
ESCROW AGREEMENT

by and between the

TOWN OF FAIRFAX

and

U.S. BANK NATIONAL ASSOCIATION, as Escrow Bank

Dated September 29, 2020

Relating to the
Lease Agreement, dated as of January 1, 2017,
by and between the Fairfax Financing Authority and the Town of Fairfax,
assigned to Capital One Public Funding, LLC

ESCROW AGREEMENT

This Escrow Agreement (this “Escrow Agreement”), dated September 29, 2020, is by and between the TOWN OF FAIRFAX (the “Town”), a municipal corporation and general law city organized and existing pursuant to the laws of the State of California, and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as escrow bank (the “Escrow Bank”).

WITNESSETH:

WHEREAS, the Fairfax Financing Authority (the “Authority”) leased certain property to the Town pursuant to a lease agreement, dated as of January 1, 2017 (the “2017 Lease”), under which the Town agreed to make lease payments to the Authority (the “2017 Lease Payments”);

WHEREAS, the 2017 Lease Payments were assigned to Capital One Public Funding, LLC (the “Assignee”) which advanced funds to the Town to permit the Town to fund a portion of the Town’s then existing unfunded actuarial liability to the California Public Employees’ Retirement System (“CalPERS”);

WHEREAS, the Town has determined that, as a result of favorable financial market conditions and for other reasons, it is in the best interests of the Town at this time to refinance the Town’s obligation to make the 2017 Lease Payments and to fund a portion of the Town’s current unfunded actuarial liability to CalPERS;

WHEREAS, to that end, the Town proposes to enter into a new lease agreement, dated as of September 1, 2020, by and between the Authority and the Town;

WHEREAS, the 2017 Lease Agreement provides that in the event that the Town deposits, or causes the deposit on its behalf of moneys for the prepayment of the 2017 Lease Payments, then all of the obligations of the Town under the 2017 Lease Agreement and all of the security provided by the Town for such obligations, excepting only the obligation of the Town to make the 2017 Lease Payments from said deposit, shall cease and terminate, and unencumbered title to the 2017 Project shall be vested in the Town without further action by the Town or the Authority;

WHEREAS, to obtain moneys to make such deposit, the Authority has agreed to issue its \$_____ Fairfax Financing Authority Taxable Lease Revenue Bonds, Series 2020 (the “Bonds”), pursuant to the terms of an indenture, dated as of September 1, 2020 (the “Indenture”), by and between the Authority and U.S. Bank National Association, as trustee thereunder;

WHEREAS, upon delivery of the Bonds and deposit of a portion of the proceeds for prepayment and defeasance of the 2017 Lease Payments, the 2017 Lease Agreement and the agreements related thereto need not be maintained (except as otherwise provided below), and the parties hereto now desire to provide for the termination of such documents as provided herein;

WHEREAS, on the date of delivery of the Bonds, the unpaid principal component of the 2017 Lease Payments (excluding the principal component of the 2017 Lease Payments due on December 15, 2020, and the then accrued interest on the principal component of such 2017 Lease Payments will be prepaid and paid to the Assignee;

WHEREAS, the Town has requested that the Trustee establish an escrow to provide for the payment of the principal (\$151,000) and interest (\$4,077.00) due with respect to the 2017 Lease Payments due on December 15, 2020;

WHEREAS, the Escrow Bank has full powers to perform the duties and obligations to be undertaken by it pursuant to this Escrow Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto do hereby agree as follows:

Section 1. Discharge of 2017 Lease Agreement. The Town hereby irrevocably elects to pay and discharge all indebtedness payable by the Town under the 2017 Lease Agreement, and to terminate all obligations of the Town thereunder with respect thereto.

Section 2. Escrow Fund.

(a) There is hereby established a special fund, to be held in trust by the Escrow Bank for the benefit of the Assignee, to be known as the "Escrow Fund." There shall be deposited into the Escrow Fund an amount equal to \$155,077.00, derived from an equity contribution from the Town.

(b) The Escrow Bank shall hold all amounts deposited in the Escrow Fund in cash, uninvested and held by the Escrow Bank in the Escrow Fund solely for the uses and purposes set forth herein.

(c) The Escrow Bank shall not be liable or responsible for any loss resulting from its full compliance with the provisions of this Escrow Agreement.

(d) Any money left on deposit in the Escrow Fund after payment in full of the 2017 Lease Agreement, and the payment of all amounts due to the Escrow Bank hereunder, shall be transferred to the Trustee, to be applied to the payment of debt service on the 2020 Bonds.

Section 3. Instructions as to Application of Deposit. The moneys deposited in the Escrow Fund pursuant to Section 2 shall be applied by the Escrow Bank for the sole purpose of paying the principal and interest due with respect to the 2017 Lease Agreement on December 15, 2020, as set forth in Exhibit A attached hereto and by this reference incorporated herein. Such amount should be paid to the Assignee as follows:

Capital One Bank
ABA#: 065000090
AC # _____
Re: Town of Fairfax-2017 Lease Agreement

Section 4. Compensation to Escrow Bank. The Town shall pay the Escrow Bank full compensation for its duties under this Escrow Agreement, including out-of-pocket costs such as publication costs, prepayment or redemption expenses, legal fees and other costs and expenses relating hereto. Under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes.

