

ESCROW AGREEMENT

THIS ESCROW AGREEMENT dated as of April [25], 2019 (this “*Escrow Agreement*”) is entered into by and among Capital One Public Funding, LLC (“*Lessor*”), the City of Milwaukee, Wisconsin (“*Lessee*”), and The Huntington National Bank (the “*Escrow Agent*”).

W I T N E S S E T H:

WHEREAS, Lessor and Lessee have heretofore entered into that certain Equipment Lease Purchase Agreement dated as of April [25], 2019 (the “*Agreement*”), which such Agreement contemplates the acquisition of certain Equipment described therein (the “*Equipment*”); and

WHEREAS, after acceptance of the Equipment by Lessee, the Equipment is to be leased by Lessor to Lessee pursuant to the terms of the Agreement; and

WHEREAS, capitalized terms not otherwise defined herein shall have the definitions assigned to them in the Agreement; and

WHEREAS, the Agreement contemplates that Lessor will deposit with the Escrow Agent cash in the amount of \$[2,100,000], to be held in escrow by the Escrow Agent and applied on the express terms and conditions set forth herein; and

WHEREAS, such deposit, together with all interest and additions received with respect thereto (hereinafter, the “*Escrow Fund*”), is to be applied from time to time to pay certain costs of acquiring the Equipment (a portion of which may, if required, be paid prior to final acceptance of the Equipment by Lessee), to pay capitalized interest, as described herein, and, if requested by Lessee, to pay certain costs of entering into the Agreement; and

WHEREAS, the parties desire to set forth the terms on which the escrow is to be created and to establish the rights and responsibilities of the parties hereto.

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

Section 1. Creation of the Escrow Fund. There is hereby created the special trust fund to be known as the Escrow Fund. The Escrow Agent hereby agrees to serve as escrow agent upon the terms and conditions set forth herein. The Escrow Agent agrees that the Escrow Fund shall be held irrevocably in trust for the account and benefit of Lessee and Lessor and all interest earned with respect to the Escrow Fund shall accrue to the benefit of Lessee and shall be applied as expressly set forth herein.

To the limited extent required to perfect the security interest granted by Lessee to Lessor in the cash and negotiable instruments from time to time comprising the Escrow Fund, Lessor hereby appoints the Escrow Agent as its security agent, and the Escrow Agent hereby

accepts the appointment as security agent, and agrees to hold physical possession of such cash and negotiable instruments on behalf of Lessor.

Section 2. Escrow Deposit. On such day as determined to the mutual satisfaction of the parties (the “*Commencement Date*”), Lessor shall deposit with the Escrow Agent cash in the amount of \$[2,100,000] to be held by the Escrow Agent on the express terms and conditions set forth herein. The Escrow Agent agrees to accept the deposit of the Escrow Fund by Lessor, and further agrees to hold the amount so deposited together with all interest and other additions received with respect thereto in escrow on the express terms and conditions set forth herein.

The Escrow Agent shall at all times segregate the Escrow Fund into an account maintained for that express purpose, which shall be clearly identified on the books and records of the Escrow Agent as being held in its capacity as Escrow Agent. Securities and other negotiable instruments comprising the Escrow Fund from time to time shall be held or registered in the name of the Escrow Agent (or its nominee). The Escrow Fund shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of any of the parties hereto (except with respect to the security interest therein held by Lessor).

Section 3. Investments. Lessee hereby directs the Escrow Agent to invest the cash comprising the Escrow Fund from time to time in Qualified Investments (as hereinafter defined). Interest or other amounts earned and received by the Escrow Agent with respect to the Escrow Fund shall be deposited in and comprise a part of the Escrow Fund. No investment shall be made that would cause the Agreement to be deemed to be an arbitrage bond within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended. For the purpose of this paragraph 4, the term “Qualified Investments” means, to the extent the same are at the time legal for investment of the funds being invested: (i) direct general obligations of the United States of America; (ii) obligations, the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United States of America acceptable to Lessor; (iv) money market funds, whose investment parameters target investments in securities as described above in points (i-iii); and (v) deposits insured by the FDIC or NCUA; or such other investments permitted by a policy duly adopted by Lessee’s governing body and approved by Lessor. In the absence of any such written investment direction, Escrow Agent is hereby directed to invest and re-invest the deposit in the Escrow Fund in the Federated Government Obligations Fund – Service Shares (Ticker: GOSXX) Money Market Fund. Lessor and Lessee recognize and agree that Escrow Agent cannot and will not provide supervision, recommendations, or other investment advice relating to either the investment of the Escrow Fund or the purchase, sale, retention or other disposition of any Qualified Investment. Any loss or expense incurred as a result of an investment or the sale, liquidation or withdrawal of an investment, will be borne by the Escrow Fund.

