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**STANDBY BOND PURCHASE AGREEMENT**

among

**CITY OF AUSTIN, TEXAS,  
as Issuer**

**WELLS FARGO BANK, N.A.,  
as Tender Agent**

and

**DEXIA CRÉDIT LOCAL,  
ACTING THROUGH ITS NEW YORK BRANCH,**

**as the Bank**

**Dated as of May 1, 2008**

**Relating to:**

**\$281,300,000**

**CITY OF AUSTIN, TEXAS  
Airport System Refunding Revenue Bonds, Series 2005**

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## STANDBY BOND PURCHASE AGREEMENT

**THIS STANDBY BOND PURCHASE AGREEMENT** is dated as of May 1, 2008, by and among THE CITY OF AUSTIN, TEXAS (the "City"), Wells Fargo Bank, N A , as Tender Agent (the "Tender Agent"), and Dexia Crédit Local, acting through its New York Branch (the "Bank"). All capitalized terms used herein and not otherwise defined shall have the meaning assigned in Section 1.01 or as otherwise provided in Section 1.02.

### WITNESSETH

WHEREAS, the City has previously issued its Bonds pursuant to the terms of the Ordinance No 20050804-039, and all appendices and exhibits thereto (the "Ordinance");

WHEREAS, the Ordinance provides that the Bonds may bear interest at certain variable rates set forth in the Ordinance;

WHEREAS, pursuant to the terms of the Ordinance and subject to the conditions described therein, the Bonds bearing interest at a Weekly Rate subject to tender for purchase by the holders thereof at various times before the maturity thereof;

WHEREAS, the payment of the regularly scheduled principal of and interest on the Bonds (including Bank Bonds, as defined herein) when due is guaranteed by a municipal bond insurance policy (together with any and all riders and endorsements thereto, the "Bond Insurance Policy") issued by Financial Security Assurance Inc. (the "Insurer"), to the Paying Agent (defined herein) for the benefit of the holders of the Bonds; and

WHEREAS, the City wishes to provide liquidity for the purchase of Bonds bearing interest at a Covered Rate (as defined herein) tendered for purchase by the holders thereof pursuant to the terms of the Bonds and the Ordinance that are not remarketed by the Remarketing Agent pursuant to the terms of the Ordinance and the Remarketing Agreement,

WHEREAS, the Bank is willing to purchase Eligible Bonds so tendered for purchase by the holders thereof and not remarketed, upon the terms and conditions set forth in this Agreement; and

WHEREAS, in reliance upon, *inter alia*, the provisions hereof, the Bank is willing to enter into this Agreement with the City and the Tender Agent

NOW, THEREFORE, for valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Specific Terms.** The following terms shall have the meanings indicated below or in the referenced Section of this Agreement, unless the context shall clearly indicate otherwise:

*“Accrued Interest”* means that portion of the Purchase Price paid by the Bank for Eligible Bonds constituting accrued but unpaid interest on such Eligible Bonds

*“Affiliate”* means any other Person controlling or controlled by or under common control with the City For purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise

*“Agreement”* means this Standby Bond Purchase Agreement, including any and all amendments and supplements hereto permitted pursuant to the terms hereof.

*“Agreement Effective Date”* means the date on which this Agreement becomes effective as provided in Article IV which shall be the Closing Date.

*“Airport System”* has the meaning assigned to such term in the Ordinance.

*“Alternate Liquidity Facility”* shall have the meaning assigned to such term in Appendix A to the Ordinance.

*“Authorized Denominations”* shall have the meaning assigned to such term in Appendix A to the Ordinance

*“Available Commitment”* means collectively, the Sub-Series 2005-1 Available Commitment, the Sub-Series 2005-2 Available Commitment, the Sub-Series 2005-3 Available Commitment and the Sub-Series 2005-4 Available Commitment

*“Bank”* means Dexia Crédit Local, acting through its New York Branch, and its successors and assigns

*“Bank Bond”* means each Bond purchased by the Bank pursuant to Section 2.01 and held by or for the account of a Bank Bondholder in accordance with the terms of this Agreement, until purchased from such Bank Bondholder or retained by such Bank Bondholder in accordance with Section 2.04(c) or redeemed in accordance with Section 3.02 or otherwise

*“Bank Bond Interest Payment Date”* shall have the meaning assigned to such term in Section 3.01.

*“Bank Bondholder”* means the Bank (but only in its capacity as owner (which as used herein shall mean beneficial owner if at the relevant time Bank Bonds are held in book entry

form) of Bank Bonds pursuant to this Agreement) and any other Person to whom a Bank Bondholder has sold Bank Bonds pursuant to Section 2.04(a)

*“Bank Rate”* means with respect to a Bank Bond (a) for the period commencing on its Purchase Date to and including the 60th day after its Purchase Date, the greater of (i) the Base Rate, or (ii) the Maximum Bond Interest Rate; (b) beginning on the 61st day after the Purchase Date up to and including the day that is the 90<sup>th</sup> day after the Purchase date, the Base Rate plus 1.00%; (iii) beginning on the 91<sup>st</sup> day after the Purchase Date and thereafter, the Base Rate plus 2.00%; *provided* that from and after the occurrence of an Event of Default, the “Bank Rate” shall mean the Default Rate

*“Base Rate”* means, for any day, a rate per annum equal to the higher of (a) the Federal Funds Rate plus 50% per annum or (b) the Prime Rate.

*“Bond Insurance Policy”* shall have the meaning assigned to such term in the recitals to this Agreement

*“Bonds”* means the \$281,300,000 City of Austin, Texas, Airport System Refunding Revenue Bonds, Series 2005(AMT).

*“Business Day”* means any day other than (a) a Saturday or Sunday, (b) a day on which banks located in the cities in which the designated office of any of the Tender Agent, the Remarketing Agent, the Paying Agent/Registrar, the Insurer or the Bank is located are required or authorized by law or executive order to close, (c) a day on which the New York Stock Exchange is closed, or (d) a day on which the payment system of the Federal Reserve System is not operational. For purposes of this definition, the Bank’s designated office shall be that office at which demands for payment are to be presented hereunder designated pursuant to Section 9.04.

*“City”* means the City of Austin, Texas, a home-rule city operating under its home-rule charter adopted pursuant to Section 5 of Article XI of the Texas Constitution, and its successors and assigns permitted hereunder.

*“City Event of Insolvency”* means, with respect to City, the occurrence of one or more of the following events:

(a) the issuance, under the laws of any state or under the laws of the United States of America, of an order of rehabilitation, liquidation or dissolution of the City;

(b) the commencement by or against the City of a case or other proceeding seeking liquidation, reorganization or other relief with respect to the City or its debts under any bankruptcy, insolvency or other similar state or federal law now or hereafter in effect, including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for the City or any substantial part of its property;

(c) the making of an assignment for the benefit of creditors by the City;

(d) the failure of the City to generally pay its debts as they become due,

(e) the declaration of a moratorium with respect to the payment of the debts of the City;

(f) the City shall admit in writing its inability to pay its debts when due, or the initiation of any actions to authorize any of the foregoing by or on behalf of the City.

“*Closing Date*” means May 1, 2008, or such later date on which this Agreement is fully executed and delivered.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and all rules and temporary, proposed or final regulations from time to time promulgated thereunder.

“*Covered Rate*” means, with respect to any Bond, the Weekly Rate defined in Appendix A to the Ordinance.

“*Debt*” means with respect to any Person, all items that would be classified as a liability in accordance with generally accepted accounting principles, including, without limitation, (a) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services (including trade obligations); (b) obligations as lessee under leases which should have been, or should be, recorded as capital leases in accordance with generally accepted accounting principles, (c) current liabilities in respect of unfunded benefits under employee benefit, retirement or pension plans; (d) obligations issued for the account of any other Person; (e) all obligations arising under acceptance facilities; (f) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor against loss, (g) obligations secured by any mortgage, lien, pledge, security interest or other charge or encumbrance on property, whether or not the obligations have been assumed and (h) obligations of such Person under Interest Rate Protection Agreements. When used with reference to the City, Debt shall be deemed to refer to only Debt, as described above, of the City which is secured by a lien on or payable from Net Revenues.

“*Default*” means the occurrence of any event or the existence of any condition which constitutes an Event of Default and the occurrence of any event or the existence of any condition which with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“*Defaulted Interest*” means accrued interest on the Bonds which was not paid when due under the terms of the Ordinance or any amounts accruing on amounts owed on the Bonds by reason of such amounts being not paid when due.

“*Default Rate*” shall have the meaning assigned to such term in Section 2.10(b)

“*Default Tender*” means a mandatory tender of the Bonds pursuant to Section A-403 of the Ordinance as a result of the Bank’s delivery of a Termination Notice to the Tender Agent and Remarketing Agent pursuant to Section 8.03(c).

“*DTC*” has the meaning assigned to such term in Section 2.02



*“Differential Interest Amount”* means the excess of (a) the amount of interest which has accrued and could actually be paid at the Bank Rate (but not in excess of the Maximum Rate), up to but excluding the Sale Date, over (b) the interest accrued on such Bonds which is received by the Bank Bondholders as part of the Sale Price.

*“Eligible Bonds”* means any Bonds Outstanding under and entitled to the benefits of the Ordinance which bear interest at a Covered Rate and that are tendered or deemed tendered for purchase pursuant to Article A-IV of the Ordinance other than any such Bond which (a) is a Bank Bond or (b) is owned by or on behalf of or is held for the account or for the benefit of the City or any Affiliate of the City or by the Insurer

*“Event of Default”* shall have the meaning assigned to such term in Article VIII.

*“Excess Interest Amount”* shall have the meaning assigned to such term in Section 3.03(b).

*“Expiration Date”* means the date on which this Agreement is to expire pursuant to its terms, initially 5:00 p m (New York time) on May 2, 2011; provided that such date is not a Business Day, the Expiration Date shall be the next preceding Business Day

*“Facility Fee”* shall have the meaning assigned to such term in Section 2.06 of this Agreement.

*“Fed Funds Rate”* means, for any day a fluctuating interest rate per annum equal to the weighted average (rounded to the next higher 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded to the next higher 1/100 of 1%) of the quotations for such day on such transactions received by the Bank from three Federal funds brokers of recognized standing selected by the Bank. Each determination of the Fed Funds Rate by the Bank shall be conclusive and binding on the City.

*“Fiscal Year”* means the fiscal year of the City ending on September 30th of each calendar year or such other fiscal year as may be adopted by the City from time to time to the extent permitted hereunder.

*“Fitch”* means Fitch Ratings, Inc. or any successor thereto

*“Insurer”* has the meaning assigned in the recitals of this Agreement.

*“Insurer Event of Insolvency”* means the occurrence and continuance of one or more of the following events

(a) the Insurer shall (i) as to itself, file any petition or commence any case or proceeding under any provision or chapter of the United States Bankruptcy Code or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or reorganization, (ii) make a general assignment for the benefit of its

creditors or fail to generally pay its debts as they become due, or (iii) have an order for relief entered against it under the United States Bankruptcy Code or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or reorganization which is final and nonappealable; or

(b) the commencement of any proceeding in a court of competent jurisdiction or by the New York Department of Insurance or other competent regulatory authority (i) seeking the appointment of a custodian, trustee, agent or receiver for the Insurer or for all or any material portion of its property, (ii) seeking the liquidation, dissolution, reorganization or rehabilitation of the Insurer or (iii) authorizing the taking of possession by a custodian, trustee, agent or receiver of the Insurer or the taking of possession of all or any material portion of the property of the Insurer and, in the case of any proceeding described in this clause (b), such proceeding is not dismissed within ninety days.

*“Interest Component”* shall mean each of the Sub-Series 2005-1 Interest Component, Sub-Series 2005-2 Interest Component, Sub-Series 2005-3 Interest Component and Sub-Series 2005-4 Interest Component

*“Interest Payment Date”* means with respect to Bank Bonds, the 15th day of each month, or if such day is not a Business Day, the immediately succeeding Business Day and with respect to Bonds which are not Bank Bonds, the meaning assigned in the Ordinance

*“Interest Rate Protection Agreement”* means the interest rate swap agreement (Swap Agreement) with Morgan Stanley & Co. Incorporated for the Bonds or any other swap agreement related to the Bonds.

*“Issuer”* means the City

*“Liquidity Facility”* shall have the meaning assigned to such term in Appendix A to the Ordinance.

*“Margin Stock”* shall have the meaning assigned to that term in Regulation U promulgated by the Board of Directors of the Federal Reserve System, as now and hereafter from time to time in effect

*“Maximum Bond Interest Rate”* means 12% or the highest interest permitted on the Bonds (which are not Bank Bonds) pursuant to the Ordinance.

*“Maximum Lawful Rate”* means the maximum “net effective interest rate” allowed under Texas law, currently codified as Chapter 1204, Texas Gov’t. Code, as amended

*“Maximum Rate”* means the lesser of either (a) 25% per annum, and (b) the Maximum Lawful Rate.

*“Moody’s”* means Moody’s Investors Service, Inc. or any successor thereto.

*“Net Revenues”* shall have the meaning assigned to such term in the Ordinance.

*“Notice of Bank Purchase”* means a notice in the form of Exhibit A.

*“Ordinance”* has the meaning assigned in the recitals of this Agreement.

*“Outstanding”* when used with regard to the Bonds shall have the meaning assigned to such term in the Ordinance.

*“Participant(s)”* means any bank(s) or other financial institutions that may purchase from the Bank a participation interest in this Agreement and certain of the Related Documents pursuant to a participation agreement between the Bank and the Participant(s).

*“Participation Agreement”* means any agreement between the Bank and a Participant or Participants in which the Participant(s) purchases a participation interest in this Agreement and certain of the Related Documents from the Bank, subject to certain terms and conditions to be specified by the parties thereto.

*“Paying Agent”* means Wells Fargo Bank, N.A., in its capacity as paying agent under the Ordinance, and any permitted successors as Paying Agent under the Ordinance.

*“Payment Office”* shall have the meaning assigned to such term in Section 2.08(a).

*“Person”* means an individual, a corporation, a partnership, an association, a joint venture, a trust, a business trust, a limited liability company or any other entity or organization, including a governmental or political subdivision or an agency or instrumentality thereof.

*“Prime Rate”* means the rate established by the Bank, from time to time as its prime rate; the Bank may lend to its customers at rates that are at, above or below the Prime Rate.

*“Prior Lien Bonds”* shall have the meaning assigned to such term in the Ordinance.

*“Purchase Date”* means each date on which Eligible Bonds are tendered or deemed tendered for purchase under the Ordinance.

*“Purchase Notice”* shall have the meaning assigned to such term in Section 2.04(b)

*“Purchase Period”* means the Sub-Series 2005-1 Bonds Purchase Period, the Sub-Series 2005-2 Bonds Purchase Period; the Sub-Series 2005-3 Bonds Purchase Period and the Sub-Series 2005-4 Bonds Purchase Period.

*“Purchase Price”* means, with respect to any Eligible Bond as of any date, one hundred percent of the principal amount of such Eligible Bond plus accrued and unpaid interest thereon to the Purchase Date but in no event to exceed the Available Commitment, provided, however, if the Purchase Date for any Eligible Bond is also an Interest Payment Date for such Eligible Bond, the Purchase Price for such Eligible Bond shall not include accrued but unpaid interest on such Eligible Bond; and provided, further, in no event shall the Purchase Price of any Bond include Defaulted Interest accrued on such Bond or any premium owed with respect to any Bond.

*“Purchaser”* shall have the meaning assigned to such term in Section 2.04(b)

“*Rating Agency*” means S&P or any successor or additional rating agency that rates the Bonds at the written request of the City.

