

**RESOLUTION NO. 2022-233**

**A RESOLUTION OF THE FISCAL COURT OF THE COUNTY OF HARDIN, KENTUCKY AUTHORIZING AN ESCROW AGREEMENT TO PREPAY CERTAIN BONDS OF THE COUNTY.**

**WHEREAS**, the County presently has outstanding its (i) County of Hardin, Kentucky General Obligation Bonds (County Administrative Office Project), Taxable Series 2014A, dated April 30, 2014, in the principal amount of \$1,255,000 and (ii) County of Hardin, Kentucky General Obligation Bonds (County Administrative Office Project), Tax-Exempt Series 2014B, dated April 30, 2014, in the principal amount of \$9,800,000 (collectively, the “Bonds”); and

**WHEREAS**, the Fiscal Court of the County has determined it to be in the interest of its citizens to prepay the principal and interest on the Bonds through the irrevocable deposit into an escrow fund of the monies necessary to pay the principal and interest on the Bonds until the earliest date that said Bonds mature or can be redeemed prior to maturity; and

**NOW, THEREFORE, THE FISCAL COURT OF THE COUNTY OF HARDIN, KENTUCKY DOES HEREBY RESOLVE AS FOLLOWS:**

1. **Authorization.** That for the purpose of prepaying the principal and interest on the Bonds, the Fiscal Court hereby authorizes and approves an Escrow Agreement by and between the County and a financial institution qualified to act as escrow agent (the “Escrow Agreement”), in the form attached to this Resolution as **Exhibit A**, subject to such minor changes, changes of dates, insertions or omissions as may be approved by the County Judge/Executive, such approval to be conclusively evidenced by the execution of said Escrow Agreement, in order to effectuate the purposes of this Resolution. The prepayment of the Bonds will be accomplished pursuant to the Escrow Agreement by depositing with the escrow agent a sum of initial cash and certain non-callable direct obligations of the United States Treasury (collectively, the “Government Obligations”). The funds needed to make the initial cash deposit and to purchase the Government Obligations will be provided from the monies of the County.

2. **Approval and Authorization of Execution of Escrow Agreement.** The County Judge/Executive or the County Attorney are hereby authorized to execute and acknowledge the Escrow Agreement for and on behalf of the County; and the County Clerk is authorized to attest same. The County’s officers, employees and agents are authorized to carry out the procedures specified in the Escrow Agreement to prepay the Bonds. The County Judge/Executive is authorized to choose the escrow agent after consultation with the County’s financial advisor, Robert W. Baird & Co., Incorporated. A copy of the Escrow Agreement is hereby ordered to be filed in the office of the County Clerk with this Resolution in the official records of the County.

3. **Authorization to Subscribe for Government Securities and/or to Purchase Other Investments.** Authority is hereby given by the County to Chip Sutherland, Michael Oldiges and Alexander Perdue of Robert W. Baird & Co. Inc., Louisville, Kentucky, Mr. Christian L. Juckett of Rubin & Hays, Louisville, Kentucky, and to any one of them, to act on behalf of the County in signing upon behalf of the County subscriptions for the purchase and issue of United States Treasury Certificates, Notes, or Bonds - State and Local Government Series, and/or other

Investments, to be issued to the escrow agent, in connection with the application of the proceeds of the Bonds. The County Judge/Executive and/or the Treasurer of the County is authorized to send a letter to the Securities Division, Federal Reserve Bank, Louisville, Kentucky, or any other branches of the Federal Reserve Bank, and/or FDIC Banks, certifying as to the authority of such individuals.

4. **Severability Clause.** If any section, paragraph, clause, or provision of this Resolution shall be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the remaining provisions hereof.

5. **Provisions in Conflict Repealed.** All resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution, are, to the extent of such conflict, hereby repealed.

6. **Effective Date of Resolution.** This Resolution shall take effect from and after its adoption and approval.

Introduced, Read, Enacted and Adopted by the Fiscal Court of the County of Hardin, Kentucky on November 29, 2022.

  
County Judge/Executive

Attest:

  
County Clerk

CERTIFICATE OF COUNTY CLERK

I, the duly qualified and acting County Clerk of the County of Hardin, Kentucky, do hereby certify that the foregoing is a true, complete, and correct copy of a Resolution read, adopted and enacted by the Fiscal Court of the County on November 29, 2022, executed by the County Judge/Executive and attested by the County Clerk, and that said Resolution has been duly recorded in the official records of the County, as shown by the official records of said County in my custody and under my control.

