

AGREEMENT NO. \_\_\_\_\_

**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT (this “**Escrow Agreement**”), is made and entered into on June \_\_\_\_, 2020, by and between the **CITY OF BAKERSFIELD**, a charter city and a municipal corporation (referred to herein as “CITY”) and **REGENT LAND INVESTMENT, LLC**, a Delaware limited liability company (referred to herein as “RLI”), and **CHICAGO TITLE COMPANY** (referred to herein as “ESCROW HOLDER”).

**R E C I T A L S**

**WHEREAS**, RLI owns certain property located within the boundaries of the City’s Assessment District No. 05-1 (City in the Hills) (the “**Assessment District**”), which Assessment District was formed pursuant to the provisions of the Municipal Improvement Act of 1913 (Division 12 of the California Streets and Highways Code) and Section 13.08.070 of the Municipal Code of the CITY; and

**WHEREAS**, the City issued \$15,595,000 in tax exempt bonds (the “**2005 Bonds**”) secured by the assessments within the Assessment District for the acquisition of certain public improvements within the Assessment District; and

**WHEREAS**, the CITY desires to refund the 2005 Bonds by issuing two series of bonds, a senior series that will be sold in a private placement (the “**Senior Bonds**”) and a junior series of bonds that will be sold to RLI (the “**Junior Bonds**” and with the Senior Bonds, collectively, the “**Refunding Bonds**”) pursuant to the Refunding Act of 1984 for 1915 Improvement Act Bonds (Division 11.5 of the California Streets and Highways Code); and

**WHEREAS**, the CITY anticipates forming a reassessment district and issuing the Refunding Bonds by August 31, 2020, but not later than December 31, 2020; and

**WHEREAS**, until such time as needed to purchase the Junior Bonds, as a good faith deposit, the CITY desires for RLI to place funds equal to One Million Two Hundred Thousand Dollars (\$1,200,000.00) (the “**Escrow Funds**”) into an escrow account with ESCROW HOLDER; and

**WHEREAS**, RLI, the CITY, and ESCROW HOLDER now desire to enter into this Escrow Agreement in connection with the Escrow Funds.

**NOW, THEREFORE**, incorporating the foregoing recitals herein, the parties agree as follows:

1. Escrow. Within five (5) days following the execution of this Escrow Agreement, RLI shall deposit with ESCROW HOLDER the Escrow Funds, which shall be held in accordance with the terms of ~~the~~ this Escrow Agreement.

2. Escrow Funds. The Escrow Funds shall secure, in part, the obligation of RLI to provide the purchase price for the Junior Bonds. It is anticipated that RLI will tender the Junior Bonds after purchase thereof to the City in payment and satisfaction of reassessment liens in their principal amount. ESCROW HOLDER shall deposit the Escrow Funds in one or more interest-bearing accounts at a federally insured state or national bank reasonably acceptable to RLI and the CITY. All interest accrued on the Escrow Funds shall be added to the Escrow Funds.

3. Escrow Fees. All fees and costs incurred by ESCROW HOLDER in connection with the performance of its duties under this Escrow Agreement shall be paid by RLI and shall be disbursed to ESCROW HOLDER within thirty (30) days following notice of such fees and costs delivered to RLI and the CITY.

4. Disbursement of Escrow Funds.

(a) In connection with the issuance of the Junior Bonds by the City, ESCROW HOLDER shall disburse the Escrow Funds as instructed by RLI following delivery to ESCROW HOLDER and the CITY of a disbursement notice ("**Disbursement Notice**") (which shall be delivered in the manner set forth herein for notices) setting forth the amount requested for disbursement, together with wire transfer instructions or other instructions for the disbursement of such funds. If the closing of the Refunding Bonds fails to occur for any reason whatsoever, ESCROW HOLDER shall return the Escrow Funds to RLI pursuant to wiring instructions that will be provided by RLI in its Disbursement Notice subject to the payment and/or reimbursement of costs in Section 4.1 (a). If the closing of the Refunding Bonds has not occurred by December 31, 2020, ESCROW HOLDER shall return the Escrow Funds to RLI, subject to the payment and/or reimbursement of certain costs incurred by the CITY in Section 4(b) below.

