

hereunder and to be held in trust for the Proposer and the City pursuant to the terms of this Agreement.

Section 2. On or before 2:00 p.m. (Eastern time) on March ~~20~~27, 2013 the Cash Deposit will be provided to the Escrow Agent by the Proposer and deposited into the Escrow Account. Upon receipt of the Cash Deposit, the Escrow Agent shall immediately issue a receipt to the Proposer, confirming that the Escrow Agent has received the Cash Deposit, and confirming the dollar amount on deposit in the Escrow Account at such time. **All risk of loss, if any, in regard to such investments or reduction of the Cash Deposit resulting from such investments shall be borne by the Proposer, other than losses arising from the Escrow Agent's negligence or willful misconduct.** The Escrow Agent shall calculate the market value on a daily basis as of close of business on the preceding day. If there is a deficit (a "Deficit") which reduces the market value of the Cash Deposit below the requirement imposed by the RFB (the "Benchmark"), the Escrow Agent shall promptly give notice to the City and Proposer of the amount of such deficit ("Deficit Notice"). The Proposer agrees to replenish the Cash Deposit to reach the applicable Benchmark through an additional deposit ("Deficit Deposit") by 5:00 p.m. (Eastern time) on the third business day following receipt by the Proposer of the Deficit Notice; provided that no Deficit Deposit need be made if the Escrow Agent, following the daily calculation of the market value of the Cash Deposit on the morning of the third business day, determines that the Deficit has been eliminated as of the time of calculation. The Escrow Agent shall provide notice to the City and the Proposer within one business day following the deadline for the Deficit Deposit established in the Deficit Notice if the Proposer has not fully replenished the Cash Deposit by such deadline.

Section 3. The Escrow Agent shall invest and reinvest the Cash Deposit in Eligible Investments (as defined in Schedule 3 hereto) at the written direction of an Authorized Proposer Representative (as described below) without distinction between principal and income. The Escrow Agent may conclusively rely upon such written instructions as to both the suitability and legality of the directed investments. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. In the absence of investment instructions from the Authorized Proposer Representative, the Escrow Agent shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Eligible Investments. Any interest or other earnings on the Funds shall become part of the Cash Deposit and shall be disbursed in accordance with the provisions of this Escrow Agreement. The Escrow Agent will provide monthly statements to the City and the Proposer that will show accrued interest along with any deposits and withdrawals from the Escrow Account. The Authorized Proposer Representatives are _____. It is further understood by the parties that the City is not responsible in any way for the results of the investments by the Escrow Agent of the Cash Deposit or the investment earnings thereon nor is the City responsible for the actions of the Escrow Agent unless such actions have been directed by an authorized representative of the City (a "City Authorized Representative") pursuant to the terms of this Agreement. The City Authorized Representatives are the Director of Finance of the City and the Controller of the City.

Section 4. The Funds shall at all times be held in a separate account and (i) may be delivered by the Proposer at all times prior to 2:00 p.m. (Eastern time), on the Commencement

Date pursuant to instructions of the Proposer and (ii) shall be disbursed after the Commencement Date pursuant to the terms and conditions of Section 5 below.

Section 5. The Escrow Agent shall, as soon as practicable, but no sooner than 9:00 a.m. (Eastern time) on ~~March 26~~, April 1, 2013, liquidate all investments and pay to the Proposer (or as directed by the Proposer) all Funds in the Escrow Account under the following conditions: (i) upon receipt of a statement signed by a City Authorized Representative addressed to the Proposer and the Escrow Agent to the effect that the Proposer has not been selected as the Concessionaire for the Concession; (ii) upon receipt of a statement signed by a City Authorized Representative at any time, and addressed to the Proposer and the Escrow Agent, to the effect that the Proposer did not tender a bid by 2:00 p.m. (Eastern time), March ~~21~~, 28, 2013 (which statement the City shall be required to deliver promptly after such date and time); (iii) upon the failure of the City to provide by 2:00 p.m. (Eastern time), May 15, 2013 or such later time as may be set by mutual consent of both the City and the Proposer (the “Escrow Deadline”) a statement signed by a City Authorized Representative addressed to the Escrow Agent that any party has been selected as the Concessionaire for the Concession.

The Escrow Agent shall retain the Funds in the Escrow Account upon receipt of a statement, signed by a City Authorized Representative to the Escrow Agent that the Proposer has been selected as the Concessionaire (the “Award Statement”) for the Concession until the earlier to occur of (a) statement, at any time after the Commencement Date, in a form substantially similar to that attached hereto as Schedule 2 (a “City Statement”) that is signed by a City Authorized Representative directing disbursement to the City of the Cash Deposit in accordance with the Bid Documents; (b) a statement of instructions from an Authorized City Representative, acknowledged by the Proposer, that the Concession Agreement is being closed and that all Funds should be paid immediately to the City; (c) the passage of one hundred and twenty (120) days following the date of the Award Statement, which shall be no later than September 15, 2013 (the “Closing Escrow Deadline”); or (d) the Proposer has provided the City with one or more satisfactory Closing LOCs meeting the aggregate requirements of the Concession Agreement.

If the City and the Proposer mutually consent to extend the Escrow Deadline or the Closing Escrow Deadline to a date certain (collectively, an “Extended Escrow Deadline”), and the City provides timely notice to the Escrow Agent of such Extended Escrow Deadline, the term of this Escrow Account shall be extended to coincide with the Extended Escrow Deadline.

Section 6. All disbursements by the Escrow Agent pursuant to this Escrow Agreement shall be made by wire transfer in immediately available funds to such account or accounts as the party entitled to receive the Funds shall designate in writing to the Escrow Agent. The Escrow Agent undertakes to perform such duties and only such duties as are expressly set forth herein and no implied duties or obligations may be read into this Escrow Agreement other than as may be required by applicable law. The Escrow Agent has not examined and is in no way responsible for the contents of the Concession Agreement or the RFB. By accepting the position of escrow agent, the Escrow Agent, the City and the Proposer agree that the Escrow Agent’s duties and obligations are set forth solely in this Escrow Agreement.

Section 7. 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