

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (Agreement), made by and between City of Austin, Texas (City), and UMB Bank, N.A., as Escrow Agent (Escrow Agent) together with any successor in such capacity;

W I T N E S S E T H:

WHEREAS, pursuant to an Ordinance finally adopted on October 13, 2022 (Ordinance), the City authorized the issuance of \$24,630,000 City of Austin, Texas Water and Wastewater System Revenue Bonds, Series 2022B (DWSRF) (Obligations) to obtain financial assistance from the Texas Water Development Board (TWDB) for the purpose of funding water or wastewater system improvements (Project); and

WHEREAS, the Escrow Agent is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in accordance with Texas Government Code, Chapter 404, Subchapter D and is otherwise qualified and empowered to enter into this Agreement, and hereby acknowledges its acceptance of the terms and provisions hereof; and

WHEREAS, a condition of the Obligations is the deposit of the proceeds of the Obligations (Proceeds) in escrow subject to being withdrawn only with the approval of the Executive Administrator or another designated representative of TWDB; provided, however, the Proceeds can be transferred to different investments so long as all parties hereto consent to such transfer;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and in consideration of the amount of fees to be paid by the City to the Escrow Agent, as set forth on **EXHIBIT A**, the receipt of which is hereby acknowledged, and in order to secure the delivery of the Obligations, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives and successors, as follows:

SECTION 1: ESCROW ACCOUNT(S). Upon the delivery of the Obligations described above, the Proceeds identified under TWDB Commitment Number LM231040 shall be deposited to the credit of a special escrow account(s) (Escrow Account(s)) maintained at the Escrow Agent on behalf of the City and the TWDB and shall not be commingled with any other accounts or with any other proceeds or funds. The Proceeds received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the City, and the Escrow Agent shall have no right to title with respect thereto except as Escrow Agent under the terms of this Agreement.

The Escrow Account(s) shall be entitled "City of Austin, Texas Water and Wastewater System Revenue Bonds, Series 2022B (DWSRF), Texas Water Development Board Commitment Number LM231040 Escrow Account" and shall not be subject to warrants, drafts or checks drawn by the City but shall be disbursed or withdrawn to pay the costs of the Project for which the Obligations were issued or other purposes in accordance with the Ordinance and solely upon written authorization from the Executive Administrator or his/her designated representative. The Escrow Agent shall provide to the City and to the TWDB the Escrow Account(s) bank statements upon request.

SECTION 2: COLLATERAL. All cash deposited to the credit of such Escrow Account(s) and any accrued interest in excess of the amounts insured by the FDIC and remaining uninvested under the terms of this Agreement shall be continuously secured by a valid pledge of direct obligations of the United States of America or other collateral meeting the requirements of the Public Funds Collateral Act, Texas Government Code, Chapter 2257.

SECTION 3: INVESTMENTS. While the Proceeds are held in escrow, the Escrow Agent shall only invest escrowed Proceeds as directed in writing by the City in investments that are authorized by the Public Funds Investment Act, Texas Government Code, Chapter 2256 (PFIA). It is the City's responsibility to direct the Escrow Agent to invest all public funds in a manner that is consistent not only with the PFIA but also with its own written investment policy. In the absence of written investment direction from the City, the Proceeds and any interest or income earned thereon shall not be invested.

SECTION 4: DISBURSEMENTS. The Escrow Agent shall not honor any disbursement from the Escrow Account(s), or any portion thereof, unless and until it has been supplied with written approval and consent by the Executive Administrator or his/her designated representative. However, no written approval and consent by the Executive Administrator shall be required if the disbursement involves transferring Proceeds from one investment to another within the Escrow Account(s) provided that all such investments are consistent with the PFIA requirements.

SECTION 5: UNEXPENDED FUNDS. Any Proceeds remaining unexpended in the Escrow Account(s) after completion of the Project and after the final accounting has been submitted to and approved by the TWDB shall be disposed of pursuant to the provisions of the Ordinance. The City shall deliver a copy of such TWDB approval of the final accounting to the Escrow Agent together with instructions concerning the disbursement of unexpended Proceeds hereunder. The Escrow Agent shall have no obligation to ensure that such unexpended Proceeds are used as required by the provisions of the Ordinance, that being the sole obligation of the City.

