

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, is made and entered into by and between the City of Billings, Montana (the "City"), and U.S. Bank, National Association, in Seattle, Washington (the "Agent"). The parties hereto recite and, in consideration of the mutual covenants and payments referred to and contained herein, covenant and agree as follows:

1. The City, in accordance with a resolution of the City adopted on February 25, 2013 (the "Resolution"), sold its Refunding Certificates of Participation, Series 2013, dated as of March 5, 2013 (the "Certificates"), in the aggregate principal amount of \$4,100,000, for the purpose of providing funds for the refunding and prepayment of amounts under the Lease Purchase Agreement (the "Refunded Lease"), dated as of March 3, 2003, by and between the City and Banc of America Public Capital Corp, as successor to Koch Financial Corporation (the "Lessee"), and for the payment of certain costs of issuance of the Certificates and of the refunding and prepayment of the Refunded Lease. The City has directed that net proceeds of the Certificates in the amount of \$4,203,436.77 be deposited in the Escrow Account. The City has also appropriated \$266,028 on hand in the debt service account for the Refunded Lease to be deposited in the Escrow Account.

2. The Agent acknowledges receipt of cash as described in Section 1, and agrees that it will hold such amount in a special escrow account in the name of the City (the "Escrow Account") and on the date hereof will remit from the Escrow Account to the Lessee, \$4,469,464 for the refunding and prepayment of the Refunded Lease.

After provision for the refunding and prepayment of the Refunded Lease, the Agent will remit any remaining funds in the Escrow Account to U.S. Bank, National Association, as trustee under the Declaration of Trust, dated as of March 5, 2013, which will hold said sum of cash in the Rental Payment Account for application toward the payment of principal and interest due on September 3, 2013 with respect to the Certificates.

The City has received a certification from Springsted Incorporated, St. Paul, Minnesota that the amount deposited as set forth in Section 1 hereof is adequate to pay the Purchase Option Price (as defined in the Refunded Lease) of the Refunded Lease on March 5, 2013.

3. The Agent also acknowledges receipt of a sum described in a letter agreement between the City and the Agent, as and for full compensation for all services to be performed by it as Agent under this Agreement, and the Agent expressly waives any lien upon or claim against the moneys and investments in the Escrow Account.

4. On or before June 30, 2013, the Agent shall submit to the City a report covering all money it shall have received and all payments it shall have made or caused to be made hereunder.

5. It is recognized that title to the money held in the Escrow Account from time to time shall remain vested in the City but subject always to the prior charge and lien thereon of this Agreement and the use thereof required to be made by the provisions of this Agreement. The Agent shall hold all such money in the Escrow Account as a special trust fund and account

separate and wholly segregated from all other money of the Agent on deposit therein and shall never commingle such money with other money. It is understood and agreed that the responsibility of the Agent under this Agreement is limited to the safekeeping and segregation of the moneys deposited with it in the Escrow Account and the collection of and accounting for the principal and interest payable with respect thereto.

6. Amounts held under this Agreement, if any, shall be invested in accordance with the terms thereof. The City acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the City the right to receive brokerage confirmations of security transactions, the City waives receipt of such confirmations. The Agent shall furnish the City periodic statements which include details of all investment transactions made by the Agent.

7. This Agreement is made by the City for the benefit of the Lender, as the lessor under the Refunded Lease, and is not revocable by the City, and the funds deposited in the Escrow Account and all income therefrom have been irrevocably appropriated for the refunding and prepayment of the Refunded Lease, in accordance with this Agreement. This Agreement may not be amended except to (i) sever any clause herein deemed to be illegal or (ii) cure any ambiguity or correct or supplement any provision herein which may be inconsistent with any other provision, provided that the Agent shall determine that any such amendment shall not adversely affect the Lender, as the lessor under the Refunded Lease.

8. This Agreement shall be binding upon and shall inure to the benefit of the City and the Agent and their respective successors and assigns. In addition, this Agreement shall constitute a third-party beneficiary contract for the benefit of the Lender, as the lessee under the Refunded Lease. Said third-party beneficiaries shall be entitled to enforce performance and observance by the City and the Agent of the respective agreements and covenants herein contained as fully and completely as if said third-party beneficiaries were parties hereto. Any bank or trust company into which the Agent may be merged or with which it may be consolidated or any bank or trust company resulting from any merger or consolidation to which it shall be a party or any bank or trust company to which it may sell or transfer all or substantially all of its corporate trust business shall, if the City approves, be the successor agent hereunder without the execution of any additional document or the performance of any further act.

IN WITNESS WHEREOF the parties hereto have caused this Escrow Agreement to be duly executed by their duly authorized officers, as of the March 5, 2013.

CITY OF BILLINGS, MONTANA

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Christina Volek  
City Administrator

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Patrick M. Weber  
City Finance Director

[Signature page to Escrow Agreement]

U.S. BANK, NATIONAL ASSOCIATION, Agent

By \_\_\_\_\_  
Its Vice President

[Signature page to Escrow Agreement]