“*Related Documents*” means this Agreement, the Bonds, the Ordinance, the Remarketing Agreement, the Bond Insurance Policy, the Interest Rate Protection Agreement and any exhibits, instruments or agreements relating thereto, as the same may be amended from time to time in accordance with their respective terms and the terms hereof.

“*Remarketing Agent*” means each Person acting from time to time as the Remarketing Agent under the Ordinance and the Remarketing Agreement.

“*Remarketing Agreement*” means, collectively, each Remarketing Agreement by and between the City and the Remarketing Agent dated as of May 1, 2008 and any similar agreement between the City and any successor Remarketing Agent, in each case, as the same may be amended, modified or supplemented from time to time in accordance with its terms and the terms hereof

“*Remarketing Memorandum*” means the final Remarketing Memorandum related to the Bonds dated April 24, 2008 (including the cover page and all summary statements, appendices and other materials included or incorporated by reference or attached thereto), as amended or supplemented or any other preliminary or final official statement of the City or prospectus used with respect to the remarketing of the Bonds or supplement to official statement

“*S&P*” means Standard and Poor’s Ratings Services, a division of the McGraw Hill Companies, Inc., or any successor thereto

“*Sale Date*” shall have the meaning assigned to such term in Section 2.04(b).

“*Sale Price*” shall have the meaning assigned to such term in Section 2.04(b).

“*State*” means the State of Texas.

“*Sub-Series 2005-1 Available Commitment*” as of any day, means the sum of the Sub-Series 2005-1 Available Principal Commitment and the Sub-Series 2005-1 Available Interest Commitment, in each case as of such day.

“*Sub-Series 2005-1 Available Interest Commitment*” initially means \$\_\_\_\_\_ and, upon any change in the amount of the Sub-Series 2005-1 Available Principal Commitment hereunder, means an amount equal to 35 days of accrued interest at 12% per annum on the Sub-Series 2005-1 Available Principal Commitment then in effect computed on the basis of a year of 365/366 day year.

“*Sub-Series 2005-1 Available Principal Commitment*” initially means \$70,300,000 and thereafter shall mean such amount adjusted from time to time as follows.

(a) Downward by the amount of any reduction in the Sub-Series 2005-1 Available Principal Commitment pursuant to Section 2.03;

(b) Downward by the principal amount of any Sub-Series 2005-1 Bonds purchased by the Bank pursuant to Section 2.01; and

(c) Upward by the principal amount of any Sub-Series 2005-1 Bonds previously purchased by the Bank pursuant to Section 2.01, which a Bank Bondholder elects to retain pursuant to Section 2.04(c) or that are sold or deemed sold by a Bank Bondholder pursuant to Section 2.04(c) (regardless of the Purchase Price received for such Bonds).

Any adjustment to the Sub-Series 2005-1 Available Principal Commitment pursuant to clauses (a), (b) or (c) above shall occur simultaneously with the occurrence of the events described in such clauses

*"Sub-Series 2005-1 Bonds"* has the meaning set forth in \_\_\_\_\_

*"Sub-Series 2005-1 Bonds Purchase Period"* means the period from the Sub-Series 2005-1 Effective Date hereof to and including the earlier of the close of business on (a) the Expiration Date, (b) the date on which no Sub-Series 2005-1 Eligible Bonds are Outstanding; or (c) the date on which the Sub-Series 2005-1 Available Commitment and the Bank's obligation to purchase Sub-Series 2005-1 Eligible Bonds has been terminated in its entirety pursuant to Section 2.03 or Article VIII

*"Sub-Series 2005-1 Effective Date"* means the date on which the Sub-Series Effective Date Requirements for the Sub-Series 2005-1 Bonds have been fulfilled to the satisfaction of counsel to the Bank and on which the City is first permitted to draw on the Sub-Series 2005-1 Available Commitment

*"Sub-Series 2005-1 Interest Component"* shall have the meaning assigned in Section 2.01(a).

*"Sub-Series 2005-2 Available Commitment"* as of any day, means the sum of the Sub-Series 2005-2 Available Principal Commitment and the Sub-Series 2005-2 Available Interest Commitment, in each case as of such day.

*"Sub-Series 2005-2 Available Interest Commitment"* initially means \$\_\_\_\_\_ and, upon any change in the amount of the Sub-Series 2005-2 Available Principal Commitment hereunder, means an amount equal to 35 days of accrued interest at 12% per annum on the Sub-Series 2005-2 Available Principal Commitment then in effect computed on the basis of a year of 365/366 day year.

*"Sub-Series 2005-2 Available Principal Commitment"* initially means \$70,325,000 and thereafter shall mean such amount adjusted from time to time as follows:

(a) Downward by the amount of any reduction in the Sub-Series 2005-2 Available Principal Commitment pursuant to Section 2.03;

(b) Downward by the principal amount of any Sub-Series 2005-2 Bonds purchased by the Bank pursuant to Section 2.01; and

(c) Upward by the principal amount of any Sub-Series 2005-2 Bonds previously purchased by the Bank pursuant to Section 2.01, which a Bank Bondholder elects to retain pursuant to Section 2.04(c) or that are sold or deemed sold by a Bank Bondholder pursuant to Section 2.04(c) (regardless of the Purchase Price received for such Bonds).

Any adjustment to the Sub-Series 2005-2 Available Principal Commitment pursuant to clauses (a), (b) or (c) above shall occur simultaneously with the occurrence of the events described in such clauses.

*“Sub-Series 2005-2 Bonds”* has the meaning set forth in \_\_\_\_\_.

*“Sub-Series 2005-2 Bonds Purchase Period”* means the period from the Sub-Series 2005-2 Effective Date hereof to and including the earlier of the close of business on (a) the Expiration Date, (b) the date on which no Sub-Series 2005-2 Eligible Bonds are Outstanding, or (c) the date on which the Sub-Series 2005-2 Available Commitment and the Bank’s obligation to purchase Sub-Series 2005-2 Eligible Bonds has been terminated in its entirety pursuant to Section 2.03 or Article VIII.

*“Sub-Series 2005-2 Effective Date”* means the date on which the Sub-Series Effective Date Requirements have been fulfilled to the satisfaction of counsel to the Bank and on which the City is first permitted to draw on the Sub-Series 2005-2 Available Commitment

*“Sub-Series 2005-2 Interest Component”* shall have the meaning assigned in Section 2.01(b).

*“Sub-Series 2005-3 Available Commitment”* as of any day, means the sum of the Sub-Series 2005-3 Available Principal Commitment and the Sub-Series 2005-3 Available Interest Commitment, in each case as of such day.

*“Sub-Series 2005-3 Available Interest Commitment”* initially means \$\_\_\_\_\_ and, upon any change in the amount of the Sub-Series 2005-3 Available Principal Commitment hereunder, means an amount equal to 35 days of accrued interest at 12% per annum on the Sub-Series 2005-3 Available Principal Commitment then in effect computed on the basis of a year of 365/366 day year.

*“Sub-Series 2005-3 Available Principal Commitment”* initially means \$70,325,000 and thereafter shall mean such amount adjusted from time to time as follows:

(a) Downward by the amount of any reduction in the Sub-Series 2005-3 Available Principal Commitment pursuant to Section 2.03;

(b) Downward by the principal amount of any Sub-Series 2005-3 Bonds purchased by the Bank pursuant to Section 2.01, and

(c) Upward by the principal amount of any Sub-Series 2005-3 Bonds previously purchased by the Bank pursuant to Section 2.01, which a Bank Bondholder elects to retain pursuant to Section 2.04(c) or that are sold or deemed sold by a Bank

Bondholder pursuant to Section 2.04(c) (regardless of the Purchase Price received for such Bonds)

Any adjustment to the Sub-Series 2005-3 Available Principal Commitment pursuant to clauses (a), (b) or (c) above shall occur simultaneously with the occurrence of the events described in such clauses.

“*Sub-Series 2005-3 Bonds*” has the meaning set forth in \_\_\_\_\_

“*Sub-Series 2005-3 Bonds Purchase Period*” means the period from the Sub-Series 2005-3 Effective Date hereof to and including the earlier of the close of business on (a) the Expiration Date, (b) the date on which no Sub-Series 2005-3 Eligible Bonds are Outstanding; or (c) the date on which the Sub-Series 2005-3 Available Commitment and the Bank’s obligation to purchase Sub-Series 2005-3 Eligible Bonds has been terminated in its entirety pursuant to Section 2.03 or Article VIII.

“*Sub-Series 2005-3 Effective Date*” means the date on which the Sub-Series Effective Date Requirements have been fulfilled to the satisfaction of counsel to the Bank and on which the City is first permitted to draw on the Sub-Series 2005-3 Available Commitment

“*Sub-Series 2005-3 Interest Component*” shall have the meaning assigned in Section 2.01(c).

“*Sub-Series 2005-4 Available Commitment*” as of any day, means the sum of the Sub-Series 2005-4 Available Principal Commitment and the Sub-Series 2005-4 Available Interest Commitment, in each case as of such day.

“*Sub-Series 2005-4 Available Interest Commitment*” initially means \$\_\_\_\_\_ and, upon any change in the amount of the Available Principal Commitment hereunder, means an amount equal to 35 days of accrued interest at 12% per annum on the Available Principal Commitment then in effect computed on the basis of a year of 365/366 day Sub-Series 2005-4 year

“*Sub-Series 2005-4 Available Principal Commitment*” initially means \$70,350,000 and thereafter shall mean such amount adjusted from time to time as follows:

(a) Downward by the amount of any reduction in the Sub-Series 2005-4 Available Principal Commitment pursuant to Section 2.03;

(b) Downward by the principal amount of any Sub-Series 2005-4 Bonds purchased by the Bank pursuant to Section 2.01; and

(c) Upward by the principal amount of any Sub-Series 2005-4 Bonds previously purchased by the Bank pursuant to Section 2.01, which a Bank Bondholder elects to retain pursuant to Section 2.04(c) or that are sold or deemed sold by a Bank Bondholder pursuant to Section 2.04(c) (regardless of the Purchase Price received for such Bonds).

Any adjustment to the Sub-Series 2005-4 Available Principal Commitment pursuant to clauses (a), (b) or (c) above shall occur simultaneously with the occurrence of the events described in such clauses

“*Sub-Series 2005-4 Bonds*” has the meaning set forth in \_\_\_\_\_

“*Sub-Series 2005-4 Bonds Purchase Period*” means the period from the Sub-Series 2005-4 Effective Date hereof to and including the earlier of the close of business on (a) the Expiration Date, (b) the date on which no Sub-Series 2005-4 Eligible Bonds are Outstanding, or (c) the date on which the Sub-Series 2005-4 Available Commitment and the Bank’s obligation to purchase Sub-Series 2005-4 Eligible Bonds has been terminated in its entirety pursuant to Section 2.03 or Article VIII.

“*Sub-Series 2005-4 Effective Date*” means the date on which the Sub-Series Effective Date Requirements have been fulfilled to the satisfaction of counsel to the Bank and on which the City is first permitted to draw on the Sub-Series 2005-4 Available Commitment.

“*Sub-Series 2005-4 Interest Component*” shall have the meaning assigned in Section 2.01(d)

“*Sub-Series Effective Date Requirements*” means that the Bank shall have received the following documentation satisfactory to counsel to the Bank:

(a) A no-adverse effect opinion of Vinson & Elkins L.L.P., addressed to the Bank (or a reliance letter with respect thereto) and dated the effective date of the sub-series of Bonds, and

(b) Evidence of the conversion of the particular sub-series of Bonds to a Covered Rate

“*Tender Agent*” means Wells Fargo Bank, N.A., in its capacity as tender agent under the Ordinance, and any permitted successors as Tender Agent under the Ordinance

“*Termination Fee*” shall have the meaning assigned to it in Section 6 21.

“*Termination Notice*” means any notice given by the Bank pursuant to Section 8.03(c) which shall be in the form of Exhibit B.

“*Written*” or “*in writing*” means any form of written communication or a communication by means of facsimile device.

**Section 1.02. Incorporation of Certain Definitions by Reference.** Each capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Ordinance and the Bonds, as applicable, unless the context otherwise requires.

**Section 1.03. Accounting Matters** All accounting terms used herein without definition shall be interpreted in accordance with generally accepted accounting principles, consistently applied, and, except as otherwise expressly provided herein, all accounting determinations



required to be made pursuant to this Agreement shall be made in accordance with generally accepted accounting principles, consistently applied.

**Section 1.04. Computation of Time Periods.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise specified herein, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

**Section 1.05. New York City Time Presumption.** All references herein to times of the day shall be presumed to refer to New York City time unless otherwise specified.

**Section 1.06. Relation to Other Documents.** Nothing in this Agreement shall be deemed to amend or relieve the City of any of its obligations under any Related Document.

**Section 1.07. Interpretation.** All words used herein shall be construed to be of such gender or number as the circumstances require. Reference to any document means such document as amended or supplemented from time to time as permitted under their respective terms and the terms hereof. Reference herein to an Article, Exhibit or Section shall constitute a reference to such Article, Exhibit or Section of or to this Agreement unless otherwise specified. Further, the parties hereto agree that:

- (a) The Bank is a Liquidity Facility Issuer under the Ordinance.
- (b) This Agreement is the initial Liquidity Facility under the Ordinance.

## **ARTICLE II**

### **THE COMMITMENT; FEES**

#### **Section 2.01. Commitment To Purchase Bonds**

(a) Subject to the terms and conditions of this Agreement, the Bank hereby agrees from time to time during the Sub-Series 2005-1 Bonds Purchase Period to extend credit to the City through the purchase, with the Bank’s own funds, of Sub-Series 2005-1 Eligible Bonds, at the Purchase Price on a Purchase Date. The aggregate principal amount (or portion thereof in Authorized Denominations) of any Sub-Series 2005-1 Eligible Bonds purchased on any Purchase Date shall not exceed the Sub-Series 2005-1 Available Principal Commitment (calculated in each case, without giving effect to any purchase of Sub-Series 2005-1 Eligible Bonds by the Bank on such date) at 10:30 a.m. on such Purchase Date. The portion of the Purchase Price paid for any Sub-Series 2005-1 Eligible Bonds constituting Accrued Interest on such Sub-Series 2005-1 Eligible Bonds (the “Sub-Series 2005-1 Interest Component”) shall not exceed the Sub-Series 2005-1 Available Interest Commitment (calculated in each case without giving effect to any purchase of Sub-Series 2005-1 Eligible Bonds by the Bank on such date) at 10:30 a.m. on such Purchase Date. Any Eligible Sub-Series 2005-1 Bonds so purchased shall thereupon constitute Bank Bonds and shall, from the date of such purchase and while they are Bank Bonds, bear interest at the Bank Rate and have other characteristics of Bank Bonds as set forth herein and in the Ordinance and the Bonds.

(b) Subject to the terms and conditions of this Agreement, the Bank hereby agrees from time to time during the Sub-Series 2005-2 Purchase Period to extend credit to the City through the purchase, with the Bank's own funds, of Sub-Series 2005-2 Eligible Bonds, at the Purchase Price on a Purchase Date. The aggregate principal amount (or portion thereof in Authorized Denominations) of any Sub-Series 2005-2 Eligible Bonds purchased on any Purchase Date shall not exceed the Sub-Series 2005-2 Available Principal Commitment (calculated in each case, without giving effect to any purchase of Sub-Series 2005-2 Bonds by the Bank on such date) at 10:30 a.m. on such Purchase Date. The portion of the Purchase Price paid for any Sub-Series 2005-2 Eligible Bonds constituting Accrued Interest on such Sub-Series 2005-2 Eligible Bonds (the "Sub-Series 2005-2 Interest Component") shall not exceed the Sub-Series 2005-2 Available Interest Commitment (calculated in each case without giving effect to any purchase of Sub-Series 2005-2 Eligible Bonds by the Bank on such date) at 10:30 a.m. on such Purchase Date. Any Sub-Series 2005-2 Eligible Bonds so purchased shall thereupon constitute Bank Bonds and shall, from the date of such purchase and while they are Bank Bonds, bear interest at the Bank Rate and have other characteristics of Bank Bonds as set forth herein and in the Ordinance and the Bonds.