Section 4. Actions by the Escrow Agent. Lessor and Lessee hereby authorize the Escrow Agent to take the following actions with respect to the Escrow Fund:

- a. From time to time, the Escrow Agent shall pay the Vendor or Lessee or other payee upon receipt of the following: (a) a duly executed Certificate of Acceptance

and Payment Request in the form attached as *Exhibit A* to this Escrow Agreement approved for payment by Lessor (or its assignee, if any), (b) the Vendor invoice or invoices specifying the acquisition price of the Equipment described in the requisition request, (c) in the event that certain cost of entering into this Agreement are described in the requisition request, invoice or other evidence specifying the amount of such costs, and (d) any additional documentation required by Lessor.

b. On [October 15, 2019], without requiring the deliverables described in Section 4(a) above, the Escrow Agent shall pay capitalized interest in the amount of \$_____ from the Escrow Fund to the Lessor.

c. In the event that Lessor provides to the Escrow Agent written notice of the occurrence of an Event of Default or a nonappropriation by Lessee under the Agreement, the Escrow Agent shall thereupon promptly remit to Lessor the entire balance of the Escrow Fund.

d. Upon receipt by the Escrow Agent of a duly executed Certificate of Acceptance and Payment Request identified as the final such request, the remaining monies in the Escrow Fund shall be paid to Lessor, for application against the outstanding principal components of Rental Payments (as defined in the Agreement, including prepayment of Rental Payments), under the Agreement, as provided therein, unless Lessor directs that payment of such amount be made in such other manner directed by Lessor that, in the opinion of nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to Lessor, will not adversely affect the exclusion of the interest components of Rental Payments from gross income for federal income tax purposes. If any such amount is used to prepay principal, the Payment Schedule attached to the Agreement will be revised accordingly as specified by Lessor to reflect such prepayment.

Section 5. Fees. Subject to Available Funds, the reasonable fees and expenses of the Escrow Agent incurred in connection herewith shall be the responsibility of Lessor and are herein defined as the sum of \$500.00, per year, payable in advance and shall not be prorated, for escrow services as described herein.

The Escrow Agent shall have no liability for acting upon any written instruction presented by together by the Lessee and Lessor in connection with this Escrow Agreement which the Escrow Agent reasonably and in good faith believes to be genuine. Furthermore, the Escrow Agent shall not be liable for any act or omission in connection with this Escrow Agreement except for its own gross negligence, willful misconduct or bad faith. The Escrow Agent shall not be liable for any loss or diminution in value of the Escrow Fund as a result of the investment decisions made pursuant to Section 4 at the direction of Lessee.

The Escrow Agent shall be fully protected in suspending all or part of its activities under this Agreement until receipt of adequate indemnity for seeking such resolution or a final judgment in such action is received.

Section 6. Resignation. The Escrow Agent may at any time resign by giving at least 60 days' prior written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of the successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by instrument in writing executed by Lessor and Lessee. Such notice shall set forth the effective date of the removal. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent.

Upon the effective date of resignation or removal, the Escrow Agent will transfer the Escrow Fund then held by it to the successor Escrow Agent selected by Lessor and Lessee.

Section 7. Termination. This Escrow Agreement and the Escrow Fund established hereunder shall terminate upon receipt by the Escrow Agent of the written notice from Lessor specified in Section 5(b) or Section 5(c) hereof.

Section 8. Notices. All notices hereunder shall be in writing, sent by certified mail, return receipt requested, or by mutually recognized overnight carrier addressed to the other party at its respective address shown on page 1 of this Escrow Agreement or at such other address as such party shall from time to time designate in writing to the other parties; and shall be effective on the date of receipt.

If to Lessor: Capital One Public Funding, LLC
12307 Walt Whitman Road, 3rd Floor
Melville, New York 11747

If to Lessee: City of Milwaukee
City Hall Room 404
200 East Wells Street
Milwaukee, Wisconsin 53202
Attention: Comptroller

If to Escrow Agent The Huntington National Bank
40 Pearl Street
Grand Rapids, Michigan 49503
Attention: Corporate Trust – MI231

Section 9. Binding Agreement. This Escrow Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. No rights or obligations of the Escrow Agent under this Escrow Agreement may be assigned without the prior written consent of Lessor and Lessee.

