

ESCROW DEPOSIT AGREEMENT

THIS AGREEMENT made as of this 21st day of September, 2023, by and between DeKalb County, Georgia (the “**County**”) and U.S. Bank Trust Company, National Association, as escrow agent (the “**Escrow Agent**”),

WITNESSETH:

WHEREAS, the County has previously issued its Water and Sewerage Revenue Refunding Bonds (Second Resolution), Series 2013 in the original aggregate principal amount of \$134,375,000 (the “**Series 2013 Bonds**”), which are currently outstanding in the aggregate principal amount of \$72,225,000, pursuant to a Master Bond Resolution adopted by the Board of Commissioners and approved by the Chief Executive Officer of the County on October 25, 2011, as supplemented, including as supplemented by a Series 2013 Bond Resolution adopted by the Board of Commissioners and approved by the Chief Executive Officer of the County on November 12, 2013 and a Supplemental Series 2013 Bond Resolution adopted by the Board of Commissioners and approved by the Chief Executive Officer of the County on December 3, 2013 (collectively, the “**Master Bond Resolution**”) for the purpose of refinancing the acquisition, construction and installation of certain improvements to the County’s water and sewerage system; and

WHEREAS, the outstanding Series 2013 Bonds maturing on and after October 1, 2024 are subject to redemption prior to their maturities, at the option of the County, on and after October 1, 2023 in whole or in part at any time at a price equal to the principal amount of each Series 2013 Bond so redeemed, plus accrued interest thereon to the redemption date; and

WHEREAS, the County has determined that it is in its best interests to pay when due and refund all of the outstanding Series 2013 Bonds maturing on October 1, 20[] through and including October 1, 20[] in the aggregate principal amount of \$[] (collectively, the “**Refunded 2013 Bonds**”); and

WHEREAS, the Refunded 2013 Bonds will no longer be deemed outstanding, provision for the payment thereof having been made from a portion of the proceeds of the \$[] aggregate principal amount of DeKalb County, Georgia Water and Sewerage Refunding Revenue Bonds (Second Resolution), Series 2023 (the “**Series 2023 Bonds**”), authorized and issued pursuant to the Master Bond Resolution and a Series 2023 Bond Resolution and a Supplemental Series 2023 Bond Resolution adopted by the Board of Commissioners and approved by the Chief Executive Officer of the County on August 8, 2023 and September 12, 2023, respectively, together with certain other funds from legally available sources; and

WHEREAS, in anticipation of the beneficial result of providing at this time for refunding of the Refunded 2013 Bonds, the County has deposited into the Escrow Deposit Fund created hereunder sufficient monies which will provide to the Escrow Agent general and direct non-callable obligations of the United States of America, the principal of and interest on which, when due and payable, together with any cash to be held by the Escrow Agent, will provide sufficient monies to pay, when due, the principal of and interest on with respect to the Refunded 2013 Bonds as more particularly hereinafter set forth and as delineated in Schedule 2 hereto.

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

1. The Refunded 2013 Bonds will be refunded and defeased through payment as provided in this Agreement. The County hereby confirms the deposit with the Escrow Agent of the sum of (a) \$[REDACTED] from the proceeds of the Series 2023 Bonds, and (b) \$[REDACTED] from the Sinking Fund created under the Master Bond Resolution which moneys were deposited in the Sinking Fund to pay principal of and interest on the Refunded 2013 Bonds. The County hereby directs the Escrow Agent to apply so much of such moneys may be required to the immediate purchase of the non-callable direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged described in Schedule 1 hereto (the “**Government Obligations**”), and to hold and apply the remainder of such monies (i.e., an initial cash balance of \$[REDACTED]) in the manner and for the purposes provided herein.

2. The Escrow Agent acknowledges (a) that it has received the proceeds of the Series 2023 Bonds and the Sinking Fund moneys described in paragraph 1 hereof, and (b) that it has acquired or will promptly acquire (and has or will have appropriate evidence of ownership by it, as Escrow Agent, of) the Government Obligations.

3. The County and the Escrow Agent (based solely in reliance on the verification report of [Name of Verification Agent] dated September 21, 2023) each acknowledge and agree that the cash deposited with the Escrow Agent as herein set forth and the principal of and the interest on the Government Obligations as and when due and payable and received in due course, will provide monies sufficient to pay the principal of, interest on the Refunded 2013 Bonds through and including October 23, 2023, the redemption date for the Refunded 2013 Bonds.

4. There is hereby created by the County and ordered established with the Escrow Agent a special separate and irrevocable trust fund to be designated “DeKalb County, Georgia Water and Sewerage Escrow Deposit Fund – 2023” (the “**Escrow Deposit Fund**”). The Escrow Agent acknowledges the establishment with it of the Escrow Deposit Fund, acknowledges that the cash and the Government Obligations referred to in paragraph 1 have been deposited in the Escrow Deposit Fund and agrees that any interest earned upon said Government Obligations will be held for the credit of the Escrow Deposit Fund.