(b) In the event the closing of the Refunding Bonds fails, RLI agrees to pay and/or reimburse CITY its actual, out-of-pocket costs incurred by the City in connection with the Refunding Bonds transaction, including but not limited to, the costs associated with the preparation of the reassessment report. Within 30 days of a written request by the CITY, RLI shall deliver a Disbursement Notice to the ESCROW HOLDER to either reimburse the CITY or pay the specified vendor in the amounts so specified. RLI shall receive a credit for the purchase price of the Junior Bonds in the amount of such disbursement, but only in the event that the Junior Bonds are issued. After payment of any such third-party vendor, ESCROW HOLDER shall return all undisbursed Escrow Funds to RLI.

5. ESCROW HOLDER Matters.

(a) The duties and obligations of the ESCROW HOLDER shall be limited to and determined solely by the express provisions of this Escrow Agreement and no implied duties or obligations shall be read into this Escrow Agreement.

(b) RLI and the CITY shall execute and deliver to the ESCROW HOLDER joint supplemental escrow instructions containing such terms and conditions not inconsistent with the Escrow Agreement as the ESCROW HOLDER may reasonably require.

(c) The ESCROW HOLDER shall not be responsible for or be required to enforce any of the terms or conditions of any other agreement between the CITY and RLI.

(d) The ESCROW HOLDER shall not be responsible or liable in any manner whatsoever for the performance or compliance of or by RLI and the CITY of their respective obligations under this Escrow Agreement, nor shall the ESCROW HOLDER be responsible or liable in any manner whatsoever for the failure of any third party to honor any of the provisions of this Escrow Agreement.

(e) The ESCROW HOLDER is not bound by and is under no duty to inquire into the terms or validity of any other agreements or documents, including any agreements or documents which may be related to, referred to in or deposited with the ESCROW HOLDER in connection with this Escrow Agreement.

(f) The ESCROW HOLDER shall be entitled to rely upon and shall be protected in acting in reliance upon any written instruction, notice, information, certificate, instrument, authorization or other document which is submitted to it in connection with its duties under this Escrow Agreement and which the ESCROW HOLDER in good faith believes to have been signed or presented by the proper party or parties. The ESCROW HOLDER may assume that any officer or manager of any party, or legal counsel for any party, purporting to give any authorization or notice or make any statement in connection with the provisions hereof has been duly authorized to do so.

(g) The ESCROW HOLDER shall not be liable for any act which the ESCROW HOLDER may do or omit to do hereunder, while acting in good faith, unless caused by or arising from its own negligence or willful misconduct.

(h) The ESCROW HOLDER shall be entitled to consult with counsel of its own selection and the opinion of such counsel shall be full and complete authorization and protection to the ESCROW HOLDER in respect of any action

taken or omitted by the ESCROW HOLDER hereunder in good faith and in accordance with the opinion of such counsel.

(i) The ESCROW HOLDER shall have no responsibility for the tax consequences of this escrow. The ESCROW HOLDER hereby advises each party to this escrow to consult with independent legal counsel concerning the tax ramifications of this

(j) In the event of conflicting claims to the Escrow Funds, ESCROW HOLDER retains the absolute right at its election, to file an action in interpleader requiring the parties to answer and litigate their several claims and rights amongst themselves, and ESCROW HOLDER is authorized to comply with the requisite interpleader statutes of the State of California in this regard. All costs of court, reasonable legal fees of ESCROW HOLDER, and all other costs of ESCROW HOLDER incident thereto shall be the joint responsibility of RLI and the CITY.

6. Indemnity. RLI shall indemnify, defend, and hold CITY its officers, agents, and employees harmless against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by RLI, RLI's employees, agents, independent contractors, companies or subcontractors in the performance of the terms and provisions of this Agreement, whether or not caused in part by a party indemnified hereunder, except for CITY's or ESCROW HOLDER's sole active negligence or willful misconduct.