SECTION 6: CERTIFICATIONS. The Escrow Agent shall be authorized to accept and rely upon the certifications and documents furnished to the Escrow Agent by the City and shall not be liable for the payment of any funds made in reliance in good faith upon such certifications or other documents or approvals, as herein recited.

SECTION 7: LIABILITY OF ESCROW AGENT. To the extent permitted by law, the Escrow Agent shall not be liable for any act done or step taken or omitted by it or any mistake of fact or law, except for its negligence or willful misconduct. The Escrow Agent shall not be responsible in any manner for any proceedings in connection with the Obligations or any recitation contained in the Obligations. In the event of a question regarding any disbursement or a disagreement between the undersigned or TWDB or any other person resulting in adverse claims being made upon the amounts in the Escrow Account, the Escrow Agent shall be protected and shall not be liable to the City or any other person if it follows the written direction of the Executive Administrator or of a final order or judgment of a court of competent jurisdiction. To the extent permitted by law, the City agrees to indemnify and save the Escrow Agent harmless from all losses, costs, liabilities, actual damages, fees and expenses (including, but not limited to, reasonable attorney's fees and expenses) suffered or incurred by the Escrow Agent arising from the performance of its obligations under this Agreement ("Acts"), except such Acts as arise from or attributable to the negligence or willful misconduct of the Escrow Agent. The Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and, to the extent

the Escrow Agent acts in good faith without negligence or willful misconduct, it shall be fully protected in acting in accordance with the opinion and instructions of such counsel. The Escrow Agent may resign at any time by providing notice in the manner set forth in Section 11.

SECTION 8: RECORDS. The Escrow Agent will keep complete and correct books of record and account relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Account, and investments of the Escrow Account and all proceeds thereof. The records shall be available for inspection and copying at reasonable hours and under reasonable conditions by the City and the TWDB.

SECTION 9: MERGER/CONSOLIDATION. In the event that the Escrow Agent merges or consolidates with another bank or sells or transfers substantially all of its assets or corporate trust business, then the successor bank shall be the successor Escrow Agent without the necessity of further action as long as the successor bank is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in accordance with Texas Government Code Chapter 404, Subchapter D. The Escrow Agent must provide the TWDB with written notification within 30 days of acceptance of the merger, consolidation, or transfer. If the merger, consolidation or other transfer has occurred between state banks, the newly-created entity shall forward the certificate of merger or exchange issued by the Texas Department of Banking as well as the statement filed with the pertinent chartering authority, if applicable, to the TWDB within five business days following such merger, consolidation or exchange.

SECTION 10: AMENDMENTS. This Agreement may be amended from time to time as necessary with the written consent of the City and the TWDB, but no such amendments shall increase the liabilities or responsibilities or diminish the rights of the Escrow Agent without its consent.

SECTION 11: TERMINATION. The City may terminate this Agreement by giving the Escrow Agent and the TWDB thirty (30) days written notice of such termination. The Escrow Agent may resign and be replaced by giving to the City and the TWDB thirty (30) days prior written notice of such resignation; provided, that the Escrow Agent shall continue to serve until such time as a successor has been appointed. In the event that this Agreement is terminated by either the City or by the Escrow Agent, the Escrow Agent must report said termination in writing to the TWDB within five business days of such termination. The City is responsible for ensuring that the following criteria are satisfied in selecting the successor escrow agent and notifying the TWDB of the change in escrow agents: (a) the successor escrow agent must be an FDIC-insured state or national bank designated by the Texas Comptroller as a state depository; (b) the successor escrow agent must be retained prior to or at the time of the termination; (c) an escrow agreement must be executed by and between the City and the successor escrow agent and must contain the same or substantially similar terms and conditions as are present in this Agreement; and (d) the City must forward a copy of the executed escrow agreement with the successor escrow agent within five business days of said termination. No funds shall be released by the TWDB until it has received, reviewed and approved the escrow agreement with the successor escrow agent. If the City has not appointed a successor escrow agent within thirty (30) days of the notice of termination, the Escrow Agent may petition any court of competent jurisdiction in Texas for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the City. Whether appointed by the City or a court, the successor escrow agent and escrow agreement must be approved by the TWDB for the appointment to be effective. The Escrow Agent is responsible for performance under this

Agreement until a successor has been approved by the TWDB and has signed an acceptable escrow agreement.