(c) Subject to the terms and conditions of this Agreement, the Bank hereby agrees from time to time during the Sub-Series 2005-3 Purchase Period to extend credit to the City through the purchase, with the Bank's own funds, of Sub-Series 2005-3 Eligible Bonds, at the Purchase Price on a Purchase Date. The aggregate principal amount (or portion thereof in Authorized Denominations) of any Sub-Series 2005-3 Eligible Bonds purchased on any Purchase Date shall not exceed the Sub-Series 2005-3 Available Principal Commitment (calculated in each case, without giving effect to any purchase of Sub-Series 2005-3 Eligible Bonds by the Bank on such date) at 10:30 a.m. on such Purchase Date. The portion of the Purchase Price paid for any Sub-Series 2005-3 Eligible Bonds constituting Accrued Interest on such Sub-Series 2005-3 Eligible Bonds (the "Sub-Series 2005-3 Interest Component") shall not exceed the Sub-Series 2005-3 Available Interest Commitment (calculated in each case without giving effect to any purchase of Sub-Series 2005-3 Eligible Bonds by the Bank on such date) at 10:30 a.m. on such Purchase Date. Any Sub-Series 2005-3 Eligible Bonds so purchased shall thereupon constitute Bank Bonds and shall, from the date of such purchase and while they are Bank Bonds, bear interest at the Bank Rate and have other characteristics of Bank Bonds as set forth herein and in the Ordinance and the Bonds.

(d) Subject to the terms and conditions of this Agreement, the Bank hereby agrees from time to time during the Sub-Series 2005-4 Purchase Period to extend credit to the City through the purchase, with the Bank's own funds, of Sub-Series 2005-4 Eligible Bonds, at the Purchase Price on a Purchase Date. The aggregate principal amount (or portion thereof in Authorized Denominations) of any Sub-Series 2005-4 Eligible Bonds purchased on any Purchase Date shall not exceed the Sub-Series 2005-4 Available Principal Commitment (calculated in each case, without giving effect to any purchase of Sub-Series 2005-4 Eligible Bonds by the Bank on such date) at 10:30 a.m. on such Purchase Date. The portion of the Purchase Price paid for any Sub-Series 2005-4 Eligible Bonds constituting Accrued Interest on such Sub-Series 2005-4 Eligible Bonds (the "Sub-Series 2005-4 Interest Component") shall not exceed the Sub-Series 2005-4

Available Interest Commitment (calculated in each case without giving effect to any purchase of Sub-Series 2005-4 Eligible Bonds by the Bank on such date) at 10:30 a.m. on such Purchase Date. Any Sub-Series 2005-4 Eligible Bonds so purchased shall thereupon constitute Bank Bonds and shall, from the date of such purchase and while they are Bank Bonds, bear interest at the Bank Rate and have other characteristics of Bank Bonds as set forth herein and in the Ordinance and the Bonds.

**Section 2.02. Method of Purchasing** If, on or before any Purchase Date during the applicable Purchase Period for a sub-series of Bonds, the Bank receives at the location specified for the delivery of a Notice of Bank Purchase specified pursuant to Section 9.04, a Notice of Bank Purchase from the Tender Agent, not later than 12:00 noon, the Bank shall, subject to Sections 2.01 and Article VII hereof, transfer to the Tender Agent not later than 2:30 p.m. on such Purchase Date, in immediately available funds, an amount equal to the aggregate Purchase Price of all Eligible Bonds tendered or deemed tendered for purchase on such date but not remarketed as specified in such Notice of Bank Purchase. Any Notice of Bank Purchase received by the Bank after 12:00 noon on any Business Day shall be deemed to be received by the Bank on the next succeeding Business Day. A Notice of Bank Purchase shall be irrevocable after receipt thereof by the Bank. The Bank shall have no responsibility for, nor incur any liability in respect of, any act, or any failure to act, by the Tender Agent or the Remarketing Agent that results in its failure to effect the purchase of Eligible Bonds by the Bank, with such funds pursuant to this Section 2.02. Eligible Bonds purchased pursuant to this Article II shall be registered by the Tender Agent in the name of the Bank, or, if directed in writing by the Bank, its nominee or designee, and shall be promptly delivered by the Tender Agent to be held as Bank Bonds under this Agreement and the Ordinance or as the Bank may otherwise direct in writing, and prior to such delivery shall be held in trust by the Tender Agent for the benefit of the Bank. If the Bonds are in book entry only form with the Depository Trust Company or any other depository appointed for such purpose ("DTC"), Bank Bonds shall be held by the Tender Agent in its DTC participant account for the benefit of the Bank Bondholder. Any amounts received by the Tender Agent from the Bank pursuant to the terms of this Agreement and not used to pay the Purchase Price of Eligible Bonds shall be immediately returned to the Bank, and the Available Commitment shall not be reduced pursuant to clause (b) of the definition of Available Principal Commitment by the amount drawn but so returned.

**Section 2.03. Mandatory Reductions of Available Commitment.**

(a) (i) Upon (x) any redemption or repayment of all or any portion of the principal amount of the Sub-Series 2005-1 Bonds or (y) the conversion of the interest rate borne by any Sub-Series 2005-1 Bonds to an interest rate other than a Covered Rate provided the Bank has honored any Notice of Bank Purchase delivered prior to such date in accordance with the terms of this Agreement, the Sub-Series 2005-1 Available Principal Commitment shall be reduced upon receipt by the Bank of written notice of such occurrence from the City by the principal amount of the Sub-Series 2005-1 Bonds so redeemed, repaid or so converted, as specified in such written notice. Upon reduction of the Sub-Series 2005-1 Available Commitment pursuant to this Section to zero, the Sub-Series 2005-1 Bond Purchase Period shall automatically terminate. The Issuer shall cause the Paying Agent to notify the Bank within one (1) business Day of any such

redemption, prepayment, repayment, other payment or conversion of the Sub-Series 2005-1 Bonds.

(ii) Upon (x) any redemption or repayment of all or any portion of the principal amount of the Sub-Series 2005-2 Bonds or (y) the conversion of the interest rate borne by any of Sub-Series 2005-2 Bonds to an interest rate other than a Covered Rate provided the Bank has honored any Notice of Bank Purchase delivered prior to such date in accordance with the terms of this Agreement, the Sub-Series 2005-2 Available Principal Commitment shall be reduced upon receipt by the Bank of written notice of such occurrence from the City by the principal amount of the Sub-Series 2005-2 Bonds so redeemed, repaid or so converted, as specified in such written notice. Upon reduction of the Sub-Series 2005-2 Available Commitment pursuant to this Section to zero, the Sub-Series 2005-2 Bond Purchase Period shall automatically terminate. The Issuer shall cause the Paying Agent to notify the Bank within one (1) business Day of any such redemption, prepayment, repayment, other payment or conversion of the Sub-Series 2005-2 Bonds.

(iii) Upon (x) any redemption or repayment of all or any portion of the principal amount of the Sub-Series 2005-3 Bonds or (y) the conversion of the interest rate borne by any of Sub-Series 2005-3 Bonds to an interest rate other than a Covered Rate provided the Bank has honored any Notice of Bank Purchase delivered prior to such date in accordance with the terms of this Agreement, the Sub-Series 2005-3 Available Principal Commitment shall be reduced upon receipt by the Bank of written notice of such occurrence from the City by the principal amount of the Sub-Series 2005-3 Bonds so redeemed, repaid or so converted, as specified in such written notice. Upon reduction of the Sub-Series 2005-3 Available Commitment pursuant to this Section to zero, the Sub-Series 2005-3 Bond Purchase Period shall automatically terminate. The Issuer shall cause the Paying Agent to notify the Bank within one (1) business Day of any such redemption, prepayment, repayment, other payment or conversion of the Sub-Series 2005-3 Bonds

(iv) Upon (x) any redemption or repayment of all or any portion of the principal amount of the Sub-Series 2005-4 Bonds or (y) the conversion of the interest rate borne by any of Sub-Series 2005-4 Bonds to an interest rate other than a Covered Rate provided the Bank has honored any Notice of Bank Purchase delivered prior to such date in accordance with the terms of this Agreement, the Sub-Series 2005-4 Available Principal Commitment shall be reduced upon receipt by the Bank of written notice of such occurrence from the City by the principal amount of the Sub-Series 2005-4 Bonds so redeemed, repaid or so converted, as specified in such written notice. Upon reduction of the Sub-Series 2005-4 Available Commitment pursuant to this Section to zero, the Sub-Series 2005-2 Bond Purchase Period shall automatically terminate. The Issuer shall cause the Paying Agent to notify the Bank within one (1) business Day of any such redemption, prepayment, repayment, other payment or conversion of the Sub-Series 2005-4 Bonds.

(b) The Available Commitment and the Purchase Period shall automatically terminate on the date on which an Alternate Liquidity Facility has become effective pursuant to the Ordinance following the Bank's honoring any Notice of Bank Purchase delivered in accordance with the terms hereof which requires that the Bank advance funds hereunder to pay the Purchase Price of Bonds tendered in connection with the substitution of this Agreement

#### **Section 2.04. Sale of Bank Bonds; Reinstatement**

(a) ***Right To Sell Bank Bonds.*** The Bank expressly reserves the right to sell, at any time, Bank Bonds, subject, however, to the express terms of this Agreement and the Ordinance. The Bank agrees to promptly notify the Tender Agent and the Remarketing Agent of any such sale (other than a sale made pursuant to Section 2.04(c)) and to notify the transferee that such Bond is not an Eligible Bond so long as it remains a Bank Bond. Any Bank Bondholders shall be deemed to have agreed not to sell such Bank Bond to any Person except the Bank or to an institutional investor or other person which customarily purchases commercial paper or tax exempt securities in large denominations or a Purchaser identified by the Remarketing Agent pursuant to Section 2.04(b). Each seller of a Bank Bond to any Person other than a Purchaser identified by the Remarketing Agent pursuant to Section 2.04(b) shall notify the Remarketing Agent and the Tender Agent of the identity of the new Bank Bondholder purchasing such Bank Bond and shall require such new Bank Bondholder to agree to sell such Bank Bonds as provided in the preceding sentence or pursuant to Section 2.04(c) and to agree not to otherwise sell its Bank Bonds.

(b) ***Purchase Notices.*** Prior to 12:00 noon on any Business Day on which Bank Bondholders hold Bank Bonds, the Remarketing Agent may deliver a notice (a "Purchase Notice") to the Bank Bondholders as registered on the bond register maintained by the Tender Agent and to the Bank, stating that it has located a purchaser (the "Purchaser") for some or all of such Bank Bonds and that such Purchaser desires to purchase such Bank Bonds on a Business Day (a "Sale Date") which shall be at least one Business Day after the date on which the Purchase Notice is received by the Bank Bondholder. The Bank Bonds to be purchased shall be in an Authorized Denomination and at a price of par plus interest as determined by the Remarketing Agent pursuant to the Ordinance (the "Sale Price"). Interest on Bank Bonds shall otherwise be payable as provided in Section 3.01

(c) ***Sale of Bank Bonds*** If a Bank Bondholder elects, at its sole option, to sell any Bank Bonds to any Purchaser, it shall give notice of such election to the Tender Agent and the Remarketing Agent at or before 4:00 p.m. on the Business Day preceding the Sale Date. If a Bank Bondholder elects, at its sole option, not to sell any Bank Bonds to any Purchaser, it shall give notice of such election to the Tender Agent at or before 4:00 p.m. on the Business Day next preceding the Sale Date. In the event no such notice is timely delivered by a Bank Bondholder such Bank Bondholder shall be deemed to have elected to sell such Bank Bonds to a Purchaser. If a Bank Bondholder elects, or is deemed to have elected, to sell such Bank Bonds to a Purchaser, such Bank Bondholder shall deliver such Bank Bonds to the Remarketing Agent by 1:00 p.m. on the Sale Date

against receipt by the Bank Bondholder, of the Sale Price and the Differential Interest Amount therefor in immediately available funds in the manner referred to in Section 2.08(a) or at such other Bank Bondholder's address listed in the bond register maintained by the Tender Agent, as the case may be, and such Bond shall thereupon no longer be considered a Bank Bond. In the event that a Bank Bondholder fails to deliver its Bond as described in the preceding sentence, the Bank Bondholder shall be deemed to have so delivered its Bond and the Remarketing Agent shall deliver the Sale Price therefor to the Tender Agent to be held in trust, together with the Differential Interest Amount, for the benefit of such Bank Bondholder pending the surrender of the Bank Bond by such Bank Bondholder. Upon delivery of such Sale Price by the Remarketing Agent to the Tender Agent and the delivery of the Differential Interest Amount by the City to the Tender Agent, such Bank Bond shall no longer be Outstanding. When Bank Bonds are purchased or deemed purchased in accordance with this Section 2.04(c), the Remarketing Agent shall, upon receipt of such Bank Bonds and upon receipt by the Bank or such Bank Bondholder of the Sale Price, notify the Tender Agent that such Bonds are no longer Bank Bonds. If a Bank Bondholder notifies the Tender Agent and the Remarketing Agent at or before 4:00 p.m. on the Business Day before the Sale Date that it will not sell its Bank Bonds, the Remarketing Agent shall notify the Tender Agent and such Bank Bondholders that as of the Sale Date such Bonds shall no longer be considered Bank Bonds.

(d) ***Continuing Obligations*** Following any sale of Bank Bonds or any election to retain Bonds pursuant to Section 2.04(c), the Bank Bondholder shall retain the right to receive payment from the City of any interest which has accrued and is payable thereon to the date of such a sale or election as provided herein and in the Ordinance.

(e) ***No Warranty*** Any sale of a Bank Bond pursuant to this Section 2.04 shall be without recourse to the seller and without representation or warranty of any kind by the Bank or any Bank Bondholder.

**Section 2.05. Rights of Bank Bondholders.** Upon purchasing Bank Bonds, Bank Bondholders shall be entitled to and, where necessary, shall be deemed assigned all rights and privileges accorded Bondholders as provided in the Bonds, including Bank Bonds and the Ordinance and the Bond Insurance Policy other than the right to tender such Bond for purchase pursuant to the Ordinance and have such Bond purchased with amounts drawn hereunder. Upon purchasing Bank Bonds and registration of such Bank Bonds in the name of or at the direction of the Bank, as provided herein, Bank Bondholders shall be recognized by the City and the Tender Agent as the true and lawful owners of the Bank Bonds, free from any claims, liens, security interests, equitable interests and other interests of the City or the Tender Agent, except as otherwise provided herein and except as such interests might exist under the terms of the Bonds with respect to all Bondholders.

