

2024 ESCROW DEPOSIT AGREEMENT

2024 ESCROW DEPOSIT AGREEMENT dated [May 28], 2024, by and between the City of Naperville (the “City”), a municipal corporation of the State of Illinois and UMB Bank, N.A. (the “Escrow Agent”), a national banking association organized and existing under the laws of the United States and having its principal corporate trust office in the City of St. Louis, Missouri.

WHEREAS, there are now outstanding and unpaid \$2,420,000 aggregate principal amount of the City’s General Obligation Bonds, Series 2013 (the “Prior Bonds”), which are more particularly described as follows:

DATED:	July 25, 2013		
REGISTRAR/PAYING AGENT:	UMB Bank, N.A.		
PRINCIPAL DUE:	December 1		
INTEREST DUE:	June 1 and December 1		
MATURITIES AND INTEREST RATES:	<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
	2024	\$500,000	4.00%
	2025	500,000	4.00
	2026	200,000	4.00
	2027	200,000	4.00
	2028	200,000	4.00
	2029	200,000	4.00
	2030	200,000	4.00
	2031	420,000	4.00

WHEREAS, pursuant to a bond ordinance adopted by the City Council of the City on April 2, 2024 (the “Bond Ordinance”), the City has authorized the issuance of its \$_____ General Obligation Bonds, Series 2024 (the “Series 2024 Bonds”) and part of the proceeds of the Series 2024 Bonds will be used to refund the Prior Bonds.

WHEREAS, the City has elected to redeem the Prior Bonds, on [August 26], 2024 (the “Redemption Date”), at the redemption price of par plus accrued interest through but not including the date of redemption (the “Redemption Price”).

WHEREAS, a portion of the proceeds of the Series 2024 Bonds are to be invested in the obligations set forth in Schedule A attached hereto so that the maturing principal of and the interest earned on such obligations, together with \$_____ of other moneys held hereunder (the “Debt Service Transfer Funds”), will be sufficient to pay the interest on the Prior Bonds due on June 1, 2024 and the Redemption Price of the Prior Bonds through the Redemption Date (collectively, the “Escrow Payments”).

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

1. There is hereby created and established with the Escrow Agent, a special and irrevocable escrow fund designated the “2024 Escrow Fund” (the “Escrow Fund”) to be held

in the custody of the Escrow Agent separate and apart from other funds of or held by the City or the Escrow Agent.

2. Concurrently with the execution of this Agreement, the City shall pay to the Escrow Agent for deposit in the Escrow Fund (i) from the Debt Service Transfer Funds of the City, the amount of \$_____ and (ii) from the proceeds of the Series 2024 Bonds, the amount of \$_____. Of the \$_____ deposit into the Escrow Fund, \$_____ shall be applied to the purchase of the United States Treasury Securities – State and Local Government Series listed in Schedule A attached hereto (the “Government Obligations”) and \$_____ shall be held uninvested in the Escrow Fund.

3. The deposit of moneys and Government Obligations in and credited to the Escrow Fund shall constitute an irrevocable deposit of said moneys and Government Obligations and the interest earned thereon for the benefit of the owners of the Prior Bonds. The Escrow Agent shall deposit any proceeds (whether principal, interest or otherwise) derived from the Government Obligations in the Escrow Fund. The Escrow Agent shall from time to time pay over the moneys in the Escrow Fund to UMB Bank, N.A. as the paying agent for the Prior Bonds, in an amount sufficient to pay when due and payable the Escrow Payments.

4. Except as provided herein, the Escrow Agent shall have no power or duty to invest any moneys held hereunder or to sell, transfer or otherwise dispose of, or to make substitutions of, the Government Obligations.

The Escrow Agent shall not make substitutions of the Government Obligations held hereunder or sell, transfer or otherwise dispose of such Government Obligations provided, however, that:

(a) At the written request of the City and upon compliance with the conditions hereinafter stated, the Escrow Agent shall, to the extent from time to time permitted by law, have the power to sell, transfer, otherwise dispose of or request the redemption of the Government Obligations acquired hereunder and to substitute therefor other non-callable, direct obligations of the United States of America, Refcorp interest strips or securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, provided, that the full faith and credit of the United States of America has been pledged to any such direct obligation or guarantee. The Escrow Agent shall purchase, at the written direction of the City, such substituted Government Obligations with the proceeds derived from the sale, transfer, disposition or redemption of the Government Obligations. The substitution of Government Obligations described above may be effected only if:

(i) the Escrow Agent shall receive an opinion of a firm of independent certified public accountants, that the moneys and Government Obligations, including the interest to be earned thereon, to be substituted will be no less than an amount sufficient to pay the Escrow Payments on the applicable payment dates, upon completion of such substitutions; and

(ii) the City shall furnish the Escrow Agent with an unqualified opinion of nationally recognized attorneys on the subject of municipal bonds to the effect

that the substitution is then permitted by law and will not cause any of the Prior Bonds or the Series 2024 Bonds to become an “arbitrage bond” as hereinafter defined.

(b) If any substitution of Government Obligations pursuant to the provisions of the preceding subparagraph (a) shall, after the satisfaction of all of the conditions set forth in clauses (i) and (ii) of said subparagraph (a), result in the creation of any surplus amount in the Escrow Fund that will not, in the opinion of the firm of independent certified public accountants referred to in clause (i) of said subparagraph (a), thereafter be required for the payment of the Escrow Payments, in accordance with the provisions of this Agreement, the amount of such surplus shall, at the written request of the City, be transferred to the City.

The City hereby covenants that no part of the moneys or funds at any time in the Escrow Fund shall be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any of the Prior Bonds or Series 2024 Bonds to be an “arbitrage bond” as defined in Section 148 of the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder, as then in effect.

5. The City has irrevocably elected to refund and redeem the Prior Bonds as provided in the Bond Ordinance, the Series 2024 Bond Order and this Agreement.

6. The owners of the Prior Bonds shall have an express lien on all moneys and obligations in the Escrow Fund until paid out and applied in accordance with this Agreement. The Escrow Agent shall have no lien on the Escrow Fund.

7. In consideration of all services rendered and to be rendered by the Escrow Agent under this Agreement, the City will pay the Escrow Agent a fee on the date of issuance of the Series 2024 Bonds.

8. The Escrow Agent may consult with counsel concerning any of its duties under this Agreement and shall be fully protected in any action taken in good faith in accordance with such advice. The Escrow Agent shall be indemnified and saved harmless by the City, from and against any and all liability, including all expenses reasonably incurred in its defense, to which the Escrow Agent shall be subject by reason of any action taken or omitted or any investment or disbursement of any part of the Escrow Fund made by the Escrow Agent pursuant to this Agreement; provided, however, the Escrow Agent shall not be indemnified by the City for its negligence or willful misconduct. The costs and expenses of enforcing this right of indemnification shall also be paid by the City. This right of indemnification shall survive the termination of this Agreement and the resignation or removal of the Escrow Agent. None of the provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

9. The Escrow Agent, acting in good faith and in its sole discretion, may disregard any and all notices or instructions given by the City or by any other person, firm or

corporation, except (i) notices or instructions specifically provided for under this Agreement and (ii) orders or process of any court. If any property subject to this Agreement is at any time attached, garnished, or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any of such events the Escrow Agent, in its sole discretion, may rely upon and comply with any such order, writ, judgment, or decree which it is advised by its legal counsel is binding upon it.

10. The Escrow Agent shall be responsible in fulfilling its duties under this Agreement to a standard of care which could fairly be attributable to an experienced corporate escrow agent. The Escrow Agent shall also be duly protected in relying upon any written notice, demand, certificate or document which it in good faith believes to be genuine.

11. This Agreement shall terminate on [September 10], 2024. Any moneys and obligations remaining in the Escrow Fund upon termination of this Agreement shall be transferred to the City.

12. If any one or more of the covenants or agreements provided in this Agreement on the part of the City 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 shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

13. This Agreement is made for the benefit of the City, the Escrow Agent and the owners from time to time of the Prior Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such owners, and the written consent of the Escrow Agent; provided however, that the City and the Escrow Agent may, without the consent of, or notice to, such owners, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such owners and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement; and
- (b) to grant to, or confer upon the Escrow Agent for the benefit of the owners of the Prior Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, the Escrow Agent.

The Escrow Agent shall be entitled to rely exclusively upon an unqualified opinion of nationally recognized attorneys on the subject of municipal bonds with respect to compliance with this Agreement, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the owners of the Prior Bonds or that any instrument executed hereunder complies with the conditions and provisions of this Section.

14. Any notice, authorization, request for consent or demand required or permitted to be given in accordance with the terms of this Agreement shall be in writing.

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

16. The transactions described herein may be conducted and related documents may be sent and stored by electronic means.

IN WITNESS WHEREOF, the parties hereto have each caused this 2024 Escrow Deposit Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF NAPERVILLE

By: _____
Mayor

(SEAL)

Attest:

City Clerk

UMB BANK, N.A.
as Escrow Agent

By: _____
Trust Officer

(SEAL)

Attest:

SCHEDULE A

GOVERNMENT OBLIGATIONS