## 7. Miscellaneous.

(a) Amendments and Modification. Any amendment or modification of this Escrow Agreement must be in writing and signed by both parties.

(b) Time. Time is of the essence of this Escrow Agreement.

(c) Governing Law. This Escrow Agreement shall be interpreted under and governed and enforced according to the laws of the State of California.

(d) Binding Effect. The terms, covenants and conditions of this Escrow Agreement shall be binding upon and shall inure to the benefit of RLI, the CITY, ESCROW HOLDER and their respective successors and assigns, but ESCROW HOLDER may not delegate its duties hereunder without the prior written consent of RLI and the CITY.

(e) No Oral Agreements. This Escrow Agreement contains all of the agreements of the parties with respect to the matters set forth herein. There are no oral or written agreements or understandings between the parties hereto relative to such matters other than this Escrow Agreement.

(f) Attorneys' Fees. In the event of any action or proceeding brought by any party against another hereunder, the prevailing party, as finally determined in a non-appealable judgment, shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party that shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

(g) Severability. If any provision of this Escrow Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Escrow Agreement, or the application of such provision to any other persons or circumstances, shall not be affected thereby, and each provision of this Escrow Agreement shall remain in effect and shall be enforceable to the fullest extent permitted by law.

(h) Counterparts. This Escrow Agreement may be executed in one or more counterparts. Original signatures to counterparts shall not be required, and electronic or scanned signatures shall be acceptable and have the same force and effect as original signatures. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart.

(i) Notices. Notices from one party to another may be personally delivered or sent by mail, postage prepaid, by overnight courier, or by facsimile or email transmission to the addresses stated below, and shall be deemed to have been given at the time of personal delivery, upon confirmed receipt of facsimile or email transmission, or at the end of the third full day following the date of mailing.

**If to RLI:**

Regent Land Investment, LLC  
12100 Wilshire Blvd., Suite 1750  
Los Angeles, CA 90025

Attention: Jeffrey Dinkin  
Email: [jdinkin@regentproperties.com](mailto:jdinkin@regentproperties.com)

**with a copy to:**

Holland & Knight LLP  
400 S. Hope Street, 8<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: Douglas Praw, Esq.  
Email: [doug.praw@hklaw.com](mailto:doug.praw@hklaw.com)

**If to the CITY:**

City of Bakersfield  
1600 Truxton Avenue, 4<sup>th</sup> Floor  
Bakersfield, CA 93301  
Attention: Joshua H. Rudnick, Esq., Deputy City Attorney  
Email: [jrudnick@bakersfieldcity.us](mailto:jrudnick@bakersfieldcity.us)

**with a copy to:**

Orrick  
400 Capitol Mall, Suite 3000  
Sacramento, CA 95814-4497  
Attention: Patricia L. Eichar, Esq.  
Email: [PEichar@orrick.com](mailto:PEichar@orrick.com)

**If to the ESCROW HOLDER:**

Chicago Title Company  
4015 Coffee Road, #100  
Bakersfield, CA 93308  
Attention: Kathy Wright  
Email: [WrightKat@ctt.com](mailto:WrightKat@ctt.com)

*[Signatures on next pages]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

**“CITY”**  
**CITY OF BAKERSFIELD**

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

**KAREN GOH**

Mayor

APPROVED as to form:

**VIRGINIA GENNARO**

City Attorney

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

**JOSHUA H. RUDNICK**

Deputy City Attorney

APPROVED as to content:

**FINANCE DEPARTMENT**

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

**TERA LOVELESS**

Assistant Finance Director

COUNTERSIGNED:

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

**RANDY MCKEEGAN**

Finance Director

**“RLI”**

**REGENT LAND INVESTMENT, LLC.**

a Delaware limited liability company

By Fund Wind Down Services Limited

Manager

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



Name: **Jess Shakespeare**

Title: Director

**“ESCROW HOLDER”**

**CHICAGO TITLE COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_