Section 5. Liabilities and Obligations of Escrow Bank. The Escrow Bank shall have no obligation to make any payment or disbursement of any type or incur any financial liability in the performance of its duties under this Escrow Agreement unless the Town shall have deposited sufficient funds with the Escrow Bank. The Escrow Bank may rely and shall be protected in acting

upon the written instructions of the Town or its agents relating to any matter or action as Escrow Bank under this Escrow Agreement.

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 Fund, the acceptance of the moneys deposited therein, the sufficiency of the uninvested moneys held hereunder to accomplish the purposes set forth herein, or any payment, transfer or other application of moneys 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 statement of the Town, and the Escrow Bank assumes no responsibility for the correctness thereof. The Escrow Bank makes no representations as to the sufficiency of the uninvested moneys to accomplish the purposes set forth herein or to the validity of this Escrow Agreement as to the Town 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 Town, 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) may be deemed to be conclusively established by a written certification of the Town.

Anything in this Escrow Agreement to the contrary notwithstanding, in no event shall the Escrow Bank be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Bank has been advised of the likelihood of such loss or damage and regardless of the form of action.

The Escrow Bank shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Escrow Agreement and delivered using Electronic Means. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Escrow Bank, or another method or system specified by the Escrow Bank as available for use in connection with its services hereunder; provided, however, that the Town shall provide to the Escrow Bank an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Town, whenever a person is to be added or deleted from the listing. If the Town elects to give the Escrow Bank Instructions using Electronic Means 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 Town understands and agrees that the Escrow Bank cannot determine the identity of the actual sender of such Instructions and that the Escrow Bank shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Bank have been sent by such Authorized Officer. The Town shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Bank and that the Town and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Town. 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 directions conflict or are inconsistent with a subsequent written instruction. The Town agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions 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; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Escrow Bank and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Town; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Escrow Bank immediately upon learning of any compromise or unauthorized use of the security procedures.

The Town hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated), to the extent permitted by law, to indemnify, protect, save and hold 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 legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Bank (whether or not also indemnified against by 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 Escrow Agreement, the establishment of the Escrow Fund, the retention of the moneys therein and any payment, transfer or other application of moneys by the Escrow Bank in accordance with the provisions of this Escrow Agreement, or as may arise by reason of any act, omission or error of the Escrow Bank made in good faith in the conduct of its duties; provided, however, that the Town shall not be required to indemnify the Escrow Bank against its own negligence or misconduct. The indemnities contained in this Section 5 shall survive the termination of this Escrow Agreement or the resignation or removal of the Escrow Bank.

The Town acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Town the right to receive brokerage confirmations of security transactions as they occur, the Town specifically waives receipt of such confirmations to the extent permitted by law. The Escrow Bank will furnish the Town monthly cash transaction statements which include detail for all investment transactions made by the Escrow Bank hereunder.

No provision of this Escrow Agreement shall require the Escrow Bank 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.

The Escrow Bank may execute any of the trusts or 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 Bank may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval 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 at any time resign by giving 30 days written notice of resignation to the Town. Upon receiving such notice of resignation, either Town shall promptly appoint a

successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Bank from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to each of the Town, the resigning Escrow Bank 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 Bank may petition any court of competent jurisdiction for the appointment of a successor.

Section 6. Amendment. This Escrow Agreement may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents of the owner of the Unredeemed 2017 Lease Agreement shall have been filed with the Escrow Bank. This Escrow Agreement may be modified or amended at any time by a supplemental agreement, without the consent of any such owners, but only (1) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein or therein reserved to the Town, (2) to cure, correct or supplement any ambiguous or defective provision contained herein, (3) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which, in the opinion of counsel, shall not materially adversely affect the interests of the Assignee or the owner of the Bonds.

Section 7. Notice of Escrow Bank and Town. Any notice to or demand upon the Escrow Bank may be served and presented, and such demand may be made, at the corporate trust office of the Escrow Bank as specified by the Escrow Bank as Trustee in accordance with the provisions of the Indenture. Any notice to or demand upon the Town shall be deemed to have been sufficiently given or served for all purposes by being mailed by first class mail, and deposited, postage prepaid, in a post office letter box, addressed to such party as provided in the Indenture (or such other address as may have been filed in writing by the Town with the Escrow Bank).

Section 8. Merger or Consolidation of Escrow Bank. Any company into which the 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 it shall be a party or any company to which the Escrow Bank may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible to act as trustee under the Indenture, shall be the successor hereunder to the Escrow Bank without the execution or filing of any paper or any further act.

Section 9. Execution in Several Counterparts. This Escrow Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same instrument.

Section 10. Governing Law. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 11. Severability. In case any one or more of the provisions contained in this Escrow Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Escrow Agreement, but this Escrow Agreement shall be construed as if such invalid or illegal or unenforceable provisions had never been contained herein.

Section 12. Counterparts. This Escrow Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and such counterparts, or as many of them as the Town and the Escrow Bank shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 13. Business Days. Whenever any act is required by this Escrow Agreement to be done on a specified day or date, and such day or date shall be a day other than a business day for the Escrow Bank, then such act may be done on the next succeeding business day.

IN WITNESS WHEREOF the parties hereto have caused this Escrow Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

TOWN OF FAIRFAX

By _____
Town Manager

U.S. BANK NATIONAL ASSOCIATION, as
Escrow Bank

By _____
Authorized Signatory

EXHIBIT A
PAYMENT SCHEDULE

Date	Maturing Principal	Interest	Total Payment
12/15/20	\$151,000	\$4,077.00	\$155,077.00