

## ESCROW AGREEMENT

This Escrow Agreement (“Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Kansas City, Missouri (“City”), Platte County, Missouri (“County”), and UMB Bank, n.a., as Escrow Agent (“Escrow Agent”).

City is a municipal corporation under the laws of the State of Missouri. County is a county under the laws of the State of Missouri. UMB Bank is a banking corporation duly incorporated under the laws of the State of Missouri.

City and County have entered into that certain Agreement for Payment of Funds for the Purpose of Construction of NW Waukomis Drive from Platte NW Englewood Road to NW 62nd Street (“Underlying Agreement”), dated as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The terms of the Underlying Agreement require City and County to submit funds to an escrow account for the purpose of submitting claims for payment. In order to satisfy the terms of the Underlying Agreement, City and County have elected to engage UMB Bank, n.a. as Escrow Agent.

Therefore, City, County, and Escrow Agent mutually agree as follows:

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

*Account:* Account shall mean the UMB escrow account titled “NW Waukomis Drive” Escrow Account”.

*Agreement:* Agreement shall mean this Escrow Agreement entered into between City, County, and Escrow Agent.

*City:* City shall mean the City of Kansas City, Missouri, a municipal corporation under the laws of the State of Missouri.

*County:* County shall mean Platte County, a county under the laws of the State of Missouri.

*Drop Dead Date:* Drop Dead Date shall mean the date when this Agreement, regardless of any extensions, amendments, modifications, and/or supplements, must terminate, such date being December 31, 2024.

*Escrow Agent:* Escrow Agent shall mean UMB Bank, n.a., as Escrow Agent, a banking corporation duly incorporated under the laws of the State of Missouri.

*Escrowed Funds:* Escrowed Funds shall mean USD \$4,400,000 initial deposit, with estimated monthly \$200,000 deposits to complete the project in full as submitted by County and \$5,000,000 as submitted by City, for an estimated total of \$13,000,000.00.

*Initial Termination Date:* Initial Termination Date shall mean the initial date in which this Agreement shall terminate, such date being August 1, 2024.

**Section 2. Appointment of Escrow Agent.** City and County hereby appoint UMB Bank, n.a. as the initial Escrow Agent and UMB Bank, n.a. hereby accepts the appointment. The Escrow Agent may resign as Escrow Agent hereunder upon 30 days written notice to both City and County. City and County may terminate the Escrow Agent's appointment by joint mutual agreement upon 30 days written notice to UMB Bank. If no successor escrow agent is appointed by the effective date of resignation or removal, the Escrow Agent may, at the expense of the City, petition a court of competent jurisdiction for the appointment of a successor Escrow Agent.

**Section 3. Creation of Escrow Account.** Escrow Agent is hereby directed to create an escrow account titled "NW Waukomis Drive Escrow Account" ("Account"). Any funds received by the Escrow Agent in connection with this Agreement shall be deposited to the Account.

**Section 4. Escrow Deposit.** Upon execution of this Agreement, City and County shall deliver to Escrow Agent funds in the following amounts (the "Escrowed Funds"):

\$8,000,000 by County  
\$5,000,000 by City

County shall only be required to deliver to the escrow agent funds derived from the proceeds of the countywide transportation sales tax approved on April 2, 2013 by the voters of Platte County for a period of 10 years (the "Tax"). If the proceeds generated and derived from the Tax are insufficient to fund the \$8,000,000.00 deposit by County set forth in this Section, then City shall supply sufficient funds to make up for any shortfall in the funds derived from the proceeds of the Tax.

City and County shall deliver funds in accordance with instructions set forth on SCHEDULE A as attached hereto. All funds deposited to Account shall be considered Escrowed Funds. Escrow Agent shall hold Escrowed Funds in accordance with the terms of this Agreement.

**Section 5. Registration & Taxes.** Escrowed Funds shall be the property of the Account and, if applicable, shall be registered in the name of the Account. City, County, and Escrow Agent expressly agree that the purposes relating to taxes, City and County shall be considered the owner of the Escrowed Funds. The City and County shall be responsible, if necessary, for tax reporting. Tax reporting shall only be conducted, if necessary, upon actual distribution of all income earned from Escrowed Funds. Simultaneously with the execution of this Agreement, City and County shall deliver to Escrow Agent an executed Form W-9s or other similar tax identification document.

**Section 6. Term.** This Agreement shall automatically terminate on August 1, 2024 (“Initial Termination Date”) or upon the final release of Escrowed Funds, whichever shall occur first. This Agreement may be extended only upon mutual written agreement executed by City, County, and Escrow Agent. In no event shall this Agreement, together with any and all extensions, amendments, modifications, and supplements, be extended past December 31, 2024 (“Drop Dead Date”).