**Section 2.06. Facility Fee** The City hereby agrees to pay or cause to be paid to the Bank a facility fee with respect to the commitment of the Bank hereunder (the "Facility Fee") at the rate of 36 basis points ( 36%) per annum for the Purchase Period on the amount of the Available Commitment of the Bank (calculated as though no Bonds had been purchased by the Bank hereunder and calculated on an actual/365 day basis) payable in immediately available

funds quarterly in arrears in respect of the Available Commitment (as so calculated) in effect as of the first day of such quarterly period. (For purposes of determining the amount of the Facility Fee on the Agreement Effective Date, the Facility Fee shall be calculated as if all Sub-Series Effective Date Requirements have been met for all sub-series of the Bonds. The Issuer agrees to pay such Facility Fees on the first day of each January, April, July, and October beginning October 1, 2008, through the Expiration Date (each such date being a "Fee Payment Date"); provided, however, that the City agrees to pay all accrued fees to the Bank at the end of the Purchase Period. The above Facility Fee is subject to the maintenance of the unenhanced ratings on the City's senior Airport System revenue obligations at a level of "A-" by S&P, and maintenance of the claims-paying ability of the Insurer of "Aaa/AAA/AAA" by Moody's, S&P and Fitch, respectively. The Facility Fee shall be increased as set forth in the chart below upon the withdrawal, suspension or reductions of such ratings. Such Facility Fees shall increase on a cumulative basis based on the lowest rating then assigned by any rating agency.

<u>Downgrade of City</u>			
<u>Downgrade of Bond Insurer</u>		Each Notch Below A-	Below Investment Grade/Withdrawn/Suspension
		Plus 0.050%	Plus 0.250%
	Each Notch Below Aaa/AAA/AAA	Plus 0.100%	Plus 0.300%
	Each Notch Below Aa3/AA-/AA-	Plus 0.150%	Plus 0.350%
	Each Notch Below A3/A-/A-	Plus 0.250%	Plus 0.450%

**Section 2.07. Drawing Fee.** The City hereby agrees to pay to the Bank a fee of \$250 per draw under this Agreement.

**Section 2.08. Transfer Fee.** The City also hereby agrees to pay to the Bank on the date of each transfer of this Agreement to a successor Tender Agent a transfer fee of \$1,000 plus the reasonable fees of any legal counsel retained by the Bank in connection therewith.

**Section 2.09. Yield Protection**

(a) If the Bank, shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty, or regulation, or any policy, guideline, or directive of, or any change in the interpretation, implementation, or administration thereof by, any court, central bank, or other administrative, or governmental authority (in each case,

whether or not having the force of law), or compliance by the Bank with any request or directive of any such court, central bank or other administrative or governmental authority (whether or not having the force of law), shall (i) change the basis of taxation of payments to the Bank of any amounts payable hereunder (except for taxes on the overall net income of the Bank), (ii) impose, modify or deem applicable any reserve, special deposit, or similar requirement against the commitment, obligation or credit extended or issuing or honoring draws hereunder, or assets held by, or deposits with or for the account of, the Bank or (iii) impose on the Bank any other condition regarding this Agreement, and the result of any event referred to in clause (i), (ii) or (iii) above shall be to increase the cost to the Bank of maintaining its commitment, honoring draws or holding Bank Bonds hereunder or to reduce the amount of any sum received or receivable by the Bank hereunder, then the Bank may, upon 30 days prior written notice increase its charges to the City by a reasonable and fair amount to reimburse the Bank for the future costs to the Bank based on the application of such changes to the transactions effected pursuant to this Agreement.

(b) If the Bank shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty or regulation, or any policy, guideline, or directive of, or any change in the interpretation, implementation, or administration thereof by, any court, central bank, or other administrative or governmental authority, or compliance by the Bank with any request by or directive of any central bank or other authority (in each case, whether or not having the force of law) or compliance by the Bank with any request or directive of any such court, central bank or other administrative or governmental authority (whether or not having the force of law), shall impose, modify or deem applicable any capital adequacy or similar requirement (including, without limitation, a request or requirement that affects the manner in which the Bank allocates capital resources to its commitments (including its obligations under standby bond purchase agreements)) that either (i) affects or would affect the amount of capital to be maintained by the Bank or (ii) reduces or would reduce the rate of return on the Bank's capital to a level below that which the Bank could have achieved but for such circumstances (taking into consideration the policies of the Bank with respect to capital adequacy) then, the Bank may, upon 30 days prior written notice, increase its charges to the City by a reasonable and fair amount to compensate the Bank for the future costs to the Bank based on the application of such changes to the transactions effected pursuant to this Agreement.

(c) A certificate as to such increased cost, increased capital, or reduction in return incurred by the Bank as a result of any event mentioned in clause (a) or (b) of this subsection setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by the Bank to the City simultaneously with such notice of increase in charges. In making the determinations contemplated by the above referenced certificate, the Bank may make such reasonable estimates, assumptions, allocations and the like that the Bank in good faith determines to be appropriate. The obligations of the City under this Section shall survive the termination of this Agreement.

(d) In the event that the Bank makes demand upon the City for payment of any amounts pursuant to this Section, the City may terminate this Agreement without



being required to pay any cost, penalty or termination fee, and with the right to receive a prorated refund of any fee paid to the Bank in advance that has not been earned as of the date of termination.

#### **Section 2.10. Computations; Payments; Default Interest.**

(a) **Method of Payment.** Except as may be otherwise provided herein, interest on amounts owed hereunder or with respect to Bank Bonds shall be computed on the basis of a year of 365/366 days and the actual number of days elapsed. Any payments received by the Bank later than 3:30 p.m. on any day shall be deemed to have been paid on the next succeeding Business Day. All payments by or on behalf of the City to the Bank hereunder shall be fully earned when due and nonrefundable when paid and made in lawful currency of the United States of America and in immediately available funds. All such payments, unless otherwise directed by the Bank in writing, shall be made by means of wire transfer of funds through the Federal Reserve Wire System to the Bank's account at Citibank, New York Branch, New York, New York, ABA No.: 021-000-089, Account Name: Dexia Credit Local, New York Branch, Account No.: 36240356, Reference: F-0743 City of Austin, or such other address as the Bank may specify in writing to the City and the Tender Agent from time to time (the "Payment Office"). If any payment due hereunder is due on a day that is not a Business Day, then such amount shall be due on the next succeeding Business Day and such extension of time shall in such case be included in the computation of the payment due hereunder.

(b) **Default Interest.** The City agrees to pay the Bank, upon demand, interest on any and all amounts owed by the City under this Agreement which are not paid when due, computed at a per annum (computed on the basis of a year of 365/366 days and the actual number of days elapsed) equal to the Base Rate plus 3.00%, but not to exceed the Maximum Rate (the "Default Rate") at such times as are described in Section 8.03(d). The obligations of the City under this Section 2.08 shall survive the termination of this Agreement.

**Section 2.11. Cure.** The City agrees to pay to the Bank, on demand, any amounts advanced by or on behalf of the Bank, to the extent required to cure any default, event of default or event of nonperformance under this Agreement or any Related Document. The Bank shall give the City reasonably prompt notice of any such advances. The Bank shall have the right, but not the obligation, to cure any such default, event of default or event of nonperformance.

**Section 2.12. Maintenance of Accounts** The Bank shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the City and the amounts payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be presumptive evidence of the existence and amounts of the obligations of the City therein recorded. The failure to record any such amount shall not, however, limit or otherwise affect the obligations of the City hereunder to repay all amounts owed hereunder, together with all interest accrued thereon as provided herein.

**Section 2.13. Withholding.** All payments of principal, interest and any other sums due hereunder shall be made in the amounts required hereunder without any reduction or setoff, notwithstanding the assertion of any right of recoupment or setoff or of any counterclaim by the City, and without any withholding on account of taxes, levies, duties or any other deduction whatsoever. If the City is required by law to withhold or deduct any sum from payments required under this Agreement, the City shall, to the extent permitted by applicable law, increase the amount paid by it to the Bank, so that, after all withholdings and deductions, the amount received by the Bank shall equal the amount the Bank would have received without any such withholding or deduction.

## **ARTICLE III**

### **BANK BONDS**

**Section 3.01. Payments** Notwithstanding anything to the contrary contained in any Bank Bond, the City agrees that (a) the Interest Component shall be paid by the City to the Bank, unless previously paid to the Bank as part of the Sale Price, on the Interest Payment Date following the Purchase Date on which such Eligible Bonds are purchased with amounts drawn hereunder and the City shall pay to the Bank on such Interest Payment Date interest on the Interest Component from the date advanced until paid to the Bank computed at the Bank Rate (subject to Section 3.03) and (b) (i) the interest on the unpaid principal amount of each Bank Bond or Bank Bonds from and including the applicable Purchase Date or the from the most recent Interest Payment Date on which interest has been paid to the Bank shall be paid on each Interest Payment Date and computed at a rate per annum equal to the Bank Rate, subject to the provisions of Section 3.03 below and (ii) interest accruing pursuant to clause (b)(i) above shall be payable (each such date specified in this clause (b)(ii) being a "Bank Bond Interest Payment Date") (A) on each Interest Payment Date, (B) upon redemption of such Bank Bond pursuant to the Ordinance (to the extent of the interest accrued on the amount being redeemed), (C) on each Sale Date (to the extent of the interest accrued on the amount being sold or deemed sold after a credit for any interest included in the Sale Price, and as provided in Section 2.04(c)), and (D) at maturity (whether by acceleration or otherwise). In the event any Bank Bond is remarketed or otherwise transferred by the Bank before payment in full of the funds provided by the Bank hereunder with respect thereto, together with interest thereon at the Bank Rate (subject to Section 3.03), the provisions of this Article III shall continue to apply to such indebtedness until all sums owing for all periods during which the same was a Bank Bond are paid. Notwithstanding anything to the contrary in the Ordinance, all or any portion of the Bank Bonds may be optionally redeemed at any time without penalty, but only in Authorized Denominations. The obligation of the City to make the payments described in this Section shall be reduced to the extent that such obligations are paid pursuant to the Ordinance or as part of the Sale Price.

**Section 3.02. Mandatory Redemption.** The City agrees to pay the principal due with respect to each Bank Bond in accordance with Section A-302 of the Ordinance unless such principal has been paid in full on a Payment Date (defined herein). Interest on such Bank Bonds shall be payable as provided in Section 3.01. Notwithstanding the foregoing, the City may optionally redeem any Bank Bond at any time without penalty or premium. All City obligations with respect to all Bank Bonds shall be due and payable in full on the earliest of (a) the date such Bonds are remarketed and sold or deemed sold by the Bank or a Bank Bondholder to a Purchaser

pursuant to Section 2.04(c), (b) the date the interest rate borne by the Bonds is converted to a rate other than a Covered Rate, or (c) on the date of the delivery of an Alternate Liquidity Facility (clauses (a), (b),(c) are collectively referred to as, the "Payment Date").

### **Section 3.03. Maximum Rate.**

(a) If the amount of interest payable hereunder under any Bank Bond for any period in accordance with terms hereof exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Rate, then interest for such period shall be payable in an amount calculated at the Maximum Rate.

(b) Any interest that would have been due and payable for any period but for the operation of Section 3.03(a) shall accrue and be payable as provided in this paragraph (b) and shall, less interest actually paid to the Bank for such period, constitute the "Excess Interest Amount." To the extent permitted by applicable Texas law, if there is any accrued and unpaid Excess Interest Amount as of any date then the principal amount of Bank Bonds, if any, (but only so long as such Bank Bonds remain outstanding) shall bear interest at the Maximum Rate, until payment to the Bank of the entire Excess Interest Amount.

(c) Notwithstanding the foregoing, on the date on which no principal amount hereunder remains unpaid hereunder and no Bank Bonds are outstanding, the City shall, to the extent permitted under applicable law, pay to the Bank a fee equal to any accrued and unpaid Excess Interest Amount. The parties hereto acknowledge and agree that the payment of any amount described in this Section 3.03(c) will not be insured by the Bond Insurance Policy and the City's obligation to make such payment shall be subordinate to its obligation to repay the Bonds and any amounts owed to the Insurer.

## **ARTICLE IV**

### **CONDITIONS PRECEDENT TO EFFECTIVENESS**

**Section 4.01. Conditions Precedent to Effectiveness.** This Agreement shall become effective on the date (the "Agreement Effective Date") when the Bank shall have received each of the following which are, in form and substance, satisfactory to the Bank and its counsel; provided however; that the City may not draw upon the Available Commitment for a particular sub-series of Bonds until the Sub-Series Effective Date for such sub-series of Bonds.

(a) A true and complete original executed counterpart of this Agreement.

(b) Certified copies of the ordinances of the City approving this Agreement, the Related Documents (including the Bond Insurance Policy and all endorsements thereto) and the other matters contemplated hereby.

(c) The approval of the Texas Attorney General related to this Agreement.

(d) A certificate of each of the City and the Tender Agent certifying the names and true signatures of the respective officers thereof authorized to sign this Agreement and the other documents to be delivered by it hereunder

(e) Letter of Vinson & Elkins L.L.P. ("*Bond Counsel*"), addressed to the Bank as to the form of no-adverse effect opinion of Vinson & Elkins to be delivered as part of the Sub-Series Effective Date Requirements

(f) Opinion of Bond Counsel, addressed to the Bank (or a reliance letter with respect thereto) and dated the Closing Date, covering such matters as the Bank may reasonably request including but not limited to a favorable opinion as to the matters addressed in Sections 5.01, 5.02, 5.04 and 5.12.

(g) Opinions of Andrews Kurth LLP, special United States counsel for the Bank, and the French counsel to the Bank, as to such matters as the Bank, the Issuer and Insurer may reasonably request.

(h) Opinion of counsel to the City in form and substance satisfactory to the Bank.

(i) A copy of the opinion of counsel to the Bond Insurer delivered at the time of the original closing on the Bonds, as to (i) the due authorization, execution and delivery of the Bond Insurance Policy and (ii) the legality, validity, binding effect and enforceability of the Bond Insurance Policy

(j) Copies of all legal opinions rendered in connection with the issuance of the Bonds and the delivery of the Related Documents and the conversion of the Bonds to a Weekly Rate.

(k) A certificate signed by duly authorized officers of the City, dated the Closing Date, stating that: (i) the representations and warranties of the City contained in Article V and in the Related Documents are correct on and as of the Closing Date as though made on and as of such date; (ii) no petition by or against the City has at any time been filed under the United States Bankruptcy Code or under any similar act; (iii) no Default or Event of Default has occurred and is continuing, or would result from the execution and performance of this Agreement or the Related Documents and (iv) all conditions precedent to the issuance of the Bonds have been satisfied and the City has duly executed and delivered the Bonds to the Paying Agent.

(l) Payment of the Bank's closing fee and the Bank's attorney's fees and expenses described in Section 9.03(a) payable on the Effective Date.

(m) Written confirmation that the Bonds have received long-term and short-term credit ratings of "AAA/A-1+" from S&P.

(o) Endorsement or rider to the Bond Insurance Policy

(n) Such other documents, instruments, approvals and, if requested by any Bank, certified duplicates of executed originals thereof, and opinions as such Bank may reasonably request.

## ARTICLE V

### REPRESENTATION AND WARRANTIES

The City represents and warrants as follows:

**Section 5.01. Existence and Power.** The City is a “Home Rule City,” acting as such under the Constitution and laws of the State, and has full legal right, power and authority to (i) charge and collect revenues related to the Airport System, (ii) adopt the Ordinance, (iii) execute and deliver this Agreement and the other Related Documents (iv) issue and deliver the Bonds, (v) pledge the Net Revenues, and (vi) perform fully and completely all its obligations and liabilities under the Ordinance, this Agreement and the other Related Documents.

**Section 5.02. Regulatory Authority.** The City is duly authorized to conduct its business under the all applicable laws, rulings, regulations and ordinances and the departments, agencies and political subdivisions governing it or regulating its business, and the City has obtained all material and requisite approvals of the state and of federal, regional and local governmental bodies required to be obtained prior to the date of delivery of the Bonds, the Related Documents and this Agreement.