5. The deposit of the cash and the Government Obligations in the Escrow Deposit Fund constitutes an irrevocable deposit thereof in trust solely for the purpose of making the payments of principal of, interest on and redemption premium on the Refunded 2013 Bonds as described in paragraph 3 above.

6. The Escrow Agent agrees to apply the cash and the proceeds of the Government Obligations deposited in the Escrow Deposit Fund and the interest earned on the Government Obligations in accordance with the provisions of this Agreement.

7. Upon the written direction of the County, subject to the conditions and limitations set forth herein, the Escrow Agent will sell, transfer or otherwise dispose of any of the Government Obligations purchased as contemplated herein or reinvest the maturing principal and interest on the Government Obligations, provided that general and direct non-callable obligations of the United States of America are substituted therefor, or such reinvestment is made in other general and direct non-callable obligations of the United States of America as hereinafter provided. The County hereby covenants and agrees that it will not request the Escrow Agent to exercise any of the powers described in the preceding sentence in any manner which would cause the Refunded 2013 Bonds or the Series 2023 Bonds to be arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder, or to cause the interest on the Refunded 2013 Bonds or the Series 2023 Bonds to be included in gross income of the recipients thereof pursuant to the Internal

Revenue Code of 1986, as amended, and applicable regulations thereunder. Any substitution, sale, transfer or other disposition of Government Obligations, or purchase or other reinvestment in general and direct non-callable obligations of the United States of America under the provisions hereof, including pursuant to a contract for forward purchase without regard to further interest earnings (a “forward purchase contract”), may be effected only if:

(a) **[Name of Verification Agent]** or any other independent certified public accountant satisfactory to the County and the Escrow Agent, certifies that the general and direct non-callable obligations of the United States of America to be substituted or purchased, including such general and direct non-callable obligations of the United States of America purchased pursuant to a forward purchase contract, together with the Government Obligations which will continue to be held in the Escrow Deposit Fund, will earn interest and mature in such amounts and at such times, together with any cash held therein, to provide sufficient monies from such interest and maturing principal to pay when due all of the principal of, applicable redemption premium and interest on the Refunded 2013 Bonds which have not previously been paid; and

(b) The Escrow Agent receives an unqualified opinion of nationally recognized bond counsel satisfactory to the County and the Escrow Agent, to the effect that such substitution, sale, transfer or other disposition, purchase or other reinvestment of Government Obligations, including pursuant to a forward purchase contract, will not cause the Refunded 2013 Bonds or the Series 2023 Bonds to be arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder, or cause the interest on the Refunded 2013 Bonds or the Series 2023 Bonds to be included in gross income of the recipients thereof pursuant to the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder.

In the event that as a result of any such substitution or reinvestment, amounts available from the maturing principal of and income on the general and direct non-callable obligations of the United States of America, including receipts from Government Obligations purchased pursuant to a forward purchase contract, together with any cash on deposit in the Escrow Deposit Fund exceed the amount required to pay the principal of and applicable redemption premium and interest on the Refunded 2013 Bonds, such excess amount will be paid over to the County or its designee upon receipt by the Escrow Agent of a certificate from **[Name of Verification Agent]** or any other independent certified accountant satisfactory to the County and the Escrow Agent, which sets forth:

(a) the amount of any excess;

(b) the date on which such amounts become excess;

(c) that if such excess amounts are withdrawn from the Escrow Deposit Fund, the Government Obligations, income therefrom, including receipts from any forward purchase contracts, and cash held in the Escrow Deposit Fund will be sufficient to pay the principal of, applicable redemption premium, and interest on the Refunded 2013 Bonds, as and when the same become due and payable.

Upon receipt of such certificate, the Escrow Agent will pay to the County at such time and from time to time the amounts certified to be excess on the dates such amounts become excess in accordance with such certificate.

8. The Escrow Agent will maintain full and complete records of all assets and funds held by it from time to time under this Agreement, and of all receipts and disbursements hereunder, and will furnish the County with reports thereof upon request, subject to such reasonable regulations or restrictions as the Escrow Agent may from time to time impose. The Escrow Agent shall be obligated to perform

only such duties as are expressly set forth in this Agreement and no other duties shall be implied. In performing its duties under this Agreement, the Escrow Agent may seek the advice of legal counsel with respect to any matter arising with respect to this Agreement and shall be fully protected and have no liability for any action taken or omitted in good faith pursuant to the advice of such legal counsel. The Escrow Agent shall be entitled to rely upon and shall be fully protected in acting on any request, instruction, statement or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information set forth therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by the person or parties purporting to sign the same and to conform to the provisions of this Agreement.