Section 10. Entire Agreement. This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and no waiver, consent, modification or change of terms hereof shall bind any party unless in writing signed by all parties.

Section 11. Governing Law. This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the laws of the State of Wisconsin.

Section 12. Counterparts. This Escrow Agreement may be executed in several counterparts, and each counterpart so executed will be an original. In addition, the parties agree that the transaction described herein may be conducted and related documents may be received, sent or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of 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.

Section 14. Patriot Act. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Escrow Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

Section 15. Authorized Representatives. Lessee and Lessor hereby appoint the individuals, whose names and specimen signatures appear on the attached Exhibits B and C, respectively, as their respective Authorized Representatives. Any single Authorized Representative of Lessee and Lessor is hereby expressly authorized to give binding written direction to Escrow Agent or to each other as to any matter related to this Escrow Agreement. Exhibits B and C may be supplemented from time to time to reflect any change in the identities of such Authorized Representatives.

Section 16. Call Back. In the event federal wire transfer instructions are given, whether in writing, e-mail, facsimile transmission or otherwise, Escrow Agent is authorized to seek confirmation of such wire instructions by telephone call back to the person or persons designated on Exhibits B or C and Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed as of the day and year first above set forth.

CAPITAL ONE PUBLIC FUNDING, LLC, as Lessor

By: _____
Name: _____
Its: _____

CITY OF MILWAUKEE, WISCONSIN, as Lessee

By: _____
Name: _____
Its: _____

THE HUNTINGTON NATIONAL BANK, as Escrow Agent

By: _____
Name: _____
Its: _____

[Signature Page to Escrow Agreement]

EXHIBIT A

CERTIFICATE OF ACCEPTANCE AND PAYMENT REQUEST

Date: _____, 20____.

The Huntington National Bank (the “*Escrow Agent*”), as escrow agent under that certain Escrow Agreement dated as of April ___, 2019 (the “*Escrow Agreement*”), by and among the City of Milwaukee, Wisconsin, as lessee (the “*Lessee*”), Capital One Public Funding, LLC, as lessor (the “*Lessor*”) and the Escrow Agent, is hereby requested to pay from the Escrow Fund established and maintained thereunder, the amount set forth below to the named payee(s). The amount shown is due and payable under a purchase order or contract (or has been paid by and not previously reimbursed to Lessee). The equipment and costs described below are (i) part or all of the Equipment listed in the Equipment Schedule to that certain Equipment Lease Purchase Agreement dated as of April ___, 2019 (the “*Agreement*”), between Lessor and Lessee or (ii) costs incurred under the Agreement. Capitalized terms not otherwise defined herein shall have the definitions assigned to them in the Agreement.

<u>QUANTITY</u>	<u>DESCRIPTION OF EQUIPMENT OR FINANCING COST</u>	<u>AMOUNT</u>	<u>PAYEE</u>
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Lessee hereby certifies and represents to and agrees with Lessor as follows with respect to the Equipment described above:

(i) the amount to be disbursed is not being paid in advance of the time, if any, fixed for any payment, and does not include any retained percentage entitled to be retained by Lessee at this time;

(ii) no amount requested to be disbursed was included in any payment request previously filed with the Escrow Agent for which payment was actually made by the Escrow Agent;

(iii) Lessee has made such investigation of such sources of information as are deemed necessary and is of the opinion that the applicable portion of the Equipment and related work has been fully paid for, and no claim or claims exist against Lessee or any Vendor out of which a lien based on furnishing labor or material exists or might arise;

(iv) acquisition and installation of the applicable portion of the Equipment for which payment is being requested has been completed in accordance with plans and specifications approved by Lessee and in accordance with the terms and conditions of the Performance Contract dated January 31, 2019 (the “*Vendor Contract*”), between Lessee and Johnson Controls, Inc. (the “*Vendor*”), and said applicable portion of the Equipment is suitable and sufficient for the expected uses thereof, however, this statement is made

without prejudice to any rights against third parties which exist at the date hereof or which may subsequently come into being; the Equipment described above has been delivered and installed at the location(s) set forth in the Equipment Schedule attached to the Agreement as Exhibit A thereto;

(v) a present need exists for the portion of the Equipment for which payment is being requested, which need is not temporary or expected to diminish in the near future;

(vi) such Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority;

(vii) the estimated useful life of such Equipment based upon the manufacturer's representations and Lessee's projected needs is not less than the term of lease with respect to such Equipment;