SECTION 12: EXPIRATION. This Agreement shall expire upon final transfer of the funds in the Escrow Account(s) to the City.

SECTION 13: POINT OF CONTACT. The points of contact for the Escrow Agent and the TWDB are as follows:

Anne-Marie Hansen
UMB Bank, N.A.
6034 W. Courtyard Drive, Suite 370
Austin, TX 78730
Telephone: 512-582-5850
Email: anne-marie.hansen@umb.com

Jeff Walker
Executive Administrator
Texas Water Development Board
1700 North Congress Avenue
Austin, Texas 78701

SECTION 14: CHOICE OF LAW. This Agreement shall be governed exclusively by the applicable laws of the State of Texas. Venue for disputes shall be in the District Court of Travis County, Texas.

SECTION 15: ASSIGNABILITY. This Agreement shall not be assignable by the parties hereto, in whole or in part, and any attempted assignment shall be void and of no force and effect.

SECTION 16: ENTIRE AGREEMENT. This Agreement evidences the entire Escrow Agreement between the Escrow Agent and the City and supersedes any other agreements, whether oral or written, between the parties regarding the Proceeds or the Escrow Account(s). No modification or amendment of this Agreement shall be valid unless the same is in writing and is signed by the City and consented to by the Escrow Agent and the TWDB.

SECTION 17: VALIDITY OF PROVISIONS. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 18: COMPENSATION FOR ESCROW SERVICES. The Escrow Agent shall be entitled to compensation for its services as stated in Exhibit A, which compensation shall be paid by the City but may not be paid directly from the Escrow Account(s).

SECTION 19: VALUE OF AGREEMENT. To the extent this Agreement constitutes a contract for goods or services, during the term of this Agreement the Escrow Agent will not receive compensation of \$100,000 or more.

SECTION 20: FOREIGN TERRORIST ORGANIZATION. For purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that at the time of execution of this Agreement, the Escrow Agent hereby represents and warrants that as a "Company", as defined in Section 808.001, Texas Government Code, the Escrow Agent, or any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Escrow Agent, (i) does not engage in business with Iran, Sudan or any foreign terrorist organization as described in Chapter 808 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, and

(ii) is not a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” shall have the meaning given such term in Section 2252.151, Texas Government Code. The Escrow Agent understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Escrow Agent and exists to make a profit.

SECTION 21: TAX MATTERS/PATRIOT ACT & BANK SECRECY ACT. The City agrees that, for tax reporting purposes, all interest or other income, if any, attributable to the amounts held in escrow by the Escrow Agent pursuant to this Agreement shall be allocable to the City. Tax reporting will be completed by the City. The City agrees to provide the Escrow Agent hereby represents and warrants that as a “Company”, as defined in Sections 806.001 and completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request at the time of execution of this Agreement, and any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time, or the Bank Secrecy Act, as amended from time to time. The City understands that if such documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as it is amended from time to time, to withhold a portion of any interest or other income earned on the investment of moneys or other property held by the Escrow Agent pursuant to this Agreement.

SECTION 22: ELECTRONIC TRANSACTIONS/ COUNTERPARTS. The parties hereto agree that the transactions described herein may be conducted and related documents may be sent, received, and stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions or original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective upon signature of both parties.

CITY OF AUSTIN, TEXAS

By: _____
Spencer Cronk, City Manager

Attest: _____
Myrna Rios, City Clerk

Date: _____

(Seal)

Address: 301 West Second Street
Austin, Texas 78701

UMB BANK, N.A.,
as Escrow Agent

By: _____

Title: _____

Date: _____

Address: 6034 West Courtyard Drive, Suite 370
Austin, Texas 78730

(Bank Seal)

EXHIBIT A
Fee Schedule

DRAFT