IN TESTIMONY WHEREOF, witness my signature as County Clerk this November 29, 2022.

  
County Clerk

**EXHIBIT A**

**County of Hardin, Kentucky**

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**FORM OF ESCROW AGREEMENT**

## ESCROW AGREEMENT

This Escrow Agreement (the "Agreement"), dated as of December \_\_\_\_, 2022, by and between the County of Hardin, Kentucky (the "County") and \_\_\_\_\_, (the "Escrow Agent"),

### RECITALS:

1. On April 30, 2014, the County issued its County of Hardin, Kentucky General Obligation Bonds (County Administrative Office Project), Tax-Exempt Series 2014B, in the principal amount of \$9,800,000 (the "Bonds"), which were sold on the open market to bondholders (the "Bondholders");

2. The Bonds were authorized by an ordinance (the "Ordinance") of the Fiscal Court of the County on March 11, 2014, which Ordinance approved \_\_\_\_\_ to be the paying agent for the Bonds (the "Paying Agent");

3. To prepay the Bonds maturing on April 1, 2023 through and 2029 (the "Defeased Bonds"), and the accrued interest thereon, the County has determined to deposit County funds into an escrow fund equal to (or sufficient to prepay) the entire amount of the principal and interest that will be payable at the time of the maturity and/or optional redemption date of the Defeased Bonds;

4. The debt service requirements with respect to the Defeased Bonds are set out in **Exhibit A** attached hereto;

5. The Escrow Agent has been so designated by the County for the purpose of providing for the payment of the principal of and interest on the Defeased Bonds and the County Judge/Executive of the County has been authorized and directed to execute this Escrow Agreement with the Escrow Agent; and

6. In consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the County and the Escrow Agent have agreed and hereby agree, for the equal and proportionate benefit and security of the Bondholders, as follows:

**Section 1. Escrow Fund.** In a resolution adopted on May 9, 2022, the County authorized the prepayment of the Defeased Bonds. The County will cause to be deposited in the Escrow Fund the amount of \$\_\_\_\_\_ in funds from the County and hereby instructs the Escrow Agent to purchase the securities described in **Exhibit B** attached hereto (the "Securities"), at a total cost of \$\_\_\_\_\_ from the moneys on deposit in the Escrow Fund. After the purchase of the Securities there will remain on deposit in the Escrow Fund, in cash, the sum of \$\_\_\_\_\_. This Escrow Fund will be held in the custody of the Escrow Agent separate and apart from other funds of the Escrow Agent or the County. The Escrow Fund Securities are scheduled to mature and be available at such times and in such amounts as are adequate and necessary, together with any uninvested cash balance, as set out in **Exhibit C** attached hereto, to provide sufficient funds to the Escrow Agent to pay to the Bondholders the principal of and interest on the Defeased Bonds to the Bondholders to and including **April 1, 2024**, the date on which the remaining outstanding Defeased Bonds are subject to optional redemption at par, plus accrued interest, without any

prepayment penalty. Payments shall be made by the Escrow Agent to the Bondholders pursuant to the wire instructions provided in **Exhibit D** attached hereto. Said wire instructions are subject to change by written notice delivered by mail or electronic mail and acknowledged by the Escrow Agent, 7 days prior to a payment of principal of or interest on the Defeased Bonds.

The Escrow Agent shall not make substitutions of such Securities held thereunder or sell, transfer, or otherwise dispose of such Securities.

**Section 3. Irrevocable Escrow; Application of Escrow Fund.** The deposit of cash and Securities will constitute an irrevocable deposit of said cash and Securities and the interest earned thereon for the benefit of the Bondholders; and such cash and Securities, together with any interest earned thereon, will be held by the Escrow Agent in the Escrow Fund and will be applied solely to the payment of principal of and interest on the Defeased Bonds.

**Section 4. Acceptance of Escrow.** The Escrow Agent hereby establishes the Escrow Fund and accepts the cash and Securities deposited therein pursuant to this Agreement.