(viii) Lessee has conducted such inspection and/or testing of such Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts such Equipment for all purposes as of the date of this Certificate;

(ix) such Equipment is covered by insurance in the types and amounts required by the Agreement;

(x) no Event of Default or nonappropriation, as such terms are defined in the Agreement, and no event which with the giving of notice or lapse of time or both, would become an Event of Default or nonappropriation, has occurred and is continuing on the date hereof;

(xi) sufficient funds have been appropriated by Lessee for the payment of all rental payments due under the Agreement during Lessee's current fiscal year; and

(xii) if requested prior to [October 15, 2019], no amount requested to be disbursed by the Escrow Agent is in excess of the amount of capitalized interest to be disbursed on [October 15, 2019] pursuant to Section 4(b) of the Escrow Agreement.

Based on the foregoing, Lessor is hereby authorized and directed to fund the acquisition of the Equipment set forth in the Agreement by paying, or causing to be paid, the Vendor, Lessee or other payee the amounts set forth on the attached invoices from the Escrow Fund held under the Escrow Agreement in accordance with its terms.

The following documents are attached hereto and made a part hereof: (a) invoice(s); and (b) applicable lien waivers.

IF REQUEST IS FOR REIMBURSEMENT, CHECK HERE . Lessee paid an invoice prior to the commencement date identified in the Equipment Schedule and is requesting reimbursement for such payment. A copy of evidence of such payment together with a copy of

Lessee's Declaration of Official Intent and other evidence required by Lessor prior to Lessor's approval hereof that Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. 1.150-2 is hereby attached. Lessor's approval hereof shall evidence that Lessee has delivered to Lessor such required documentation.

IF REQUEST IS FINAL REQUEST, CHECK HERE . Lessee hereby certifies that (a) all of the Equipment described in the Equipment Schedule to the Agreement has been received in good condition and has been installed in accordance with the Contract; (b) Lessee has inspected the Equipment, and determined that it is in good working order and complies with all purchase orders, contracts and specifications; (c) Lessee has fully and satisfactorily performed all covenants and conditions to be performed by it as of this date under the Agreement with regard to such Equipment; (d) as between Lessor and Lessee, only, Lessee waives any right to revoke its acceptance; and (e) the Equipment is insured in accordance with Section 22 of the Agreement. This certificate is made without prejudice to any rights against third parties which may exist as of the date hereof or which may subsequently come into being.

Dated the date first listed above:

Approved for Payment:

**CAPITAL ONE PUBLIC FUNDING,
LLC, as Lessor**

**CITY OF MILWAUKEE, WISCONSIN,
as Lessee**

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

[Signature Page to Certificate of Acceptance and Payment Request]

EXHIBIT B

**LESSOR'S AUTHORIZED REPRESENTATIVE
CERTIFICATE OF INCUMBENCY**

The undersigned, Vice President of Capital One Public Funding, LLC, hereby certifies that the following named officer is duly appointed, qualified and acting in the capacity set forth opposite his name, and the following signature is the true and genuine signature of said officer.

Name (Printed)	Title	Signature	Phone Number
Jonathan A. Lewis	President		(631) 531-2824

Further, such officer is hereby designated as Authorized Representative and as such is authorized to furnish the Escrow Agent with directions relating to any matter concerning this Escrow Agreement and the funds and/or property held pursuant to this Escrow Agreement.

IN WITNESS WHEREOF, Capital One Public Funding, has caused this Certificate of Incumbency to be executed by its officers duly authorized this [25]th day of April, 2019.

By: _____

Name: Catherine DeLuca

Title: Vice President

EXHIBIT C

**LESSEE'S AUTHORIZED REPRESENTATIVE
CERTIFICATE OF INCUMBENCY**

The undersigned, _____ of City of Milwaukee, Wisconsin, hereby certifies that the following named officer is duly appointed, qualified and acting in the capacity set forth opposite his name, and the following signature is the true and genuine signature of said officer.

Name (Printed)	Title	Signature	Phone Number

Further, such officer is hereby designated as Authorized Representative and as such is authorized to furnish the Escrow Agent with directions relating to any matter concerning this Escrow Agreement and the funds and/or property held pursuant to this Escrow Agreement.

IN WITNESS WHEREOF, City of Milwaukee, Wisconsin, has caused this Certificate of Incumbency to be executed by its officers duly authorized this ___ day of _____, 2019.

By: _____

Name: _____

Title: