

**Section 8. Termination of Escrow Agreement; Written Request of City.**

When the Escrow Agent shall have transferred, pursuant to Section 7 hereof, such moneys as are required to pay in full and discharge all of the Refunded Bonds, the Escrow Agent, after payment of all fees and expenses of the Escrow Agent, shall immediately pay over to the City or its order the moneys, if any, then remaining in the Escrow Fund and shall make forthwith a final report to the City, and this Escrow Agreement shall terminate. The Trustee shall pay to the City any and all unclaimed moneys as provided in Section 12.02 of the Indenture and this shall constitute the Written Request of the City for such purpose.

**Section 9. Fees and Costs.**

A. The Escrow Agent's fees, expenses and reimbursement for costs incurred for and in carrying out the provisions of this Escrow Agreement have been fixed by separate agreement. The Escrow Agent shall also be entitled to additional fees, expenses and reimbursement for costs incurred, including but not limited to, legal and accounting services in connection with any litigation or other proceedings which may at any time be instituted involving this Escrow Agreement not due to the negligence or willful misconduct of the Escrow Agent. Under no circumstances shall any fees, expenses or reimbursement of costs of the Escrow Agent or any other party (including without limitation, the cost of any required Verification Report) be paid out of amounts held in the Escrow Fund.

B. Payments to the Escrow Agent pursuant to this Section 9 shall not be for deposit in the Escrow Fund, and the fees of and the costs incurred by the Escrow Agent shall not be a charge on and in no event shall be deducted from the Escrow Fund.

**Section 10. Character of Deposit.**

A. It is recognized that title to the Escrowed Securities and moneys accounted for in the Escrow Fund from time to time shall be subject always to the prior trust, charge and lien thereon of this Escrow Agreement in favor of the owners of the Refunded Bonds and the use thereof shall be required to be made by the provisions hereof.

B. The Escrow Agent shall hold all such securities and moneys in the Escrow Fund as special trust funds separate and wholly segregated from all other securities and funds of the Escrow Agent, and shall never commingle such securities or moneys with other securities or moneys.

C. No money paid into and accounted for in the Escrow Fund shall ever be considered as a banking deposit and the Escrow Agent shall have no right or title with respect thereto except in its capacity as Escrow Agent hereunder.

**Section 11. Exculpatory Provisions.**

A. The duties and responsibilities of the Escrow Agent are limited to those expressly and specifically stated in this Escrow Agreement.

B. The Escrow Agent shall not be liable or responsible for any loss resulting from any investment or reinvestment made pursuant to this Escrow Agreement and made in compliance with the provisions hereof. The Escrow Agent shall not be liable or responsible for the accuracy of any calculations or the sufficiency of any Escrowed Securities, the Escrow Fund or any moneys held by it to meet the Refunding Requirements.

C. No provision of this Escrow Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent failure to act or its own willful misconduct.

D. The Escrow Agent shall be under no obligation to inquire into or be in any way responsible for the performance or nonperformance by the City of any of its obligations, nor shall it be responsible in any manner for the recitals or statements contained herein or in the Refunded Bonds or any proceedings taken in connection therewith, such recitals and statements being made solely by the City. The Escrow Agent may conclusively rely on any opinion, written request, certificate, written direction or report of the City, any certified public accountant, financial advisor or investment bank delivered to it and received in good faith in connection with the transactions contemplated hereby.

E. Nothing in this agreement shall be construed to create any obligations or liabilities on the part of the Escrow Agent to anyone other than the City or the holders of the Refunded Bonds.

F. The Escrow Agent may at any time resign by giving thirty (30) days written notice to the City of such resignation. 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 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 an 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.

G. The City, to the extent permitted by law, agrees to indemnify the Escrow Agent, its agents and its officers or employees for and hold the Escrow Agent, its agents, officers or employees harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, reasonable fees and disbursements of counsel for the Escrow Agent) which may be imposed on, incurred by, or asserted against the Escrow Agent at any time by reason of the performance of its duties as Escrow Agent hereunder, in any transaction arising out of this Escrow Agreement, or the Indenture or any of the transactions contemplated herein or in the Indenture, unless due to the Escrow Agent's or its officers' or employees' or agents' negligence or willful misconduct. Such indemnity shall survive the termination of this Escrow Agreement or resignation of the Escrow Agent.