**Section 5.03. Noncontravention.** The adoption, execution and delivery by the City of this Agreement and the other Related Documents and the performance of its obligations hereunder and thereunder, will not violate any existing law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the City, or result in a breach of any of the terms of, or constitute a default under or result in the creation or imposition of any lien on, any indenture, ordinance, mortgage, deed of trust, lease or other agreement or instrument to which the City is a party or by which it or any of its property is bound or its articles of incorporation, bylaws or any of the rules or regulations applicable to it or its property or any decree or order of any court or other governmental body.

**Section 5.04. Due Authorization.** The adoption, execution, delivery and performance by the City of this Agreement and the other Related Documents to which it is a party is within its corporate power and authority, and has been duly authorized by all necessary action and will not contravene any provision of the Ordinance.

**Section 5.05. Valid and Binding Obligations.** This Agreement and the other Related Documents to which the City is a party are valid and binding limited obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforceability may be limited by the City’s bankruptcy, insolvency, reorganization, moratorium or other laws or equitable principles relating to or limiting creditors’ rights generally.

**Section 5.06. Remarketing Memorandum.** The information regarding the City contained in the Remarketing Memorandum is correct in all material respects and does not contain an untrue statement of a material fact or omit to state a material fact necessary to make

the statements made therein, in light of the circumstances under which they were made, not misleading. The City makes no representation as to information in the Remarketing Memorandum relating to the Bank and provided by the Bank for inclusion therein. The City makes no representation as to information in the Remarketing Memorandum about any other party.

**Section 5.07. Pending Litigation and Other Proceedings.** There is no pending action or proceeding before any court, governmental agency or arbitrator against or directly involving the City and, to the City's knowledge, there is no threatened action or proceeding affecting the City or any of its Affiliates or any of its assets before any court, governmental agency or arbitrator which, if adversely determined, could materially and adversely affect the financial condition or operations of the City or the validity or enforceability of this Agreement or any of the other Related Documents or the ability of the City to perform its obligations hereunder or under the other Related Documents.

**Section 5.08. Insurance** The City currently maintains insurance of such type and in such amounts or in excess of such amounts as are customarily carried by, and insures against such risks as are customarily insured against by, Texas home-rule cities of like type, size and character to the City.

**Section 5.09. Financial Statements** The balance sheets of the City as of September 30, 2007 and the related statement of revenues and expenses and changes in financial position for the years then ended and the auditors' reports with respect thereto and the balance sheets of the City as of September 30, 2007 and the related statements of revenues and expenses and change in financial position for the period then ended, copies of which have heretofore been furnished to the Bank, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the City at such dates and for such periods, and were prepared in accordance with generally accepted accounting principles as applied to Texas home-rule cities. Since September 30, 2007 there has been no material adverse change in the business, properties, condition (financial or otherwise) or operations, present or prospective, of the City nor any increase in its long term debt which has not been otherwise disclosed to the Bank.

**Section 5.10. Complete and Correct Information.** All information, reports and other papers and data with respect to the City furnished to the Bank or its counsel by the City were, taken in the aggregate (including all updated information provided) and at the time the same were so furnished, complete and correct in all material respects, to the extent necessary to give the Bank a true and accurate knowledge of the subject matter. No fact is known to the City which materially and adversely affects or in the future may (so far as it can foresee) materially and adversely affect the business, assets or liabilities, financial condition, results of operations of the City or its prospects which has not been set forth in the financial statements referred to in Section 5.09 above or in such information, reports, papers and data or otherwise disclosed in writing to the Bank by the City. When taken in the aggregate, no document furnished or statement made by the City in connection with the negotiation, preparation or execution of this Agreement or any other Related Document contains any untrue statement of a fact material to its creditworthiness of the City or omits to state a material fact necessary in order to make the statements contained therein not misleading. With regard to any information provided to the

Bank which is subsequently updated prior to the Closing Date, this representation shall not apply to the information that has been updated to the extent updated

**Section 5.11. Pending Legislation and Decisions** To the knowledge of the City, there are no proposed amendments to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which will materially adversely affect the issuance of any of the Bonds, the security for any of the Bonds or the City's obligations hereunder or under any of the other Related Documents, or the City's ability to repay when due its obligations under this Agreement, any of the Bonds, and the other Related Documents.

**Section 5.12. Bond.** Each Bond (including all Bank Bonds) has been duly and validly issued under the Ordinance and entitled to the benefits thereof.

**Section 5.13. Default** No Event of Default or Default has occurred and is continuing.

**Section 5.14. Bank Bonds.** The Eligible Bonds purchased pursuant to Article II will be transferred to or held for the benefit of the Bank, free and clear of all liens, security interests or claims of any Person other than the Bank, except for consensual liens or other security interests as may be created by the Bank

**Section 5.15. Incorporation of Representations and Warranties.** The City hereby makes to the Bank the same representations and warranties as were made by it in each Related Document to which it is a party, which representations and warranties, together with the related definitions of terms contained therein, are hereby incorporated by reference with the same effect as if each and every such representation and warranty and definition were set forth herein in its entirety. No amendment to or waiver of such representations and warranties or definitions made pursuant to such Related Documents shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Bank

**Section 5.16. Security.** Pursuant to the Ordinance the City has pledged the Net Revenues to the payment and security of the Bonds (including the Bank Bonds) and the obligation of the City to make payments under this Agreement. The payment obligations of the City under this Agreement are Parity Obligations, as defined in the Ordinance. The Ordinance validly grants the pledge which it purports to create to secure the Bonds (including the Bank Bonds) and the City's obligations hereunder as and to the extent provided herein and in the Ordinance and is a perfected lien.

**Section 5.17. Usury.** The terms of the Agreement and the other Related Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

**Section 5.18. Federal Reserve Board Regulations.** The City does not intend to use any part of the proceeds of the Bonds or the funds advanced hereunder and has not incurred any indebtedness to be reduced, retired or purchased by the City out of such proceeds, for the

purpose of purchasing or carrying any Margin Stock, and the City does not own and has no intention of acquiring any such Margin Stock.

**Section 5.19. Investment Company Act.** The City is not an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended

**Section 5.20. Bond Insurance.** The Bonds, including payment of principal and interest on all Bank Bonds as provided in this Agreement are entitled to the benefits of Bond Insurance Policy.

## ARTICLE VI

### COVENANTS OF THE CITY

During the Purchase Period and so long as any obligation is owed to the Bank hereunder or under the Bonds, the City covenants and agrees as follows, unless the Bank shall otherwise consent in writing:

**Section 6.01. Compliance With Laws and Regulations.** The City shall comply with all laws, ordinances, orders, rules and regulations of duly constituted public authorities which may be applicable to its or its properties if the failure to comply could have a material adverse effect on the security for any of the Bonds or the City’s ability to pay when due any obligations under this Agreement or the Ordinance.

**Section 6.02. Reporting Requirements.** The City shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the City on a consolidated or combined basis in accordance with generally accepted accounting principles applicable to Texas home-rule cities consistently applied. The City shall furnish to the Bank two hard copies of each of the following:

(a) ***Annual Financial Statements*** As soon as available, and in any event within 180 days after the close of each Fiscal Year of the City, (i) the complete audited financial statements of the City including the balance sheet as of the end of such Fiscal Year and the related statements of revenues, expenses and cash flows and changes in fund balance for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year all in reasonable detail, certified and prepared by an independent certified public accountant in accordance with generally accepted accounting principles, consistently applied.

(b) ***Certificate of Compliance.*** Simultaneously with the delivery of each set of financial statements referred to in (a) above, a certificate signed by the chief financial officer or the treasurer of the City stating that (i) under his/her supervision the City has made a review of its activities during the preceding annual period for the purpose of determining whether or not the City has complied with all of the terms, provisions and conditions of this Agreement and the other Related Documents and (ii) to the best of his/her knowledge the City is not in default in the performance or observance of any of



the terms, covenants, provisions or conditions of this Agreement or any of the other Related Documents, or if the City shall be in default, such certificate shall specify each such default, the nature and status thereof and any remedial steps taken or proposed to correct each such default

(c) ***Other Reports.*** Promptly upon request by the Bank, copies of any financial statement or report furnished to any other holder of the long term securities of the City pursuant to the terms of any long term Ordinance, loan or credit or similar agreement and not otherwise required to be furnished to the Bank pursuant to any other clause of this Section 6.02.

(d) ***Amendments*** Promptly after the adoption thereof, copies of any amendments of or supplements to the bylaws of the City and copies of any amendments to the Related Documents.

(e) ***Ordinance Information.*** Copies of all notices, certificates, opinions and other reports or documents required to be filed pursuant to the Ordinance. The City shall provide the Bank written notice of any change in the identity of the Paying Agent, Tender Agent or the Remarketing Agent upon becoming aware of the same. The City shall, upon request, provide or cause to be provided, to the Bank the list of the name and address of the last known holders of the Bonds.

(f) ***Other Information.*** Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the City as the Bank may from time to time reasonably request.

**Section 6.03. Amendments.** The City shall not amend, modify or supplement, nor agree to any amendment or modification of, or supplement to, any of the Related Documents without the prior written consent of the Bank, which the Bank shall not unreasonably withhold or delay.

#### **Section 6.04. Notices.**

(a) ***Notice of Default.*** The City shall provide to the Bank immediate notice by telephone, promptly confirmed in writing, of any Default or Event of Default

(b) ***Litigation.*** Together with the information described in Section 6.02(b), the City shall provide to the Bank written notice of all actions, suits and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, against the City and which, if adversely determined could have a material adverse affect on the financial condition of the City or its ability to pay or perform its obligations hereunder or under any of the other Related Documents.

(c) ***Certain Notices*** Furnish to the Bank a copy of any notice, certification, demand or other writing or communication given by the Remarketing Agent or the Tender Agent to the City or by the City to the Remarketing Agent or the Tender Agent under or in connection with any of the Related Documents, in each case promptly after the receipt or giving of the same.

(d) **Other Notices** Promptly give written notice to the Bank of any material dispute which may exist between the City and any of the Remarketing Agent or the Tender Agent or any dispute in connection with any transaction contemplated under this Agreement or the other Related Documents

(e) **Failure of Other Parties to Perform.** Notice of the failure by the Bond Insurer to perform any of its obligations under the Bond Insurance Policy or by the Remarketing Agent, the Tender Agent or the Paying Agent to perform any of their respective obligations under the Related Documents.

(f) **Payments Under the Bond Insurance Policy** Notice of each demand for payment made by the Tender Agent or the Paying Agent under the Bond Insurance Policy

(g) **Substitutions.** Notice of any proposed substitution of this Agreement or the Bond Insurance Policy

**Section 6.05. Further Assurances** to the extent the provisions of Chapter 1208, Texas Government Code are held by a court of competent jurisdiction to not apply to this Agreement, the City shall, upon the request of the Bank, from time to time, execute and deliver and, if necessary, file, register and record such further financing statements, amendments, confirmation statements and other documents and instruments and take such further action as may be reasonably necessary to effectuate the provisions of this Agreement and the other Related Documents. Except to the extent it is exempt there from, the City will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, the other Related Documents and such instruments of further assurance.

**Section 6.06. Right of Entry** The City shall permit the duly authorized representatives of the Bank during normal business hours and upon reasonable notice to enter the premises of the City, or any parts thereof, to examine and copy the City's financial and corporate books, records and accounts related to the Related Documents, and to discuss the affairs, finances, business and accounts related to the City's Net Revenues with the City's officers.

**Section 6.07. Payment of Obligations; Removal of Liens** The City shall pay (a) all indebtedness and obligations of the City in accordance with the terms thereof and (b) all assessments or other governmental charges as the same respectively become due, all taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to the Net Revenues and promptly discharge or cause to be discharged all liens, encumbrances and charges on such property and assets.

**Section 6.08. Preservation of Existence, Ownership, Etc.** The City shall not dissolve nor shall it sell, lease, assign, transfer or otherwise dispose of all or substantially all of its assets

The City shall preserve and maintain its existence, right (charter and statutory) and franchises and licenses.

**Section 6.09. Related Obligations.** The City shall promptly pay all amounts payable by it hereunder and under the other Related Documents according to the terms hereof or thereof and shall duly perform each of its obligations under this Agreement and the other Related Documents to which it is a party, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety without giving effect to any expiration, amendment, supplement or termination of the Related Documents to which the Bank has not given its express consent.

**Section 6.10. Alternate Liquidity Facility.**

(a) The City shall obtain an Alternate Liquidity Facility to replace this Agreement or cause the Bonds to be converted to bear interest at interest rate Mode other than a Covered Rate in the event (i) the City terminates this Agreement pursuant to the terms hereof, (ii) the Bank shall furnish a Termination Notice to the Tender Agent in accordance with this Agreement, (iii) the Insurer shall be downgraded as set forth in Section 6.18 and the City does not replace the Insurer with an insurer reasonably acceptable to the Bank or (iv) the Bank shall determine not to extend the Expiration Date (such replacement or conversion to occur on or before the mandatory purchase date established pursuant to the Ordinance)

(b) The City agrees that any Alternate Liquidity Facility will require, as a condition to the effectiveness of the Alternate Liquidity Facility, that the Alternate Liquidity Facility will provide funds to the extent necessary, in addition to other funds available, on the date the Alternate Liquidity Facility becomes effective, for the purchase of all Bank Bonds at par plus interest (at the Bank Rate) through the date purchased. On such date any and all amounts owed to the Bank, hereunder or under the Ordinance or the Bonds shall be payable in full to the Bank.

(c) The City shall not permit an Alternate Liquidity Facility to become effective with respect to less than all of the Bonds without the prior written consent of the Bank.

**Section 6.11. Certain Information** The City shall not include in a remarketing document for the Eligible Bonds any information concerning the Bank that is not supplied in writing, or otherwise consented to, by the Bank for inclusion therein

**Section 6.12. Disclosure of Participants.** The City agrees to permit the Bank to disclose any information received by the Bank in connection herewith, including without limitation the financial information described in Section 6.02, to any Participants of the Bank in this Agreement

**Section 6.13. Sovereign Immunity** To the extent that the City has or hereafter may acquire under any applicable law any right to immunity from legal proceedings, including but not limited to a writ of mandamus ordering a levy of hotel occupancy taxes by the City, on the

grounds of sovereignty or otherwise, the City, to the fullest extent permitted by law, hereby irrevocably waives such rights to immunity for itself and agrees not to invoke any defense of immunity in respect of its obligations arising under or related to this Agreement

**Section 6.14. Paying Agent; Tender Agent; Remarketing Agent.** The City shall not remove the Paying Agent, the Tender Agent or the Remarketing Agent or appoint a successor Paying Agent, the Tender Agent or Remarketing Agent without the written consent of the Bank. If the position of Paying Agent, the Tender Agent or Remarketing Agent becomes vacant, the City shall promptly appoint a successor which is reasonably acceptable to the Bank.

**Section 6.15. Payment of Purchase Price.** The City shall cause the amounts advanced hereunder to be used only to pay the Purchase Price due and payable on any Purchase Date in connection with any Eligible Bonds.

**Section 6.16. Conversions; Defeasance.** The City (a) shall promptly furnish, or cause to be furnished, to the Bank, not later than its furnishing the same to the Remarketing Agent, a copy of any written notice furnished by the City to the Remarketing Agent pursuant to the Ordinance indicating a proposed conversion of the interest rate on the Bonds; and (b) shall not permit a conversion of the Bonds to Bonds bearing an interest rate other than a Covered Rate without the prior written consent of the Bank if, after giving effect to such conversion, any Bonds remain as Bank Bonds. In addition, the City will not defease, nor allow the defeasance of, the Bonds without having contemporaneously satisfied all of its obligations hereunder.

