

## **EXHIBIT C**

### **ESCROW AGREEMENT**

THIS ESCROW AGREEMENT (the “Agreement”), dated and made effective as of March 1, 2012, by and between the City of Austin, a governmental agency, body politic and corporate and political subdivision of the State of Texas in Travis, Williamson and Hays Counties, Texas (the “City”), and Deutsche Bank National Trust Company, a banking corporation organized and existing under the laws of the United States of America, or its successors (the “Bank”)

#### **WITNESSETH:**

WHEREAS, the City has heretofore issued, sold, and delivered, and there is currently outstanding obligations totaling in the principal amount of \$20,175,000 of the following issue or series (hereinafter referred to as the “Refunded Bonds”), to wit: City of Austin, Texas, Convention Center/Waller Creek Venue Project Bonds, Series 1999A, dated June 15, 1999, scheduled to mature on November 15 in each of the years 2012, 2019 and 2029; and

WHEREAS, in accordance with the provisions of V.T.C.A., Government Code, Chapter 1207 (the “Act”), the City is authorized to sell refunding bonds in an amount sufficient to provide for the full and complete payment of obligations, deposit the proceeds of such refunding bonds with the place of payment for the obligations being refunded, or other authorized depository, and enter into an escrow or similar agreement with such place of payment for the safekeeping, investment, reinvestment, administration and disposition of such deposit, upon such terms and conditions as the parties may agree; and

WHEREAS, the City on the 1<sup>st</sup> day of March, 2012, pursuant to an ordinance (the “Ordinance”) finally passed and adopted by the City Council, authorized the issuance of bonds known as “City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Revenue Refunding Bonds, Series 2012 (Convention Center/Waller Creek Venue Project)” (the “Bonds”), and such Bonds are being issued to refund, discharge and make final payment of the principal of and interest on the Refunded Bonds pursuant to the Ordinance; and

WHEREAS, proceeds of sale of the Bonds, together with available funds from the City, are to be deposited with the Bank under this Agreement, which deposit of funds will be sufficient to pay and redeem in full the Refunded Bonds on April 24, 2012 (the “Payment Date”);

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the payment to the Bank of the amounts provided in Section 9 hereof, and to secure the payment of the principal of and the interest on the Refunded Bonds, the City and the Bank hereby agree as follows:

SECTION 1: Escrow Fund Creation/Funding. There is hereby created by the City with the Bank a special segregated and irrevocable trust fund designated “SPECIAL 2012 CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX/CONVENTION CENTER/WALLER CREEK VENUE PROJECT REFUNDING BOND ESCROW FUND” (hereinafter called the “Escrow Fund”) for the benefit of the holders of the Refunded Bonds, and, immediately following the delivery of the Bonds, the City agrees and covenants to cause to be deposited with the Bank for the credit of the Escrow Fund the sum of \$\_\_\_\_\_.

The Bank agrees to establish such Escrow Fund and further agrees to receive said moneys, apply the same as set forth herein, and to hold the cash deposited and credited to the Escrow Fund for application and disbursement for the payment and redemption of the Refunded Bonds on the Payment Date.

SECTION 2: Escrow Fund Sufficiency. The City represents that the amount deposited to the credit of the Escrow Fund will be sufficient to pay and redeem in full all the Refunded Bonds on the Payment Date by reason of redemption.

SECTION 3: Pledge of Escrow. The Bank agrees that all funds and/or investments held in the Escrow Fund shall constitute dedicated interest and sinking funds for the payment of the principal of and interest on the Refunded Bonds which will mature and become due on and after the date of this Agreement, and such funds deposited to the credit of the Escrow Fund shall be applied solely in accordance with the provisions of this Agreement and the City shall have no right or title with respect thereto, except as otherwise provided herein. Such funds shall not be subject to checks or drafts drawn by the City.

SECTION 4: Escrow Insufficiency-City Warranty to Cure. If, for any reason, the funds on hand in the Escrow Fund shall be insufficient to pay the redemption price of the Refunded Bonds on The Payment Date , the City shall timely deposit to the credit of the Escrow Fund, from lawfully available funds, additional funds in the amounts required to make such payment. Notice of any such insufficiency shall be immediately given by the Bank to the City by the fastest means possible, but the Bank shall in no manner be responsible for the City’s failure to make such deposit.