9. On September 21, 2023 (i.e., at least 30 days prior to October 23, 2023), the Escrow Agent hereby agrees to deliver a notice of redemption in substantially the form set forth in Exhibit A attached hereto and in the manner as described in Section 3.2 of the Master Bond Resolution to (a) the owners of the Refunded 2013 Bonds that such Refunded 2013 Bonds will be optionally redeemed on October 23, 2023 and (b) the Municipal Securities Rulemaking Board via its Electronic Municipal Marketplace Access system at <http://emma.msrb.org>; provided however, that the Escrow Agent shall not have any liability to any party in connection with any failure to timely file such notice of optional redemption with the Municipal Securities Rulemaking Board via its Electronic Municipal Marketplace Access system and the sole remedy available shall be an action by the holders of the Refunded 2013 Bonds in mandamus for specific performance or similar remedy to compel performance.

10. Immediately after October 23, 2023, cash and securities remaining in the Escrow Deposit Fund, if any, after payment of all amounts payable therefrom as described in paragraph 3 above or retention by the Escrow Agent of amounts sufficient to make such payments not theretofore made, will be transferred to the Series 2023 Costs of Issuance Account of the Project Fund created under the Master Bond Resolution, as amended and supplemented, and this Agreement and the rights hereby granted will thereupon cease, terminate and be void.

11. The creation and establishment of the Escrow Deposit Fund for the purposes herein specified will be irrevocable and the holders of the Refunded 2013 Bonds will have an express first lien on the aforesaid Government Obligations and the earnings thereon and all cash in the Escrow Deposit Fund from time to time until paid out, used and applied in accordance with this Agreement.

12. The Escrow Agent acknowledges that it will, by virtue of its services hereunder, have no lien or right of set-off on the Government Obligations or any other moneys in the Escrow Deposit Fund for payment of its fees and expenses for acting as Escrow Agent hereunder. The Escrow Agent agrees that it will look to and will bill the County for its services and expenses at its standard rates on an annual basis and will have no rights against the Escrow Deposit Fund therefor. The County shall pay to the Escrow Agent the fees and expenses as more particularly set forth in Schedule 3 hereto, which is incorporated herein by reference.

13. This Agreement is made for the benefit of the County and the holders from time to time of the Refunded 2013 Bonds and it may not be repealed, revoked, altered or amended without the written consent of all such holders and the written consent of the County and the Escrow Agent; provided that the County and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement as do not adversely affect the rights of such holders and as are not be inconsistent with the terms and provisions of this Agreement, in order to (a) cure any ambiguity or formal defect or omission in this Agreement; (b) grant to, or confer upon, the Escrow Agent for the benefit of such holders any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; (c) subject to this Agreement additional funds, securities or properties; or (d) make such changes as may be required, in the opinion of counsel of

recognized experience with respect to federal income tax aspects of municipal securities, to preserve the exemption from federal income taxation of interest on the Refunded 2013 Bonds or the Series 2023 Bonds; provided that such change does not adversely affect the amounts of funds which would otherwise be available hereunder for payment of principal and interest requirements of, and redemption premium with respect to, the Refunded 2013 Bonds when due. The parties agree that advance notice of any amendment or revision of this Agreement and any draft documents necessary to accomplish such amendment or revision will be provided prior to the effective date thereof to each rating agency rating the Refunded 2013 Bonds or the Series 2023 Bonds. Such prior notice will also be given with respect to any proposed forward purchase contract (along with an advance copy of any such contract) which may hereafter be entered into by the Escrow Agent upon request of the County under paragraph 7 above.

14. To the extent permitted by applicable law, the County agrees to indemnify and hold harmless the Escrow Agent and each of its directors, officers, agents and employees from and against any loss, liability, expense, damage or cost incurred by the Escrow Agent or such persons arising directly or indirectly by virtue of the Escrow Agent's acceptance of its duties under this Agreement to the extent authorized by law; provided, however, that the County shall not be obligated to hold harmless or indemnify the Escrow Agent with respect to any such loss, liability, expense, damage or cost occasioned by the negligence or willful misconduct of the Escrow Agent. The rights granted the Escrow Agent by virtue of this paragraph shall survive the redemption of the Refunded 2013 Bonds and the termination of this Agreement.

15. If any one or more of the covenants or agreements provided in this Agreement on the part of the County or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement will be deemed and construed to be severable from the remaining covenants and agreements herein contained and will in no way affect the validity of the remaining provisions hereof, and the remaining portions of this Agreement will in any event be construed to accomplish the purpose of this Agreement.