**Section 7. Authorized Representatives.** Authorized Representatives, along with respective specimen signatures, of City and County shall be set forth on SCHEDULE B, as attached hereto. Authorized Representatives shall have the authority to act on behalf of the respective party, submit notices and/or instructions to Escrow Agent as may be required by this Agreement, verbally confirm disbursement requests, or any other action that may be reasonably required by this Agreement.

**Section 8. Investments.** Upon deposit of Escrowed Funds to Account, Escrowed Funds will be invested as directed in writing by the City and County in Permitted Investments as set forth in SCHEDULE C as attached hereto. City and County expressly agree that Escrow Agent shall bear no liability as to investment decisions, investment performance, or any other subject matter relating to investments. The Escrow Agent shall be entitled to sell or redeem any such investment as necessary to make any distributions required under this Agreement and shall not be liable or responsible for any loss resulting from any such sale or redemption. Income, if any, resulting from the investment of the Escrowed Funds shall be retained by the Escrow Agent and shall be considered, for all purposes of this Agreement, to be part of the Escrowed Funds.

**Section 9. Release of Escrowed Funds.** Escrow Agent shall only release funds in accordance with joint written instructions executed by both City and County. Upon receipt of joint written instructions executed by both City and County, Escrow Agent will release funds within 10 business days from the date of receipt. Escrow Agent shall only release moneys from Escrowed Funds in accordance with the joint written instructions of the City and County which the Escrow Agent will received in accordance with SCHEDULE D, as attached hereto. Should any controversy arise involving City, County, and Escrow Agent, or if Escrow Agent is in doubt as to which course action should be taken, Escrow Agent shall have the right, but not the obligation, to (i) institute, at the cost of the City, a petition of interpleader in any competent jurisdiction to determine the rights of the parties hereto; or (ii) refuse to comply with any demand or claim, as long as such controversy or question shall continue, and in so refusing to make any delivery or other disposition of the Escrowed Funds, the Escrow Agent shall not be or become liable to the undersigned for its refusal to comply with such conflicting or adverse demands, and the Escrow Agent shall be entitled to refuse and refrain to act until: (a) the rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and having jurisdiction of the parties and money, papers and property involved herein or affected hereby, or (b) all differences shall have been adjusted by agreement and the Escrow Agent shall have been notified thereof in writing, signed by all the interested parties.

**Section 10. Security Procedures.** When Escrow Agent is instructed to release Escrowed Funds pursuant to the terms of Section 9 of this Agreement, Escrow Agent shall verbally confirm the release via telephone call to at least one of the Authorized Representatives of both City and County. Escrow Agent shall only contact the individuals listed on SCHEDULE B as attached hereto.

**Section 11. Scope of Undertaking.** Escrow Agent's duties and responsibilities in connection with this Agreement shall be purely ministerial and shall be limited to those duties expressly set forth in this Agreement. Escrow Agent is not a principal, participant, or beneficiary in any underlying transaction associated with this Agreement.

**Section 12. Reliance & Liability.** Escrow Agent may rely on any written notice, instruction, request, communication, or other document furnished to it hereunder to which Escrow Agent reasonably believes to have been signed or presented by the appropriate parties associated with this Agreement. Escrow Agent is not obligated to inquire as to the sufficiency or validity of any underlying transaction, document, or communication associated with the Agreement. Escrow Agent shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness, or validity of the subject matter for this Agreement, any part hereof, or for the underlying transactions associated with this Agreement. Escrow Agent shall not be liable for any legal matters associated with City and County. The Escrow Agent shall not be held liable for any error in judgment made in good faith by an officer or employee of the Escrow Agent unless it shall be proved that the Escrow Agent was grossly negligent in ascertaining the pertinent facts or acted intentionally in bad faith.

In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. In the event that the Escrow Agent shall become involved in any arbitration or litigation relating to the Escrowed Funds, the Escrow Agent is authorized to comply with any decision reached through such arbitration or litigation.

To the extent permitted by law, the City and County, jointly and severally, hereby agree to indemnify the Escrow Agent and each direction, officer, employee, attorney, agent and affiliate of the Escrow Agent for, and to hold it harmless against any loss, liability or expense incurred in connection herewith without gross negligence or willful misconduct on the part of the Escrow Agent, including without limitation legal or other fees arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including without limitation the costs and expenses of defending itself against any claim of liability in the premises or any action for interpleader.

**Section 13. Escrow Agent Compensation.** City shall be solely responsible for Escrow Agent compensation and reimbursement. All compensation and reimbursement hereunder shall be payable in advance and shall not be pro-rated. Escrow Agent shall be entitled to compensation and reimbursement, including attorneys fees and extraordinary fees and expenses to the extent incurred, as set forth on SCHEDULE E as attached hereto. To the extent the City fails to pay Any fees and expenses shall be payable from and may be deducted by Escrow Agent from interest and/or principal of any monies held in Escrowed Funds by Escrow Agent.