SECTION 5: Firm Banking Arrangements-Collateralization. The Bank represents that the deposit covered by this Agreement shall constitute firm banking arrangements to insure payment of the Refunded Bonds, and, to the extent such deposit is subject to any loss or diminution by virtue of any action of the Bank or as a result of its lack of financial integrity, funds deposited to the credit of the Escrow Fund shall be collateralized by a pledge of direct obligations of the United States of America, in the par or face amount equal to the amount on deposit in such Account and not otherwise covered by the Federal Deposit Insurance Corporation.

SECTION 6: Withdrawal of Funds. The Bank shall, without further direction from anyone, including the City, cause to be withdrawn from the Escrow Fund the amount required to pay the principal and accrued interest on the Refunded Bonds due and payable on the Payment Date and the amount withdrawn from the Escrow Fund shall be immediately transmitted and deposited with the paying agent for the Refunded Bonds to be paid with such amount. The paying agent for the Refunded Bonds is The Bank of New York Mellon Trust Company, N.A.. The Bank does not act as a depository of the City.

SECTION 7: Absence of Claim/Lien on Escrow Fund. The Bank shall have no lien whatsoever upon any of the moneys deposited to the credit of the Escrow Fund for payment of services rendered hereunder, or for any costs or expenses incurred hereunder and reimbursable from the City.

SECTION 8: Investment of Moneys on Deposit in Escrow Fund. Pending the disbursement of moneys held in the Escrow Fund, amounts deposited to the credit of the Escrow Fund may be invested at the direction of the City in direct obligations of the United States of America which mature on or before the Payment Date and are not subject to prior redemption. Absent written instructions from the City the funds in the Escrow Fund will remain uninvested. All earnings realized from the investment of such funds will be immediately remitted to the City following the receipt thereof by the Bank. No investment of funds deposited to the credit of the Escrow Fund shall be made on or after the Payment Date. Except as authorized and permitted in this Section, neither the City nor the Bank shall invest any moneys deposited in the Escrow Fund.

SECTION 9: Escrow Agent's Compensation-Paying Agent/Registrar Charges. Except for reimbursement of costs and expenses incurred by the Bank pursuant to Section 2 hereof, the Bank hereby agrees the compensation noted below is full and complete payment for the administration of this Agreement.

The City agrees to deposit with the Bank on the date of the delivery of the Bonds the sum of \$\_\_\_\_\_, and the Bank acknowledges and agrees that the above amount is and represents the total amount of compensation due the Bank for services rendered as escrow agent for the Refunded Bonds. The Bank hereby agrees to pay, assume and be fully responsible for any additional charges that it may incur in the performance of its duties and responsibilities as paying agent for the Refunded Bonds.

The City also agrees to deposit with the Bank, the sum of \$300.00, which represents the total charge due the paying agent for the Refunded Bonds and the City acknowledges and agrees that such amount is and represents the total amount of compensation due The Bank of New York Mellon Trust Company, N.A. for services rendered as paying agent for the Refunded Bonds. Furthermore, the Bank agrees to transmit to the paying agent for the Refunded Bonds the amount included in such deposit for paying agent services to be rendered for the Refunded Bonds in accordance with the City's instructions.

SECTION 10: Escrow Agent's Duties/Responsibilities/Liability. The Bank shall not be responsible for any recital herein, except with respect to its organization, its powers and authority and to the safety and security of the deposit of funds to be made by the City hereunder. As to the existence or nonexistence of any fact relating to the City or as to the sufficiency or validity of any instrument, paper or proceedings relating to the City, the Bank shall be entitled to rely upon a certificate signed on behalf of the City by its City Clerk as sufficient evidence of the facts therein contained. The Bank may accept a certificate of the City Clerk under the City's seal, to the effect that a resolution or other instrument in the form therein set forth has been adopted by the City Council of the City, as conclusive evidence that such resolution or other instrument has been duly adopted and is in full force and effect.

The duties and obligations of the Bank shall be determined solely by the express provisions of this Agreement and the Bank shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Bank.

In the absence of bad faith on the part of the Bank, the Bank may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Bank, conforming to the requirements of this Agreement; but notwithstanding any provision of this Agreement to the contrary, in the case of any such certificate or

opinion or any evidence which by any provision hereof is specifically required to be furnished to the Bank, the Bank shall be under a duty to examine the same to determine whether it conforms to the requirements of this Agreement.