16. The Escrow Agent agrees to accept and act upon instructions or directions from the County pursuant to this Agreement and delivered using Electronic Means; provided, however, the County shall provide to the Escrow Agent 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 County whenever a person is to be added or deleted from the listing. If the County elects to give the Escrow Agent instructions using Electronic Means and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The County understands and agrees that the Escrow Agent cannot determine the identity of the actual sender of such instructions and that the Escrow Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Agent have been sent by such Authorized Officer. The County shall be responsible for ensuring that only Authorized Officers transmit such instructions to the Escrow Agent and that the County 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 County. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The County agrees: (i) to assume all risks arising out of the use of Electronic Means to submit instructions to the Escrow Agent, including without limitation the risk of the Escrow Agent 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 Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by the County; (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 Agent immediately upon learning of any compromise or unauthorized use of the security procedures. “**Electronic Means**” means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Escrow Agent, or another method or system specified by the Escrow Agent as available for use in connection with its services hereunder.

17. This Agreement will be governed by laws of the State of Georgia.

18. This Agreement may be executed in several counterparts, all of which will be regarded for all purposes as one original and will constitute and be but one and the same instrument.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officer or officers and their corporate seals to be hereunto affixed and attested as of the date first above written.

DEKALB COUNTY, GEORGIA

[SEAL]

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

Barbara Sanders-Norwood, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO ESCROW DEPOSIT AGREEMENT]

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Escrow Agent for
the Refunded 2013 Bonds

By: _____
April Bright, Assistant Vice President

EXHIBIT A

NOTICE OF REDEMPTION

**DeKalb County, Georgia
Water and Sewerage Revenue Refunding Bonds (Second Resolution),
Series 2013**

CUSIP NUMBERS: 240523 [REDACTED] – 20 [REDACTED] maturity; 240523 [REDACTED] – 20 [REDACTED] maturity

Notice is hereby given by DeKalb County, Georgia (the “County”) of its intention to redeem all of its outstanding Water and Sewerage Revenue Refunding Bonds (Second Resolution), Series 2013 maturing on October 1, 20 [REDACTED] through and including October 1, 20 [REDACTED] (the “Refunded 2013 Bonds”) on October 23, 2023 (the “Redemption Date”) at the redemption price (the “Redemption Price”) of the par amount thereof plus accrued interest to the Redemption Date.

Payment of the Redemption Price for the Refunded 2013 Bonds will be made on presentation and surrender of the Refunded 2013 Bonds at U.S. Bank Trust Company, National Association (the “Paying Agent”) as follows:

By Insured Mail / Courier

U.S. Bank Trust Company, National Association
Global Corporate Trust
111 Fillmore Avenue E.
St. Paul, Minnesota 55107
Attention: Bondholder Communications

Refunded 2013 Bonds held through The Depository Trust Company (“DTC”) should be surrendered for redemption in accordance with DTC’s procedures therefor.

Any inquiries can be made to the Paying Agent by calling the customer service number: (800) 934-6802. Government Obligations and cash sufficient to pay the Redemption Price have been deposited with U.S. Bank National Association, as escrow agent and trustee for the Refunded 2013 Bonds. Consequently, on the Redemption Date, the Refunded 2013 Bonds will cease to bear interest.

Under the provisions of the Tax Cuts and Jobs Act of 2017, a paying agent making payments of principal and interest on municipal securities may be obligated to withhold a tax at the applicable backup withholding rate from remittances to individuals who have failed to furnish the paying agent with a valid Taxpayer Identification Number. Registered owners of the Refunded 2013 Bonds who wish to avoid the imposition of this tax should submit certified Taxpayer Identification Numbers when presenting their Refunded 2013 Bonds to the Paying Agent for collection.

The Paying Agent shall not be responsible for the selection or use of the CUSIP Number(s), nor is any representation made as to its correctness indicated in this Notice or on any Refunded 2013 Bond. It is included solely for convenience of the owners of the Refunded 2013 Bonds.

Dated this 21st day of September, 2023

DEKALB COUNTY, GEORGIA

By: U.S. Bank Trust Company, National Association,
as Paying Agent

SCHEDULE 1 TO ESCROW DEPOSIT AGREEMENT

<u>Maturity Date</u>	<u>Par</u>	<u>Type</u>	<u>Coupon</u>
10/23/2023	\$ [REDACTED]	SLGS	[REDACTED]%

The Escrow Fund will include uninvested cash in the amount of \$[REDACTED].

SCHEDULE 2 TO ESCROW DEPOSIT AGREEMENT

Refunded 2013 Bonds

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>
10/01/23	\$ <u> </u>	\$ <u> </u>
10/23/23	<u> </u>	<u> </u>

SCHEDULE 3 TO ESCROW DEPOSIT AGREEMENT