**Section 5. Reinvestment.** Subject to the requirements set forth herein for the use of the Escrow Fund, and the moneys and Securities therein, the parties hereto covenant and agree that the Escrow Agent will have full and complete control and authority over and with respect to the Escrow Fund and moneys and Securities therein and that the County will not exercise any control or authority over and with respect to the Escrow Fund and the moneys and Securities therein. The Escrow Agent will have no power or duty to invest any moneys held hereunder to make substitutions or exchanges of the Securities held hereunder, or to sell, transfer or otherwise dispose of the Securities acquired hereunder. The liability of the Escrow Agent for the payment of the principal of and interest on the Defeased Bonds pursuant to this Agreement will be limited to the cash and principal of and interest on the Securities deposited in the Escrow Fund.

**Section 6. Payment of Defeased Bonds.** The Escrow Agent will receive the matured principal of and the interest on the Securities as the same are payable and the Escrow Agent will pay the principal of and interest as they fall due on the Defeased Bonds to the Bondholders.

**Section 7. Application of Escrow Fund After Payment of Defeased Bonds.** After **April 1, 2024**, the earliest date for optional prepayment of the remaining outstanding Defeased Bonds, all remaining funds and Securities, together with any interest thereon, in the Escrow Fund, in excess of the amount required to meet the requirements of the Defeased Bonds that have become due by maturity but that have not yet been presented for payment (and/or checks which have not yet been cashed and the outstanding fees and expenses of the Escrow Agent, if any), shall be transferred by the Escrow Agent to the County.

**Section 8. Lien of Bondholders on Escrow Fund.** The escrow created hereby and herein will be irrevocable, and the Bondholders have and will have an express lien on and security interest in all moneys and Securities, including the interest earned thereon, in the Escrow Fund until paid out, used, and applied in accordance with this Agreement and the Defeased Bonds.

**Section 9. Fees of Escrow Agent.** In consideration of the services rendered by the Escrow Agent under this Agreement, provision has been made by the County for the payment of the reasonable fees and expenses of the Escrow Agent for services performed under this Agreement

and for the reimbursement of the Escrow Agent for its extraordinary service and expenses incurred by it, if any, to the extent permitted by law, until the termination of this Agreement. Except as provided in Section 7, the Escrow Agent will not use any of the moneys or Securities in the Escrow Fund for any fees or expenses.

**Section 10. Termination of Agreement; Non-presentation.** This Agreement will terminate when the principal of and interest due the under Defeased Bonds have been fully paid and discharged in accordance with the terms of the Defeased Bonds, and any remaining funds and Securities, together with any interest thereon in the Escrow Fund, have been transferred by the Escrow Agent to the County in accordance with Section 7 hereof. If any of the principal of or interest on the Defeased Bonds have not been paid when due, the Escrow Agent shall hold the appropriate portion of the funds held hereunder to the extent necessary to provide for the payment of the principal of and interest falling due on the Defeased Bonds until paid.

**Section 11. Amendment.** This Agreement is made for the benefit of the County and the Bondholders and it will not be repealed, revoked, altered or amended, regardless of whether the consent of the parties hereto will be given, other than for the purpose of subjecting to this Agreement additional funds, securities or properties. The County and the Escrow Agent covenant, warrant and agree that neither of them will consent, either orally or in writing, to the repealing or revoking of this Agreement, other than for the purpose of subjecting to this Agreement additional funds, securities, or properties. The County agrees further that even if, for any reason whatever, the Escrow Agent is removed and replaced by a different escrow agent, such replacement will not adversely affect the commitment of the County herein to refuse to agree to the repealing or revoking of this Agreement. The Escrow Agent will be entitled to rely exclusively on an unqualified opinion of nationally recognized attorneys on the subject of municipal bonds with respect to compliance with this Section, including the extent, if any, to which any change affects the rights of the Bondholders and/or is in compliance with the conditions and provisions of this Section.

**Section 12. Notice of Deficiency.** If at any time there are insufficient funds on hand in the Escrow Fund for the payment of principal of or interest on the Defeased Bonds, the Escrow Agent shall promptly notify the County of such deficiency, and the County shall immediately supply such deficiency from funds of the County available therefor.

**Section 13. Reports of Escrow Agent.** Until this Agreement is terminated pursuant to Section 10 hereof, the Escrow Agent shall, on or before the 1st day of January of each year, deliver to the County an operating statement for the Escrow Fund.