The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Bank unless it shall be proved that the Bank was negligent in ascertaining or acting upon the pertinent facts. The Bank shall not be responsible or liable to any person in any manner whatever for the sufficiency, correctness, genuineness, effectiveness, or validity of the deposits made pursuant to this Agreement, or for the form or execution thereof, or for the identity or authority of any person making or executing such deposits.

The term “Responsible Officers” of the Bank, as used in this Agreement, shall mean and include the Chairman of the Board of Directors, the President, any Vice President and any Second Vice President, the Secretary and any Assistant Secretary, the Treasurer and any Assistant Treasurer, and every other officer and assistant officer of the Bank customarily performing functions similar to those performed by the persons who at the time shall be officers, respectively, or to whom any corporate trust matter is referred, because of his knowledge of and familiarity with a particular subject; and the term “Responsible Officer”, when used with respect to the Bank, means the officer in the corporate trust department of the Bank having direct responsibility for administration of this Agreement..

SECTION 11: Interpleader. This Agreement is between the City and the Bank only and in connection therewith the Bank is authorized by the City to rely upon the representations of the City with respect to this Agreement and the deposits made pursuant hereto and as to this City’s right and power to execute and deliver this Agreement, and the Bank shall not be liable in any manner as a result of such reliance. The duty of the Bank hereunder shall only be to the City and the holders of the Refunded Bonds. In the event conflicting demands or notices are made upon the Bank growing out of or relating to this Agreement or the Bank in good faith is in doubt as to what action should be taken hereunder, the Bank shall have the right at its election to:

- (a) Withhold and stop all further proceedings in, and performance of, this Agreement with respect to the issue in question and of all instructions received hereunder in regard to such issue; and
- (b) File a suit in interpleader and obtain an order from a court of appropriate jurisdiction requiring all persons involved to

interplead and litigate in such court their several claims and rights among themselves.

In the event the Bank becomes involved in litigation in connection with this Section, the City, to the extent permitted by law agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses and attorney fees suffered or incurred by the Bank as a result thereof. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Jersey City, New Jersey.

The Bank may advise with legal counsel in the event of any dispute or question regarding the construction of any of the provisions hereof or its duties hereunder, and in the absence of negligence or bad faith on the part of the Bank, no liability shall be incurred by the Bank for any action taken pursuant to this Section and the Bank shall be fully protected in acting in accordance with the opinion and instructions of legal counsel that is knowledgeable and has expertise in the field of law addressed in any such legal opinion or with respect to the instructions given.

SECTION 12: Time of the Essence. Time shall be of the essence in the performance of obligations from time to time imposed upon the Bank by this Agreement.

SECTION 13: Accounting-Reports. Following the Payment Date, the Bank shall forward by letter to the City, to the attention of the City Treasurer, or other designated official of the City, a final accounting statement with respect to the payment and discharge of the Refunded Bonds.

SECTION 14: Notices. Any notice, authorization, request or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given upon receipt when mailed by registered or certified mail, postage prepaid addressed as follows:

CITY OF AUSTIN, TEXAS

700 Lavaca, Suite 940  
Austin, Texas 78701

Attention: City Treasurer

DEUTSCHE BANK NATIONAL TRUST COMPANY

100 Plaza One, 6<sup>th</sup> Floor  
Jersey City, New Jersey 07311

Attention: Global Transaction Banking

The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the date and fact of delivery.

Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten (10) days prior notice thereof.

SECTION 15: Performance Dates. Whenever under the terms of this Agreement the performance date of any provision hereof, including the date of maturity of interest on or principal of the Refunded Bonds, shall be a Sunday or a legal holiday or a day on which the Bank is authorized by law to close, then the performance thereof, including the payment of principal of and interest on the Refunded Bonds, need not be made on such date but may be performed or paid, as the case may be, on the next succeeding business day of the Bank with the same force and effect as if made on the date of performance or payment and with respect to a payment, no interest shall accrue for the period after such date.