**Section 6.17. Bond Insurance Policy/Replacement**

(a) Unless and until an Alternate Credit Facility (as defined in the Ordinance) shall be in effect, the City shall at all times maintain the Bond Insurance Policy so that such Bond Insurance Policy (A) provides coverage in an amount equal to all payments of principal of and interest on the Eligible Bonds (whether at the stated rate for Bonds not purchased hereunder or at the Bank Rate, but not to exceed the Maximum Rate) pursuant to the terms hereof and of the Ordinance, and (B) remains in full force and effect for so long as any payment of principal or interest is outstanding with respect to any Eligible Bonds (including any Bank Bonds)

(b) Notwithstanding any provision of the Ordinance to the contrary, the City shall not replace or cancel the Bond Insurance Policy without the Bank's prior written consent. If the claims paying ability of the Bond Insurer is lowered below "Aa3," "AA-" or "AA-" by any two of Moody's, S&P or Fitch, respectively, the City shall within 30 days of such downgrade (i) replace the Insurer with an Insurer reasonably acceptable to the Bank and which will not cause a reduction, withdrawal or suspension of the then current rating on the Bonds as confirmed in writing by the rating agencies then rating the Bonds, (ii) convert the interest rate borne by the Bonds to an interest rate other than a Covered Rate and terminate this Agreement or (iii) obtain an Alternate Liquidity Facility.

(c) The City shall promptly forward to the Bank all notices, if any, received by the City from the Insurer under the Bond Insurance Policy

### **Section 6.18. Liens, Additional Debt and Rate Setting**

(a) **Parity Liens.** Except as permitted by the Ordinance, the City shall not grant any lien, pledge or security interest in the Net Revenues which is on parity with the lien on Net Revenues that secure the payment of the City's obligations hereunder.

(b) **Additional Senior Debt** The City shall not issue any obligations after the Closing Date which are secured by a lien on Net Revenues that is senior to that securing the Bonds.

**Section 6.19. Incorporation of Covenants by Reference** The City agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in each Related Document to which it is a party and in each case such provisions, together with the related definitions of terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety. To the extent that any such incorporated provision permits any Person to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement such provision shall be complied with unless it is waived by the Bank and such document, opinion or other instrument must be acceptable or satisfactory to the Bank unless such satisfaction or acceptability is waived by the Bank, provided that such waiver by the Bank shall only be required if the action proposed to be taken would materially adversely affect the rights, interests or obligations of the Bank. The City shall provide the Bank with 30 days prior written notice of all actions or waivers proposed to be taken pursuant to this Section regardless of whether the City believes the Bank's consent is required.

**Section 6.20. Voluntary Termination; Termination Fee.** Upon (i) providing the Bank and the Tender Agent with ninety (90) days' prior written notice, (ii) complying with the requirements of the Ordinance, (iii) paying to the Bank all costs, fees and payments due hereunder and (iv) paying or causing to be paid to the Bank the Sale Price for all Bank Bonds and any accrued and unpaid Differential Interest Amount in respect thereof, the Issuer may terminate this Agreement. If the Issuer terminates the Agreement, the Issuer shall pay to the Bank a Termination Fee equal to the three-years of Facility Fees less any amounts already paid. No Termination Fee will be due if the Issuer terminates this Agreement after the Bank's short term ratings issued by any Rating Agency have declined or been withdrawn

**Section 6.21. Rating.** The City covenants to maintain at least one long term credit rating from Moody's, S&P and Fitch on its senior Airport System revenue obligations while this Agreement is in effect.

## ARTICLE VII

### CONDITIONS PRECEDENT TO BANK'S OBLIGATION TO PURCHASE ELIGIBLE BONDS

The obligation of the Bank to purchase Eligible Bonds pursuant to Section 2.01 hereunder on any date is subject to the satisfaction of the following conditions, unless waived in writing by the Bank:

(a) No Event of Default described in Section 8.02 shall have occurred and be continuing; and

(b) The Bank shall have received a Notice of Bank Purchase during the Purchase Period in the manner described in Section 2.02.

Each notification delivered pursuant to clause (b) of this Article VII hereof shall constitute a representation and warranty by the City on each Purchase Date that (i) the condition described in clause (a) of this Article VII has been satisfied on such Purchase Date and (ii) that the representations and warranties made by the City herein are true and correct in all material respects on and as of such Purchase Date, as if made on and as of such Purchase Date

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

The occurrence of any of the following events set forth in Sections 8.01 and 8.02 shall constitute an event of default (each, an "Event of Default"):

#### **Section 8.01. Events of Default not Permitting Immediate Termination.**

(a) ***Payments.*** The City shall fail to pay when due (i) any installment of the Facility Fee and such failure shall continue for a period of ten Business Days after written notice is provided to the Insurer of such failure or (ii) any other amounts owed by the City to the Bank pursuant to this Agreement. For the avoidance of doubt, the Bank agrees that it will accept payment of the Facility Fee from the Insurer on behalf of the City.

(b) ***Representations*** Any representation or warranty made by or on behalf of the City in this Agreement or in any Related Document or in any certificate or statement delivered hereunder or thereunder shall prove to have been incorrect or untrue in any material respect when made or deemed to have been made.

(c) ***Covenants.*** The City shall fail to perform or observe any term, covenant or agreement (other than ones described in any other paragraph of this Section 8.01) contained in this Agreement or the other Related Documents on its part to be performed or observed which failure continues for 30 days or more

(d) **Default** An “Event of Default” under the Ordinance or an “Event of Default” under any ordinance pursuant to which any other Bonds secured by Net Revenues has been issued.

(e) **Invalidity.** Any provision of this Agreement, the Bonds or any of the other Related Documents shall cease to be valid and binding on the City, or the City shall contest any such provision, or the City or any agent or trustee on behalf of any of them, shall deny that it has any further liability under any provision of this Agreement, the Bonds or any of the Related Documents

(f) **Judgments.** Entry of filing of any judgment, writ or warrant of attachment or of any similar process against the City payable from Net Revenues in an amount greater than \$5,000,000 and failure of the affected entity to vacate, bond, stay or contest in good faith such judgment, writ, warrant of attachment or other process for a period of 30 days or failure to pay or satisfy such judgment within 60 days or as otherwise required by such judgment, writ or warrant of attachment.

(g) **Other Documents.** Any event of default under any of the Related Documents (other than this Agreement and the Ordinance) shall occur.

(h) **City Event of Insolvency.** A City Event of Insolvency shall have occurred

(i) **Insurer Downgrade** The financial strength rating assigned to the Insurer by the Rating Agencies is withdrawn, suspended or falls, in each case, below “AA-” by S&P, “Aa3” by Moody’s and “AA-” by Fitch, respectively, for a period of 30 consecutive days

## **Section 8.02. Events of Default Permitting Immediate Suspension or Termination**

(a) **Insurer Event of Insolvency.** An Insurer Event of Insolvency shall exist.

(b) **Payment Default.** Any principal or interest due on the Bonds (including the Bank Bonds) is not paid by the City when due and, in addition, such principal or interest is not paid by the Insurer when, as, and in the amounts required to be paid pursuant to the terms of the Bond Insurance Policy.

(c) **Contest of Validity.** (i) Any provision of the Bond Insurance Policy affecting the Insurer’s obligation to pay thereunder at any time for any reason ceases to be valid and binding on the Insurer in accordance with the terms of the Bond Insurance Policy or is declared to be null and void in each case by a final non-appealable order of a court or other governmental agency of appropriate jurisdiction, or (ii) the validity or enforceability thereof is contested by the Insurer, the New York Department of Insurance or other competent regulatory authority in writing, or (iii) the Insurer denies in writing that it has any or further liability or obligation under the Bond Insurance Policy.

(d) **Bond Insurer Cross-Default** The Bond Insurer shall fail to make any payment (other than payments which are subject to a good faith dispute) required under

any municipal bond insurance policy (other than the Bond Insurance Policy) issued by it insuring obligations publicly rated by Moody's, Fitch or S&P when due and such payment default shall continue for a period of 7 days.

(c) ***Insurer Downgrade Below Investment Grade.*** The financial strength rating assigned to the Insurer by all of the Rating Agencies shall be withdrawn, suspended or reduced below "Baa3" by Moody's, "BBB-" by S&P or "BBB-" by Fitch, respectively.

(f) ***Termination.*** Without the prior written consent of the Bank, the Bond Insurance Policy is canceled or terminated or amended or modified in any respect which materially and adversely affects the rights of the Bank.

**Section 8.03. Remedies** Upon the occurrence of an Event of Default hereunder, the Bank may take one or more of the following actions:

(a) In the case of any Event of Default specified in Section 8.02, the Available Commitment and the obligation of the Bank to purchase Eligible Bonds shall immediately and automatically terminate without notice or demand, and thereafter the Bank shall be under no obligation to purchase Eligible Bonds. Upon such Event of Default, the Bank shall promptly give written notice of the same to the Tender Agent, the City and the Remarketing Agent; provided, that the Bank shall incur no liability of any kind by reason of its failure to give such notice, and such failure shall in no way affect the termination of the Available Commitment and of the obligation of the Bank to purchase Eligible Bonds pursuant to this Agreement. The Tender Agent shall immediately notify the Paying Agent who shall notify all Bondholders of the termination of the Available Commitment and the obligation of the Bank to purchase the Eligible Bonds.

(b) In the case of Default under Section 8.02(a) and prior to the expiration of the 90 day period referenced in the definition of Insurer Event of Insolvency and, in the case of Section 8.02(d) and prior to the expiration of the 7 day period referenced therein, the Bank's obligations to purchase Bonds shall be automatically and immediately suspended without notice or demand and thereafter the Bank shall be under no obligation to purchase Bonds until the Available Commitment is reinstated as described in this Section 8.03(b). Promptly upon the Bank obtaining knowledge of any such Default, the Bank shall give written notice of the same to the City, the Tender Agent, the Remarketing Agent and the Insurer of such suspension; provided, that the Bank shall incur no liability or responsibility whatsoever by reason of its failure to give such notice and such failure shall in no way affect the suspension of the Bank's obligations to purchase Bonds. In the case of a Default under Section 8.02(a), if such insolvency proceedings are dismissed within the 90 day period referenced in definition of Insurer Event of Insolvency then the Bank's obligation to purchase Bonds hereunder shall be reinstated unless otherwise terminated hereunder. If such proceedings are not dismissed within such 90 day period then the obligation of the Bank to purchase Bonds shall terminate pursuant to Section 8.03(a). In the case of a Default under Section 8.02(d), if the payment default by the Insurer triggering such event is cured within such 7 day period the obligation of the Bank



to purchase bonds hereunder shall be reinstated, unless otherwise terminated hereunder. If such payment default by the Insurer which has caused the Default under Section 8.02(d) is not cured within such 7 day period the obligation of the Bank to purchase Bonds hereunder shall terminate pursuant to Section 8.03(a).

(c) In the case of any Event of Default as specified in Section 8.01(a)(i) or Section 8.01(i), the Bank may give written notice in the form of Exhibit B of such Event of Default to the City, the Tender Agent and Remarketing Agent stating that this Agreement shall terminate 15 days after such notice is received by the Tender Agent and directing that the Bonds be called for mandatory tender pursuant to Section A-403 of Appendix A to the Ordinance. The obligation of the Bank to purchase Eligible Bonds shall terminate 15 days after such notice is received by the Tender Agent, and on such date the Available Commitment shall terminate and the Bank shall be under no obligation hereunder to purchase Eligible Bonds.

(d) Upon the occurrence of any Event of Default under Section 8.01(a)(i) and Section 8.02, all amounts owed to the Bank hereunder and under any Bank Bonds shall bear interest at the Default Rate and the Bank shall have all remedies provided at law or equity, including, without limitation, to accelerate all amounts due hereunder and under the Bank Bonds (provided, however in the case of an Event of Default under Section 8.01 amounts owed hereunder and with respect to Bank Bonds shall not be subject to acceleration and, except as provided in 8.03(a), (b) and (c), the Bank shall not have the right to terminate the Purchase Period or to cause the mandatory tender of the Bonds) and specific performance. In addition, as to any amount due hereunder which is not paid when due, such amount shall bear interest at the Default Rate until paid in full. The Bank shall promptly provide written notice to the Tender Agent and the City of any acceleration of the amounts due hereunder.

(e) In addition to the rights and remedies set forth in Section 8.03(a), (b), (c) and (d) above, upon the occurrence of any Event of Default specified in Sections 8.01 and 8.02, (i) the Bank may demand that all amounts payable hereunder (excluding principal and interest on the Bonds) shall, upon notice to the City, become immediately due and payable without further presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the City, and/or (ii) the Bank may exercise all the rights and remedies available to it under this Agreement, the other Related Documents, or otherwise pursuant to law or equity; provided, however, that the Bank shall not have the right to terminate its obligation to purchase Bonds or to declare any amount due hereunder due and payable except as expressly provided herein, or to accelerate the maturity date of any Bonds except as provided in the Ordinance.

(f) In the case of any Event of Default hereunder the Bank shall have the right, but not the obligation, to cure any such Event of Default (in which case the City shall reimburse the Bank therefor pursuant to Section 2.09).

**Section 8.04. Certain Other Matters.** No failure or delay on the part of the Bank in exercising any right, power or privilege hereunder and no course of dealing shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder

preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have. No notice to or demand on the Issuer or any other Person hereto in any case shall entitle the City or such other Person to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Bank to any other or further action in any circumstances without notice or demand.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Obligations Absolute.** The obligations of the City under this Agreement shall be absolute, unconditional and irrevocable and shall be paid, but solely from and to the extent of sources provided for in the Ordinance and herein, or performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including, without limitation, the following circumstances:

- (a) to the extent permitted by applicable law, any lack of validity or enforceability of this Agreement or any other Related Document or any other agreement or instrument delivered in connection herewith or therewith;
- (b) any amendment to, waiver of, consent to or departure from the terms of any of the Related Documents;
- (c) the existence of any claim, set off, defense or other right that the City may have at any time against the Tender Agent, the Remarketing Agent, the Bank or any other Person, whether in connection with this Agreement, the other Related Documents or otherwise,
- (d) any statement or any other document presented under this Agreement or any of the other Related Documents proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever; or
- (e) payment by the Bank hereunder against presentation of an instrument certificate which does not strictly comply with the terms hereof; or
- (f) any other circumstances or happening whatsoever, whether or not similar to any of the foregoing.