**Section 14. Notice.** Any notices or communications required to be submitted to any of the parties under the terms of this Agreement shall be considered properly submitted if submitted in the form of private overnight delivery, certified mail with return receipt requested, facsimile, or electronic mail. Any copies as detailed below shall not constitute proper notice. Notices are to be given pursuant to contact information below:

If to Escrow Agent: UMB BANK  
CORPORATE TRUST & ESCROW SERVICES  
ATTN: NICOLE TARANTINO  
928 GRAND BLVD, 12<sup>th</sup> FLOOR  
KANSAS CITY, MO 64106  
Telephone: (816) 860-7631  
Facsimile: (816) 860-3029  
Email: [nicole.tarantino@umb.com](mailto:nicole.tarantino@umb.com)

If to City: Director of Public Works  
City Hall, 20<sup>th</sup> Floor  
414 East 12<sup>th</sup> Street  
Kansas City, MO 64106

With Copy: City Attorney  
City Hall, 23<sup>rd</sup> Floor  
414 East 12<sup>th</sup> Street  
Kansas City, MO 64106

If to County: Director of Public Works  
15955 Highway 273  
Platte City, MO 64079

With Copy: County Counselor  
McGinness & Shaw, LLC  
303 Marshall Road, Suite 1  
P.O. Box 168  
Platte City, MO 64079

**Section 15. Consultation with Legal Counsel.** Escrow Agent may consult with its in-house counsel, or other outside counsel, regarding any of the duties or obligations placed upon Escrow Agent pursuant to the terms of this Agreement. Escrow Agent shall not be liable for acts, or omissions, taken by Escrow Agent in good faith upon advice of such counsel.

**Section 16. Choice of Law.** This Agreement shall be construed and interpreted according to the statutes, regulations, and constitutional provisions of the State of Missouri. Except as provided in Section 9 of this Agreement, City, County, and Escrow Agent hereby agree that the forum for resolution of any dispute arising under this Agreement shall be in the Circuit Court of Platte County, Missouri. City, County, and Escrow Agent also agree to be subject to jurisdiction of any State or Federal court sitting in Platte County, Missouri.

**Section 17. General Provisions.** If any or more provisions of this Agreement are held for any reason to be invalid, illegal, or unenforceable, such holding shall not affect the validity of any other provision set forth in this Agreement. Provisions that may be held to be invalid, illegal, or unenforceable shall be treated as those provisions were never set forth in this Agreement. The headings contained in this Agreement are for reference purposes only and shall not have any effect upon the interpretation of any of the provisions. Escrow Agent shall not be liable for any loss or damages arising out of any acts natural disasters, labor strikes, economic downturns, equipment or transmission failures, war, terrorism, or any other circumstances beyond the reasonable control of Escrow Agent. This Agreement represents that final agreed upon terms between City, County, and Escrow Agent. This Agreement shall not be contradicted by any other previous oral agreements between City, County, and Escrow Agent. This Agreement may be amended, modified or terminated at any time by a writing executed by the City, County and the Escrow Agent. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

THIS AGREEMENT IS HEREBY EXECUTED as of the date first listed above.

[SIGNATURES BEGIN ON NEXT PAGE]

**ATTEST TO: KANSAS CITY, MISSOURI**

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

Name:  
City Clerk

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

Michael Shaw  
Director of Public Works

**Approved as to form:**

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

Name:  
Assistant City Attorney

State of Missouri     )  
                                  )ss  
County of Jackson    )

**BE IT REMEMBERED**, that on this \_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a notary public in and for the county and state aforesaid, came **Michael Shaw, Director of Public Works** of Kansas City, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and, Marilyn Sanders, City Clerk, of Kansas City, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of said municipal corporation, and such persons duly acknowledge the execution of the same to be the act and deed of said municipal corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, sufficient to meet the obligation hereby incurred, and that there is a balance, otherwise unencumbered, and a cash balance sufficient to meet the obligation hereby incurred from which payment is to be made.

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

Name: Director of Finance

DRAFT



**ATTEST TO: PLATTE COUNTY, MISSOURI**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
County Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Presiding Commissioner

**Approved as to form:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
County Counselor

State of Missouri     )  
                                  )ss  
County of Platte     )

**BE IT REMEMBERED**, that on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a notary public in and for the county and state aforesaid, came, to me personally known, who by me duly sworn did say that he is the **Presiding Commissioner of Platte County, a Missouri**, and the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and acknowledged said instrument to be free act and deed of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

Pursuant to Sections 50.660 and 55.160 R.S.Mo., I certify that there is an unencumbered balance or anticipated revenue to be placed to the credit of the appropriation to which the foregoing expenditure is to be charged, and an unencumbered cash balance or anticipated revenue in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

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Kevin Robinson, County Auditor

DRAFT

**ATTEST TO: UMB BANK, N.A., AS ESCROW AGENT**

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

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

State of Missouri     )  
                                  )ss  
County of Jackson    )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a notary public in and for the county and state aforesaid, came \_\_\_\_\_, \_\_\_\_\_ of UMB Bank, a banking corporation duly incorporated under the laws of the State of Missouri, who is personally known to me to be the same persons who executed, as officials, the within instrument on behalf of said banking corporation, and such persons duly acknowledge the execution of the same to be the act and deed of said corporation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission expires:  
\_\_\_\_\_

## SCHEDULE A

### ESCROW AGENT DELIVERY INSTRUCTIONS

Wire Instructions:

Bank Name: UMB Bank, N.A.