SECTION 16: Warranty of Parties Re; Power to Execute and Delivery Escrow Agreement. The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement, in any and every said Refunded Bond as executed, authenticated and delivered and in all proceedings pertaining thereto as said Refunded Bonds shall have been modified as provided in this Agreement. The City covenants that it is duly authorized under the Constitution and laws of the State of Texas to execute and deliver this Agreement, that all actions on its part for the payment of said Refunded Bonds as provided herein and the execution and delivery of this Agreement have been duly and effectively taken and that said Refunded Bonds and coupons in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the City according to the import thereof as provided in this Agreement.

SECTION 17: Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the parties 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.

SECTION 18: Termination. This Agreement shall terminate either (i) when the Refunded Bonds and coupons appertaining thereto have been paid and discharged in accordance with the provisions of this Agreement or (ii) at the expiration of three (3) years after the Payment Date, whichever circumstance shall first occur. Subject to applicable unclaimed property laws of the State, moneys held in the Escrow Fund at the termination of this Agreement shall be remitted and transferred to the City.

SECTION 19: Assignment. Neither the City nor the Bank shall assign or attempt to assign or transfer any interest hereunder or any portion of any such interest. Any such assignment or attempted assignment shall be in direct conflict with this Agreement and be without effect.

SECTION 20: Successors/Assigns. This Agreement shall inure to the benefit of and be binding upon the Bank and the City and their respective successors.

(a) Should the Bank not be able to legally serve or perform the duties and obligations under this Agreement, or should the Bank be declared to be insolvent or closed for any reason by federal or state regulatory authorities or a court of competent jurisdiction, the City, upon being notified or discovering the Bank's inability or disqualification to serve hereunder, shall forthwith appoint a successor to replace the Bank, and upon being notified of such appointment, the Bank shall (i) transfer all funds and securities held hereunder, together with all books, records and accounts relating to the Escrow Fund and the Refunded Bonds, to such successor and (ii) assign all rights, duties and obligations under this Agreement to such successor. If the City should fail to appoint such a successor within ninety (90) days from the date the City discovers, or is notified of, the event or circumstance causing the Bank's inability or disqualification to serve hereunder, the Bank, or a bondholder of the Refunded Bonds, may apply, at the expense of the City, to a court of competent jurisdiction to appoint a successor or assigns of the Bank and such court, upon determining the Bank is unable to continue to serve, shall appoint a successor to serve under this Agreement and the amount of compensation, if any, to be paid to such successor for the remainder of the term of this Agreement for services to be rendered both for administering the Escrow Fund and for paying agent duties and responsibilities for the Refunded Bonds.

(b) Furthermore, the Bank may resign and be discharged from performing its duties and responsibilities under this Agreement upon notifying the City in writing of its intention to resign and requesting the City to appoint a successor. No such resignation shall take effect until a successor has been appointed by the City and such successor has accepted such appointment and agreed to perform all duties and obligations hereunder for a total compensation equal to the unearned proportional amount paid the Bank under Section 16 hereof for the administration of this Agreement and the unearned proportional amount of the paying agents fees for the Refunded Bonds due the Bank.

Any successor to the Bank shall be a bank, trust company or other financial institution that is duly qualified under applicable law (the Act, or other appropriate statute) to serve as escrow agent hereunder and authorized and empowered to perform the duties and obligations contemplated by this Agreement and organized and doing business under the laws of the United States or the State of Texas, having its principal office and place of business in the State of Texas, having a combined capital and surplus of at least \$5,000,000 and be subject to the supervision or examination by Federal or State authority.

Any successor or assigns to the Bank shall execute, acknowledge and deliver to the City and the Bank, or its successor or assigns, an instrument accepting such appointment hereunder, and the Bank shall execute and deliver an instrument transferring to such successor, subject to the terms of this Agreement, all the rights, powers and trusts created and established and to be performed under this Agreement. Upon the request of any such successor Bank, the City shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Bank all such rights, powers and duties. The term "Bank" as used herein shall be the Bank and its legal assigns and successor hereunder.

SECTION 21: Executed Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

SECTION 22: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 23: Governing Law. This Agreement shall be governed by the laws of the State of Texas.

*[remainder of page left blank intentionally]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF AUSTIN, TEXAS

\_\_\_\_\_  
LEE LEFFINGWELL, Mayor

Attest:

\_\_\_\_\_  
SHIRLEY A. GENTRY  
City Clerk

(City Seal)

Deutsche Bank National Trust Company,  
as escrow agent

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Title: \_\_\_\_\_