H. The Escrow Agent may consult with counsel, who may be counsel of or to the City, with regard to legal questions and the opinion of such counsel shall be full and complete authorization in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

I. Any company into which the Escrow Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business shall be the successor to the Escrow Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

J. The Escrow Agent's rights to indemnification hereunder shall survive its resignation or removal and the termination of the Escrow Agreement.

K. No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

L. The Escrow Agent shall not have any liability hereunder except to the extent of its own negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special indirect or consequential damages.

#### **Section 12. Time of Essence.**

Time shall be of the essence in the performance of the obligations from time to time imposed upon the Escrow Agent by this Escrow Agreement.

#### **Section 13. Amendments.**

This Escrow Agreement may not be revoked or amended by the parties hereto unless there shall first have been filed with the City and the Escrow Agent (i) a written opinion of nationally recognized bond counsel stating that such amendment will not adversely affect the exclusion from gross income for federal income tax purposes of



interest on the Refunded Bonds and (ii) unless such amendment is not materially adverse to the interests of the registered owners of the Refunded Bonds, the written consent of all the owners of the Refunded Bonds then outstanding.

**Section 14. Successors.**

A. Whenever herein the City or the Escrow Agent is named or is referred to, such provision shall be deemed to include any successor of the City or the Escrow Agent, respectively, immediate or intermediate, whether so expressed or not.

B. All of the stipulations, obligations and agreements by or on behalf of, and other provisions for the benefit of, the City or the Escrow Agent contained herein:

1) Shall bind and inure to the benefit of any such successor;  
and

2) Shall bind and shall inure to the benefit of any officer, board, authority, agent or instrumentality to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the City or the Escrow Agent, respectively, or of its successor.

**Section 15. Notices.**

All notices and communications hereunder shall be in writing and shall be deemed to be duly given if received or sent by first class mail to the following addresses or to such other address as the recipient thereof shall request in writing to the other party hereto:

If to the City:

If to the Escrow Agent:

**Section 16. Severability.**

If any section, paragraph, clause or provision of this Escrow Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Escrow Agreement.

**Section 17. Law Governing.**

This Escrow Agreement is made in the State of California and is to be construed under the Constitution and laws of such State.

**Section 18. Counterparts.**

This Escrow 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.

IN WITNESS WHEREOF, the CITY OF FRESNO has caused this Escrow Agreement to be signed in its name by its duly authorized officer, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., has caused this Escrow Agreement to be signed in its name by its duly authorized officer, all as of the day and year first above written.

CITY OF FRESNO

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

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Escrow  
Agent

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

**EXHIBIT A**

**SUMMARY OF ESCROW DEPOSITS**

**EXHIBIT B**

**REFUNDING REQUIREMENTS**

**EXHIBIT C**

**ESCROWED SECURITIES**

## CERTIFICATE OF PUBLICATION

This Certificate of Publication is delivered on the date set forth below for the purposes of demonstrating compliance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and applicable Treasury Regulations (the "Regulations"). The undersigned, as representative of the City of Fresno (the "City"), hereby certifies as follows:

1. A Notice of Public Hearing containing the language attached as Exhibit A (the "Notice") with respect to the plan of finance, the issuance of the bonds, notes or obligations (the "Bonds") and the project described therein (the "Project"), was published on the City's primary website address of <https://www.fresno.gov> on [\_\_\_\_], 2023.

2. The Notice was published in an area of the City's website which is used to inform residents within its geographical jurisdiction about public hearings to be held by the City affecting them and which is clearly identified and accessible to members of the general public seeking information concerning the plan of finance, the issuance of the Bonds and the Project.

3. Evidence of the website publication of the Notice is attached hereto as Exhibit B. The City will maintain records evidencing that the Notice was timely published as set forth in Sections 1 and 2 above for the period referred to in Section 4 below, and acknowledges it is responsible for maintaining such records.

4. The Notice remained continuously published on the City's website for the entire period of seven (7) or more days from the date of the original publication described in Section 1 above to the hearing date described in the Notice. The City held the hearing as described in the Notice on the date and at the time as described therein.

5. Following the hearing, the City approved of the issuance of the Bonds pursuant to a plan of finance for the Project as the applicable elected representative as required by Section 147(f) of the Code and the Regulations.

Dated this \_\_\_ of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**NOTICE OF PUBLIC HEARING**