ABA Number: 101000695

BNF Name: Trust Operations

BNF A/C: xx-0000-xxxx

OBI Field: FBO KCMO-PLATTE COUNTY WAUKOMIS RDWY ESCROW ACCT

ACH Instructions:

Bank Name: UMB Bank, N.A.

ABA Routing No: 101000695

BNF Name: Trust Operations/CT

BNF Acct: A/C- xx-0101-xxxx

Reference: FBO: KCMO-PLATTE COUNTY WAUKOMIS RDWY ESCROW  
ACCT

Checks:

UMB Bank, N.A.

Attn: Nicole Tarantino

Mailstop: 1011201

928 Grand Blvd., 12<sup>th</sup> Floor

Kansas City, MO 64106

**SCHEDULE B**

**AUTHORIZED REPRESENTATIVES**

The below listed Parties (each a “Party”) are a party to UMB Bank trust account titled KCMO-PLATTE COUNTY NW WAUKOMIS DR. ESCROW associated with the that certain Escrow Agreement (“Agreement”) entered into as of \_\_\_\_\_, 20\_\_\_\_ by and between City, County, and UMB as Escrow Agent. Pursuant to the Agreement, the below named Individuals (each an “Individual”) are hereby designated as Authorized Representatives of the appropriate Party. The specimen signatures of the Individuals are set forth below. Escrow Agent shall be entitled to fully rely upon this SCHEDULE B.

**Party: City**

Individual:	Michael Shaw	Specimen Signature
Title:	Director of Public Works	
Telephone Number:	(816) 513-9988	

Attest:

I, Marilyn Sanders, duly acting as City Clerk of City, hereby confirm that Michael Shaw is an Authorized Representative of City.

By: \_\_\_\_\_  
Marilyn Sanders, City Clerk

**Party: County**

Individual:	Bob Heim	Specimen Signature
Title:	Director of Public Works	
Telephone Number:	(816) 858-2223	

STATE OF MISSOURI     )  
  )SS  
COUNTY OF PLATTE     )

On \_\_\_\_\_, 20\_\_\_\_, Bob Heim appeared before a Notary Public who acknowledged the following: that he actually is Individual Name and has presented photo-identification to that effect; that he is a resident of the State of Missouri; that he is an Authorized Representative of County.

By: \_\_\_\_\_  
Notary Public

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

Commission Expiration:  
\_\_\_\_\_

## SCHEDULE C

### PERMITTED INVESTMENTS

Initially, Escrowed Funds will be invested in the Goldman Sachs Financial Square Treasury Fund #525 (“Financial Square”) (Ticker: FYSXX; CUSIP 38142B708). Financial Square is a money-market fund comprised of U.S. Treasury securities only. City and County expressly agree that Financial Square shall always remain in effect as a sweep vehicle even if no moneys are held in Financial Square. Escrowed Funds shall remain invested in Financial Square until, and if, City and County deliver written investment authorization to Escrow Agent authorizing Escrow Agent to invest the Escrowed Funds in other investments subject to the limitations set forth below.

Escrowed Funds shall only be invested in the following Permitted Investments:

Goldman Sachs Financial Square Treasury Fund #525

DRAFT

## **SCHEDULE D**

### **DELIVERY INSTRUCTIONS**

If to Contractor:

Instructions: The Contractor shall submit a pay application to the City. Upon receipt of pay application, City shall forward a copy to the County. City and County shall both provide approving payment to Contractor. Escrow Agent shall submit payment to Contractor at the joint written direction of the City and County.

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**SCHEDULE E**

**ESCROW AGENT COMPENSATION**

Upon execution of this Agreement, the following fees shall become immediately due and payable to Escrow Agent:

Set-Up Fee:	USD \$1,500.00 a one-time fee;
Annual Fee (payable in advance):	USD \$1,500.00 payable every year;

Releases of Escrowed Funds in the form FED wires or ACHs will be subject to the following fees:

Unlimited transfers per calendar year:	No Charge
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Escrow Agent shall be entitled to deduct any unpaid compensation and expenses from Escrowed Funds if such unpaid compensation and/or expenses are not paid to Escrow Agent within 20 days from the invoice date.

DRAFT