**Section 14. Liability of Escrow Agent.** The Escrow Agent will not be liable for any act done or step taken or omitted by it, or for any mistake of fact or law, or for anything which it may do or refrain from doing, except for its gross negligence or its willful misconduct in the performance of any obligation imposed upon it hereunder. The Escrow Agent will be responsible only for amounts or investments received by the Escrow Agent and will not be responsible in any manner whatsoever for the recitals or statements contained herein, or in the Bonds, or in any proceedings taken in connection therewith, but the same are made solely by the County. The Escrow Agent will not be liable or responsible for any loss resulting from any investment made pursuant to this Agreement and in full compliance with the provisions hereof. None of the

provisions contained in this Agreement require the Escrow Agent to use or advance its own funds or otherwise to incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder. The Escrow Agent will be under no liability for interest on any funds or other property received by it hereunder.

**Section 15. Disclaimer of General Liability by County.** It is hereby expressly made a condition of this Agreement that any covenants or representations herein contained do not and will not constitute or give rise to a personal or pecuniary liability or charge against the general credit of the County, and in the event of a breach of any such covenant or representation, no personal or pecuniary liability or charge payable directly or indirectly from the revenues (other than those specifically pledged herein) of the County will arise therefrom. Nothing contained in this Section, however, will relieve the County from the observance and performance of the several covenants and agreements on its part herein contained.

**Section 16. Replacement of Escrow Agent.** In the event of the failure by the Escrow Agent to perform any function(s) required herein after seven (7) days written notice to perform, the County will have the right to (a) designate a successor escrow agent to replace the Escrow Agent named herein, which successor must be a bank organized pursuant to the laws of any state of the United States of America or the laws of the United States of America, whose deposits are insured by the Federal Deposit Insurance Corporation; or (b) take direct action, when appropriate to carry out the duties and functions of the Escrow Agent herein, provided any such action under this Section can only be accomplished with the advice and/or approval of an unqualified opinion of nationally recognized attorneys on the subject of municipal bonds to the effect that such action does not adversely affect the interests of the owners of the Defeased Bonds. Upon 30-days written notice to the County, the Escrow Agent may resign from its duties and obligations under the Agreement.

**Section 17. Concerning the Escrow Agent.** The Escrow Agent may rely and will be protected in acting or refraining from acting, upon any instrument furnished to it hereunder and believed by it to be genuine and believed by it to have been signed or presented by the appropriate party or parties and including, with respect to the County, any instrument purporting to have been signed on its behalf by its County Judge/Executive or its Treasurer. The Escrow Agent may consult with counsel of its own choice and will be fully protected in acting or refraining to act in good faith and in accordance with the opinion of such counsel. The Escrow Agent will be responsible only for the moneys and/or Securities actually received by it. The Escrow Agent will have the right to perform any of its duties hereunder through its agents, attorneys, custodians or nominees.

**Section 18. Severability.** If any one or more of the covenants or agreements provided in this Agreement on the part of the parties to be performed is 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 of this Agreement.

**Section 19. Counterparts; Headings.** This Agreement may be executed in several counterparts, all or any of which will be regarded for all purposes as an original and will constitute and be but one and the same instrument. The section headings used herein are for convenience of reference only.

**Section 20. Governing Law.** This Escrow Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**Section 21. Notices.** Any notices, request, communication or other paper will be sufficiently given and will be deemed given when delivered or mailed, by registered or certified mail, postage prepaid, or sent by telegram, as follows:

If to County: County of Hardin, Kentucky  
PO Box 568  
150 North Provident Way  
Elizabethtown, KY 42701  
Attn: Lisa Pearman, Treasurer  
Phone: (270) 765-2350  
Email: [lisap.hcgo@hcky.org](mailto:lisap.hcgo@hcky.org)

If the Escrow Agent: \_\_\_\_\_  
Corporate Trust Services  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

The County and the Escrow Agent may designate any further or different addresses to which subsequent notices, requests, communications or other papers are sent.

**Section 22. Electronic Communication.** The Escrow Agent will have the right to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods, provided, however, that the instructions or directions will be signed by a person as maybe designated and authorized to sign for the County, by an authorized representative of the County, who will provide to the Escrow Agent an incumbency certificate listing such designated persons, which incumbency certificate will be amended whenever a person is to be added or deleted from the listing. If the County elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions will be deemed controlling. The Escrow Agent will 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 instructions conflict or are inconsistent with a subsequent written instruction. The County agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions 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.

*[Signature Page Follows]*



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

COUNTY OF HARDIN, KENTUCKY

By   
County Judge/Executive

\_\_\_\_\_, as Escrow Agent

By HARRY L. BERRY  
Title Judge / EXECUTIVE