**Section 9.02. Liability of the Bank.** With respect to the Bank, the City assumes any and all risks with respect to the acts or omissions of each of the Paying Agent, the Tender Agent, the Insurer and the Remarketing Agent in connection with its use of this Agreement or any amounts made available by the Bank hereunder. The Bank shall have no responsibility for, nor incur any liability in respect of, (i) the failure of the Tender Agent, the Remarketing Agent or the Paying Agent to credit the appropriate account with funds made available by the Bank pursuant to Section 2.02 or (ii) any act or omission of the Tender Agent or the Paying Agent, as the case may be, that results in the failure of the Tender Agent or the Paying Agent, as the case may be, to

effect the purchase of Tendered Bonds for the account of the Bank with funds provided by the Bank pursuant to Section 2.02 hereof or to comply with the applicable provisions of the Ordinance. Neither the Bank nor any of the officers, directors, employees or agents thereof shall be liable or responsible for any of the following: (a) the use that may be made of this Agreement or any amounts made available by the Bank hereunder or for any acts or omissions of the Paying Agent, the Tender Agent, the Insurer, the City or the Remarketing Agent in connection therewith; (b) the validity, sufficiency or genuineness of documents (except for the validity and enforceability of the Bank's obligations hereunder), or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms hereof, including failure of any documents to bear any reference or adequate reference to this Agreement; or (d) any other circumstances whatsoever in making or failing to make payment hereunder, except only that the City shall have a claim against the Bank, and the Bank shall be liable to the City, to the extent, but only to the extent, of any direct, as opposed to consequential or punitive damages (the right to receive consequential or punitive damages being hereby waived), suffered by the City which are caused by (i) the Bank's willful misconduct or negligence in determining whether documents presented hereunder comply with the terms hereof or (ii) the Bank's failure to pay hereunder after the presentation to it by the Tender Agent (or a successor Tender Agent under the Ordinance in accordance with its terms) of a Notice of Bank Purchase strictly complying with the terms and conditions hereof; provided, however, that the maximum amount of damages recoverable by the City as provided above is expressly limited to the Available Commitment and the costs of enforcing the City's rights hereunder, which are payable on demand by the City (including reasonable attorneys fees, court costs and prejudgment interest at the Default Rate on amounts overdue). In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

### **Section 9.03. Expenses; Indemnification.**

(a) The City agrees to pay on the Closing Date fees of counsel for the Bank plus disbursements and any foreign counsel fees as payment of all out-of-pocket expenses of the Bank incurred in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Related Documents for which the City shall be liable. With respect to any breach by the City of its obligations hereunder, the City shall also pay all of the Bank's out-of-pocket expenses (including, without limitations, reasonable fees and expenses of counsel to the Bank) arising in connection with the enforcement or administration of, or preservation of rights in connection with, this Agreement or the other Related Documents. In addition, the City shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement, the other Related Documents or such other documents and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

(b) In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the City agrees, to

the extent permitted by law, to indemnify and hold harmless each of the Bank, each Participant and their respective officers, directors, employees and agents (each an "Indemnified Party") from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorney's fees) that the an Indemnified Party, or any of them, may incur (or which may be claimed against an Indemnified Party, or any of them, by any Person whatsoever) or that arises out of the transactions contemplated by this Agreement or the Related Documents, including, without limitation, (i) the issuing, offering, sale, remarketing or resale of the Bonds (including, without limitation, by reason of any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in the Official Statement or any other offering circular or document used in connection therewith, or in any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statement, in the light of the circumstances under which they are or were made, not misleading or the failure to deliver the Official Statement or any other offering circular or document to any offeree or purchaser of Bonds but excluding any information included in the Official Statement or such other offering circular relating to the Bank and provided by the Bank for inclusion therein), (ii) the City's execution, delivery and performance of, or payment or failure to pay under, this Agreement or the Related Documents (iii) the invalidity of the Bonds under the laws of the State or the failure of the Bonds to be entitled to the benefits of the Ordinance or the Bond Insurance Policy and (iv) the use of the proceeds of the sale of the Bonds or any amounts drawn under this Agreement, provided, however, that the City shall not be required to indemnify any Indemnified Party for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the breach of contract, willful misconduct or negligence of an Indemnified Party. Nothing in this Section is intended to limit the obligations of the City under the Bonds or of the City to pay its other obligations hereunder and under the Related Documents. If any proceeding shall be brought or threatened against an Indemnified Party by reason of or in connection with the events described above (and except as otherwise provided above), such Indemnified Party shall promptly notify the City in writing and the City shall, to the extent permitted by law, assume the defense thereof, including the employment of counsel and the payment of all costs of litigation. Notwithstanding the preceding sentence, such Indemnified Party shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (1) the employment of such counsel shall have been authorized in writing by the City or (2) the City, after due notice of the action, shall have failed to employ counsel to take charge of such defense, in either of which events the reasonable fees and expenses of counsel for such Indemnified Party shall be borne by the City. The City shall not be liable for any settlement of any such action effected without its consent.

(c) The provisions of this Section 9.03 shall survive the termination of this Agreement and the payment in full of the Bonds and the obligations of the City thereunder and hereunder.

**Section 9.04. Notices.** Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto or referred to herein shall be

deemed to have been given (a) in the case of notice by letter, when delivered by hand, and (b) in the case of notice by facsimile, upon confirmation of receipt, addressed to them as follows or at such other address as any of the parties hereto may designate by written notice to the other parties hereto and to the Remarketing Agent:

City: City of Austin, Texas  
(Tax Identification No. \_\_\_\_\_)  
700 Lavaca, Suite 1510  
Austin, Texas 78701  
Attention Treasurer  
Telephone (512) 974-7883  
Telecopy: (512) 370-3838

Tender Agent \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telecopy: \_\_\_\_\_

Remarketing Agent Sub-Series 2005-1 and 2005-2: Morgan Stanley & Co., Incorporated  
1221 Avenue of the Americas  
New York, NY 10020  
Attention: Nora Crarres  
Telephone: (212) 762-4755  
Facsimile: (212) 520-0554

Remarketing Agent Sub-Series 2005-3 and 2005-4. Morgan Keegan & Company, Inc  
5956 Sherry Lane, Suite 1900  
Dallas, TX 75225  
Attention: Thomas Oppenheim  
Telephone: (214) 365-5505  
Facsimile: (214) 692-5035

Bank (for credit and administrative matters): Dexia Crédit Local, New York Branch  
445 Park Avenue, 7th Floor  
New York, New York 10022  
Attention: Senior Vice President and Manager,  
Public Finance  
Telephone: (212) 515-7003  
Facsimile: (212) 753-7516

with a copy to:  
(as to funding):  
Dexia Credit Local, New York Branch  
445 Park Avenue  
New York, New York 10022  
Attention Vice President of Operations  
Telephone: (212) 515-7007  
Facsimile (212) 753-7522

Insurer:  
Financial Security Assurance Inc.  
New York, New York 10022  
Attention General Counsel  
Telephone: (212) 909-3925  
Facsimile: (212) 909-3959

Notwithstanding the foregoing, any Notice of Bank Purchase given hereunder shall be effective only when given in the manner provided in Section 2.02.

The Bank agrees to provide written notice to the Tender Agent and the Paying Agent of any non payment of principal and interest due on the Bank Bonds so that the Tender Agent or the Paying Agent, as applicable, can make a demand for payment of such principal and interest under the Bond Insurance Policy.

**Section 9.05. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Tender Agent, the City, the Bank and their respective successors, endorsees and assigns, and the Insurer. The City may not assign or transfer its rights or obligations hereunder (other than by merger or consolidation) without the prior written consent of the Bank. This Agreement is a continuing obligation and shall survive the Expiration Date. The Bank may grant interests in its rights hereunder as provided in Section 9.10, provided, however, that no such grant shall affect the obligations of the Bank to purchase Eligible Bonds as herein provided.

**Section 9.06. Governing Law.** This Agreement shall be governed by the laws of the State of Texas and applicable federal law provided that the duties and obligations of the Bank under this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York

**Section 9.07. Limitation on Obligations.** Notwithstanding any other provision herein to the contrary, the City's obligations hereunder to make payment to the Bank (and any Person claiming by or through the Bank) shall be limited to, and be payable solely from, Net Revenues (as defined in the Ordinance), which shall be applied in the manner and priority stated in the Ordinance.

**Section 9.08. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument

**Section 9.09. Use of Funds.** The Bank agrees that all funds provided by the Bank hereunder to pay the Purchase Price of Bonds will be paid from funds of the Bank and not

directly or indirectly from funds or collateral on deposit with or for the account of, or pledged with or for the account of, the Bank by the City or any Participant

**Section 9.10. Participations.** The City acknowledges and agrees that the Bank may participate portions of its obligations hereunder and with respect to the Bank Bonds and any other Related Documents (collectively, the “Participated Obligations”) to other financial institutions without notice or the consent of the City and without diminishing the obligations of the Bank hereunder in any manner. The City further acknowledges and agrees that upon any such participation the Participants will become owners of a pro rata portion of the Participated Obligations and the City waives any right of setoff it may have at any time against the Bank or any Participant with regard to the Participated Obligations. Notwithstanding the foregoing, (i) the City shall have no obligation to provide information to any Participant, (ii) the grant of such participation interest shall not limit the obligations of the Bank hereunder, including the obligation of the Bank to purchase Bonds hereunder with its own funds and (iii) the Bank will continue to serve as the only contact and agent for all Participants for all matters relating to this Agreement. The Bank agrees that it will only enter into participation arrangements with Participants who agree that the Bank may bind such Participants in all matters relating to this Agreement, Bank Bonds and the transactions contemplated by the Related Documents, including without limitation to any interpretation, amendment, waiver, settlement, or compromise of any matter or term of any Related Document or any act or omission of the City. The Bank shall defend, indemnify and hold the City harmless against any claim by a Participant based in whole or in part on a lack of authority by the Bank to bind such Participant as to such matters

**Section 9.11. No Right of Setoff.** The City not having any depository or other relationship with the Bank related to the Net Revenues and the City having outstanding obligations secured by Net Revenues on a basis senior and prior to the lien securing the Parity Obligations, the Bank hereby, for itself and all Participants, waives any and all rights to set-off or apply against any of its obligations to the City and obligations of the City to the Bank hereunder or under the Related Documents, including during the existence of an Event of Default

**Section 9.12. Severability.** Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

**Section 9.13. Headings.** Section headings in this Agreement are included herein for convenience of reference only and shall not have any affect for purposes of interpretation or construction of the terms of this Agreement.

**Section 9.14. Complete and Controlling Agreement.** This Agreement and the other Related Documents completely set forth the agreements among the Bank, the Tender Agent and the City and fully supersede all prior agreements, both written and oral, among the Bank, the Tender Agent and the City relating to all matters set forth herein and in the Related Documents. The terms and provisions of this Agreement may be amended or superseded only by a written instrument and no oral agreements, practices, standards or other extrinsic communications or

facts shall have any bearing on the interpretation or enforcement of this Agreement or the other Related Documents except as otherwise expressly agreed to in writing by the Bank and the City.

**Section 9.15. No Waivers, Etc. Except in Writing.** No provision of this Agreement shall be waived, amended or supplemented except by a written instrument executed by the parties hereto and consented to in writing by the Insurer. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In the event any agreement contained in this Agreement should be breached by the City and thereafter waived by the Bank, such waiver shall be limited to the particular breach so waived for the specific period set out in such waiver and such waiver shall not constitute a waiver of such breach for any other period and shall not waive any other or similar breach hereunder.

#### **Section 9.16. Term of the Agreement**

(a) The term of this Agreement shall be until the later of (i) the last day of the Purchase Period or (ii) the payment in full of the principal of and interest on all Bank Bonds and all other amounts due hereunder.

(b) Upon the written request of the Issuer substantially in the form of Exhibit C hereto (or in such other form to which the Bank may consent in writing) received by the Bank no earlier than one hundred eighty (180) days prior to, and no later than one hundred twenty (120) days prior to, the Expiration Date, or such other date to which the Bank may consent in writing, substantially in form of Exhibit D, the Bank (acting in its absolute and sole discretion) shall within thirty (30) days of such request notify the Issuer, the Tender Agent, and the Remarketing Agent whether or not it will extend the scheduled Expiration Date, for a period of one year (or such other period as the Bank and the Issuer may agree). If the Bank notifies the Issuer, the Tender Agent and the Remarketing Agent that the scheduled Expiration Date shall be so extended, the Bank shall, within thirty (30) days of its notification to the Issuer, the Tender Agent and the Remarketing Agent, deliver to the Tender Agent and the Issuer a written acknowledgment of such extension. If the Bank fails to notify the Issuer of its decision within such 30 day period, the Bank shall be deemed to have rejected such request. Any such request by the Issuer for an extension of the Expiration Date shall be substantially in the form of Exhibit D hereto (or in such other form to which the Bank may consent in writing) and, unless the Bank shall otherwise consent, shall include (i) a statement of the outstanding principal amount of the Bonds, (ii) a reasonably detailed description of any and all Defaults that have occurred and are continuing, (iii) confirmation that all representations and warranties of the Issuer as set forth in Article V of the Agreement are true and correct as though made on the date hereof and that no Default has occurred and is continuing on the Date hereof except for the Defaults referenced in (ii) above, and (iv) any other pertinent information requested by the Bank.

**Section 9.17. USA Patriot Act.** The Bank hereby notifies the City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Patriot Act, and the City hereby



agrees to take any action necessary to enable the Bank to comply with the requirements of the Patriot Act.

**Section 9.18. Assignment to Federal Reserve Bank.** The Bank may assign and pledge all or any portion of the obligations owing to it to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the City to the Bank in accordance with the terms of this Agreement shall satisfy the City's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder

**Section 9.19. Chapter 346 of the Texas Finance Code** Pursuant to the provisions of Section 346.004 of the Texas Finance Code, as amended, it is agreed that the provisions of Chapter 346 of the Texas Finance Code, as amended (which regulates certain revolving credit loans and revolving tri-party accounts), shall not govern or in any manner apply to this Agreement or any of the Related Documents or any of the obligations and transactions contemplated herein or therein, other than such Section 346.004.

**Section 9.20. Usury.** It is the intent of the Bank and the City in the execution and performance of this Agreement and the Related Documents to strictly comply with all applicable usury laws. If the effective rate or amount of interest that would otherwise be payable under this Agreement or any other Related Document would exceed the maximum amount of interest that the Bank is allowed by applicable law to charge, contract for, take or receive, or in the event that the Bank shall charge, contract for, take or receive monies that are deemed to constitute interest that would, in the absence of this provision, increase the effective rate or amount of interest payable under this Agreement or any other Related Document to a rate or amount in excess of that permitted by applicable law, then the amount of interest that would otherwise be payable hereunder or thereunder shall be reduced to the maximum amount allowed under said laws. All such moneys so charged, contracted for, or received that are deemed to constitute interest in excess of the maximum amount of interest permitted by applicable law shall be immediately returned to the Issuer or credited to the account of the Issuer or other paying Person upon such determination. All amounts paid or agreed to be paid in connection with this transaction that would under applicable law be deemed "interest" shall, subject to Sections 3.01(b) and 3.01(c) hereof, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of this Agreement

**Section 9.21. Survival.** All representations, warranties, covenants and agreements of the Issuer contained in this Agreement as amended or supplemented from time to time or made in writing in connection herewith shall survive the execution and delivery hereof and the purchase of Bonds by the Bank hereunder and shall continue in full force and effect until payment in full of all the obligations of the Issuer hereunder, it being understood that the provisions of Sections 2.06, 2.07, 2.08, 2.11, 9.01, 9.02 and 9.03 hereof shall survive the expiration and/or termination of this Agreement and the payment in full of the Bonds and the obligations of the Issuer hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written

THE CITY OF AUSTIN, TEXAS

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SEAL]

[Signatures continued on following page]

[Execution Page to Standby Bond Purchase Agreement]

DEXIA CRÉDIT LOCAL, acting through its New  
York Branch

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

[Signatures continued on following page]

[Execution Page to Standby Bond Purchase Agreement]

\_\_\_\_\_  
\_\_\_\_\_, as Tender Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### NOTICE OF BANK PURCHASE

The undersigned, a duly authorized officer of \_\_\_\_\_ (the "Tender Agent"), hereby certifies to Dexia Crédit Local, acting through its New York Branch (the "Bank"), in accordance with the Standby Bond Purchase Agreement, dated as of \_\_\_\_\_ 1, 2008 (the "Standby Bond Purchase Agreement") among the City of Austin, Texas (the "City"), the Tender Agent and the Bank relating to the City's \$281,300,000 Airport System Refunding Revenue Bonds, Series 2005 (all capitalized terms herein having the meanings ascribed thereto in the Standby Bond Purchase Agreement), that:

1 Sub-Series 2005-\_\_\_\_ Eligible Bonds have been tendered or deemed tendered for purchase pursuant to Section \_\_\_\_\_ of the Ordinance.

2 To the Tender Agent's actual knowledge, no Event of Default described in Section 8.02 of the Standby Bond Purchase Agreement has occurred.

3. Insufficient moneys are available for such purchase pursuant to Section \_\_\_\_\_ of the Ordinance

4. The Tender Agent hereby requests the payment of Purchase Price in the amount of \$\_\_\_\_\_.

5 The portion of the Purchase Price requested hereby relating to the principal of the Sub-Series 2005-\_\_\_\_ Eligible Bonds for which there is not sufficient moneys referred to above is \$\_\_\_\_\_, which amount does not exceed the Sub-Series 2005-\_\_\_\_ Available Principal Commitment and the portion of the Purchase Price requested hereby relating to accrued interest on the Sub-Series 2005-\_\_\_\_ Eligible Bonds for which there is not sufficient moneys referred to above is \$\_\_\_\_\_, which amount does not exceed the Sub-Series \_\_\_\_\_ Available Interest Commitment.

6. Upon completion of purchase, the Tender Agent will register such Sub-Series 2005 -\_\_\_\_ Eligible Bonds, or if an Sub-Series 2005-\_\_\_\_ Eligible Bond to be purchased pursuant to Section \_\_\_\_\_ of the Ordinance has not been delivered, a new Sub-Series 2005-\_\_\_\_ Eligible Bond issued in replacement of the undelivered Sub-Series 2005-\_\_\_\_ Eligible Bond, in the name of the Bank, or, if directed in writing by the Bank, its nominee or designee on the bond register, and will promptly deliver such Sub-Series 2005-\_\_\_\_ Eligible Bonds to the Bank, or as the Bank may otherwise direct in writing, and prior to such delivery will hold such Sub-Series 2005-\_\_\_\_ Eligible Bonds in trust for the benefit of the Bank, provided if the Bonds are in book entry form, the Tender Agent shall hold Bank Bonds in its participant account for the benefit of the Bank, as described in Section 2.02 of the Standby Bond Purchase Agreement.

7 The funds requested hereunder shall be transferred to the Tender Agent as follows:

[PLEASE PROVIDE]

8. The Purchase Date is \_\_\_\_\_, \_\_\_\_\_.

IN WITNESS WHEREOF, the Tender Agent has executed and delivered this Notice of Bank Purchase as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, as Tender Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**EXHIBIT B**

**FORM OF TERMINATION NOTICE**

{DATE}

\_\_\_\_\_,  
as Tender Agent  
[ADDRESS]  
Attention.

City of Austin, Texas  
\$\_\_\_\_\_ Airport System Refunding Revenue Bonds, Series 2005

Ladies and Gentlemen

The undersigned, duly authorized officers of Dexia Crédit Local, acting through its New York Branch (the "Bank"), pursuant to Section 8.03 of the Standby Bond Purchase Agreement dated as of \_\_\_\_\_, 2008 (the "Agreement") among \_\_\_\_\_, as Tender Agent, the City of Austin, Texas and the Bank, hereby request you call all Eligible Bonds for mandatory tender pursuant to [Section \_\_\_\_] of the Ordinance as described in Section 8.03I of the Agreement and notify you that an Event of Default (as defined in the Agreement) under Section 8.01(a)(i) or (i) of the Agreement has occurred and that as a result thereof the Agreement shall terminate on the date that is 15 days after your receipt of this notice

Sincerely,

Dexia Crédit Local, acting through its New York  
Branch

By: \_\_\_\_\_  
Authorized Signatory

By: \_\_\_\_\_  
Authorized Signatory

cc: [Remarketing Agent]  
[City]

## EXHIBIT C

### FORM OF REQUEST FOR EXTENSION OF EXPIRATION DATE

[DATE]

Dexia Crédit Local, New York Branch  
445 Park Avenue, 7<sup>th</sup> Floor  
New York, New York 10022  
Attention: Public Finance Manager

Ladies and Gentlemen:

Reference is made to the Standby Bond Purchase Agreement dated as of \_\_\_\_\_, 2008 (the "Agreement") by and among City of Austin, Texas (the "Issuer"), \_\_\_\_\_ (the "Tender Agent") and DEXIA CREDIT LOCAL, acting through its New York Branch (the "Bank") (the terms defined therein being used herein as therein defined).

The Issuer hereby requests, pursuant to Section 9.16 of the Agreement, that the Stated Expiration Date with respect to the Available Commitment as of the date hereof be extended by up to \_\_\_\_ years to \_\_\_\_\_, \_\_\_\_ Pursuant to such Section 9.16, we have enclosed with this request the following information:

1. The outstanding principal evidenced by the \_\_\_\_\_;
2. A reasonably detailed description of any and all Defaults that have occurred and are continuing;
3. Confirmation that all representations and warranties of the City as set forth in Article V of the Agreement are true and correct as though made on the date hereof and that no Default has occurred and is continuing on the date hereof except for the defaults referenced in paragraph 2 above; and
4. Any other pertinent information previously requested by the Bank.

The Bank is required to notify the City of its decision with respect to this request within 90 days of the date of receipt hereof. If the Bank fails to notify the County of its decision within such 90-day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

CITY OF AUSTIN, TEXAS

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



## EXHIBIT D

### FORM OF APPROVAL FOR EXTENSION OF EXPIRATION DATE

[Date]

City of Austin  
301 W 2<sup>nd</sup>, 3<sup>rd</sup> Floor  
Austin, Texas 78701

Financial Security Assurance Inc.

[Remarketing Contact]

STANDARD & POOR'S CORPORATION  
55 Water Street, 38<sup>th</sup> Floor  
New York, NY 10041

[Tender Agent Contact]

MOODY'S INVESTORS SERVICE, INC.  
Public Finance Dept , Structured Finance Group  
99 Church Street  
New York, NY 10007-2796

Re. Standby Bond Purchase Agreement dated as of \_\_\_\_\_, 2008 among City of Austin, Texas, \_\_\_\_\_ (as Tender Agent), and Dexia Crédit Local, New York Branch Relating to City of Austin, Texas Airport System Refunding Revenue Bonds, Series 2005

Dear Sir or Madam

Pursuant to Section 9.16 of the aforementioned Agreement, we are pleased to inform you that Dexia Crédit Local, New York Branch has received approval to extend the Expiration Date of the Agreement. The new Expiration Date shall be \_\_\_\_\_ and will be effective on \_\_\_\_\_. No further documentation is required to evidence the extension.

Please acknowledge receipt of this notice by signing and faxing such to me at (212) 753-5516.

Sincerely,

Received and Acknowledged:

By: \_\_\_\_\_

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

Company: \_\_\_\_\_

Date: \_\_\_\_\_



**REMARKETING AGREEMENT**

**THIS REMARKETING AGREEMENT** dated as of May 1, 2008 (this "**Agreement**"), between **CITY OF AUSTIN, TEXAS** (the "**Issuer**"), and **MORGAN KEEGAN & COMPANY, INC.**, as Remarketing Agent (the "**Remarketing Agent**").

**Recitals**

**A.** The Issuer issued its City of Austin, Texas, Airport System Refunding Revenue Bonds, Series 2005 (AMT) as four sub-series, in the aggregate principal amount of \$281,300,000 (the "**Bonds**"), pursuant to the provisions of Ordinance No. 20050804-039 adopted and approved by the Issuer on August 4, 2005 (the "**Ordinance**"). Wells Fargo Bank, N.A., has been appointed as paying agent and bond registrar (the "**Paying Agent**") with respect to the Bonds under the Ordinance. All terms not otherwise defined in this Remarketing Agreement have the meanings ascribed to such terms in the Ordinance.

**B.** Pursuant to the Ordinance the Bonds may bear interest at variable interest rates and, under the circumstances, at the times and in the manner provided in the Ordinance, may be, and at certain times are required to be, tendered by the holders thereof for purchase.

**C.** The Bonds are subject to both optional and mandatory tender for purchase by the holders thereof and to remarketing, all as provided in the Ordinance.

**D.** The Bonds are more fully described in the Remarketing Memorandum, dated April 24, 2008 (the "**Remarketing Memorandum**") and the Ordinance

**E.** Pursuant to Section A-601 of Appendix A to the Ordinance, the Issuer desires to appoint Morgan Keegan & Company, Inc., as its agent of the Bonds of Sub-Series 2005-1 and Sub-Series 2005-2 (collectively, the "**Sub-Series Bonds**") to perform the services of Remarketing Agent provided for herein and in the Ordinance, and Morgan Keegan & Company, Inc. is willing to do so on the terms and conditions set forth herein.

**F.** The City has entered into a Standby Bond Purchase Agreement, dated as of \_\_\_\_\_, 2008, (the "**Liquidity Facility**") with Dexia Crédit Local, acting through its New York Branch (the "**Bank**"), to provide liquidity to pay the purchase price of any tendered Bonds.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Agreement, the parties to this Agreement hereby covenant and agree as follows.

**1. Representations and Warranties of the Issuer. The Issuer represents and warrants to the Remarketing Agent that as of the date hereof:**

(a) The representations and warranties made by the Issuer in the Liquidity Facility dated \_\_\_\_\_, 2008, to the Bank and Wells Fargo Bank, N.A. (the "**Tender Agent**"), as representative of the purchasers of the Bonds named therein are true and correct.

(b) This Agreement has been duly authorized by the Issuer and constitutes the legal, valid and binding obligation of the Issuer, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy or other laws affecting the enforcement of creditors' rights

generally or by general equitable principles and except as rights of indemnity or contribution hereunder may be limited by law or public policy.

**2. Acceptance of Appointment and Obligations of Remarketing Agent.**

(a) Morgan Keegan & Company, Inc. hereby accepts its appointment as the Remarketing Agent for the Sub-Series Bonds and hereby accepts and agrees to perform the duties and obligations imposed upon it as Remarketing Agent under the Ordinance.

(b) The Remarketing Agent hereby certifies that it is a member of the National Association of Securities Dealers, Inc., having a capitalization of at least \$15,000,000 and is authorized by law to perform all the duties imposed upon it as Remarketing Agent by this Agreement and the Ordinance.

(c) The Remarketing Agent will determine the Daily Rate, the Weekly Rate, the Term Rate and the Fixed Rate, all in accordance with the Ordinance, and will give notice of such rates in the manner and to the persons specified therein. In addition, the Remarketing Agent will provide all notices in the manner and at the times set forth in the Ordinance, and in addition, the Remarketing Agent will provide all notices required by the Ordinance.

(d) The Remarketing Agent will keep books and records with respect to its duties as Remarketing Agent as is consistent with prudent industry practice and will make those books and records available for inspection by the Issuer at all reasonable times during its normal business hours.

(e) The Remarketing Agent will be acting solely as an agent in the resale of the Sub-Series Bonds and will use its best efforts to remarket the Sub-Series Bonds in accordance with the Ordinance and perform all other duties assigned to it under the Ordinance. In the event of any conflict between the terms of this Agreement and the Ordinance, the Ordinance shall control.

**3. Fees and Expenses.** While any Sub-Series Bonds bear interest at a Weekly Rate, unless otherwise agreed upon from time to time by the Issuer and the Remarketing Agent, the Issuer will pay the Remarketing Agent directly as compensation for its services for any Sub-Series Bonds bearing interest at a Weekly Rate, a fee equal to \_\_\_\_ hundredths of one percent (\_\_\_\_%) per annum of the weighted average principal amount of the Sub-Series Bonds outstanding bearing interest at a Weekly Rate during each three-month period (or from the date of the remarketing of such Bonds to the payment date with respect to the initial period), payable quarterly in arrears on each January 1, April 1, July 1 and October 1, commencing May 1, 2008. If the Bonds are to bear interest at a Daily Rate, the Issuer will pay the Remarketing Agent for Sub-Series Bonds bearing interest at a Daily Rate a remarketing fee that is mutually agreed to by the Issuer and the Remarketing Agent at the time of conversion of any Sub-Series Bonds to a Daily Rate. The Remarketing Agent will not be entitled to compensation after this Agreement is terminated except for a pro rata portion of the fee in respect of the quarter in which such termination occurs. Additionally, the Issuer will reimburse the Remarketing Agent for its reasonable out-of-pocket expenses in performing its obligations hereunder, including, without limitation, expenses incurred in the preparation and distribution of the disclosure documents referred to in **section 4** and in connection with the proposed conversion of any Sub-Series Bonds from one Mode to another Mode. The parties anticipate that separate arrangements for compensation will be made for the remarketing of Bonds in connection with a conversion to the Term Rate Mode or the Fixed Rate Mode at the time of such conversion.

**4. Disclosure Document.** If required under any applicable law or as a material change in the information in a disclosure document heretofor used in connection with the sale or theretofore used in

connection with the remarketing of the Sub-Series Bonds, which may include the Official Statement or the Remarketing Memorandum (collectively, the "Disclosure Document") the Issuer promptly will provide the Remarketing Agent with a disclosure document reasonably satisfactory to the Remarketing Agent and its counsel in respect of the Sub-Series Bonds. The Issuer will supply the Remarketing Agent with such number of copies of such disclosure document as the Remarketing Agent reasonably requests from time to time, within such reasonable time period as will permit the Remarketing Agent to comply with provisions of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the "**Rule**"). The Issuer will supplement and amend the disclosure document so that, at all times when used in connection with the remarketing of the Sub-Series Bonds. The disclosure document will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that no such amendment or supplement will be made prior to allowing the Remarketing Agent a reasonable opportunity to review it. The Issuer will not, however, be required to make representations or warranties as to statements or omissions based upon information furnished to the Issuer in writing by or on behalf of the Remarketing Agent relating to the Remarketing Agent expressly for use therein.

The Issuer agrees to notify the Remarketing Agent promptly in writing of the occurrence of any of the following events:

- (a) any default under the Ordinance of which it has knowledge or any event which, with notice or lapse of time or both, would constitute such an event of default;
- (b) any event with respect to the Sub-Series Bonds which requires the delivery of an opinion of Bond Counsel pursuant to the Ordinance;
- (c) any optional redemption or extraordinary optional redemption pursuant to the Ordinance;
- (d) any mandatory redemption (other than pursuant to sinking fund provisions) pursuant to the Ordinance;
- (e) any notice of each demand for payment made by the Tender Agent or the Paying Agent under the Bond Insurance Policy;
- (f) each material amendment, modification or supplement to the Ordinance;
- (g) any adverse change, or threatened adverse change, in the federal income tax treatment of interest on the Sub-Series Bonds thereof;
- (h) any fact or occurrence as a result of which the Disclosure Document would be or become false or misleading in any material respect or any representation or warranty made herein would become false;
- (i) any material adverse change in the financial condition or general affairs of the Issuer's Airport System, or
- (j) any reduction, qualification or withdrawal or any written suggestion by any rating agency that it is considering a possible reduction, qualification, or withdrawal in the rating of the Sub-Series Bonds.

The Issuer hereby acknowledges the requirements imposed on the Remarketing Agent by the Rule. The Issuer covenants and agrees that it will comply with the continuing disclosure requirements

pursuant to Section (b)(5)(i) of the Rule to the extent applicable to the Bonds, and take such other actions as is reasonably necessary to enable the Remarketing Agent to comply with the Rule, if applicable.

Upon the request of the Remarketing Agent, which may be made from time to time, the Issuer shall cooperate with the Remarketing Agent to cause the Sub-Series Bonds to qualify for offer and sale under the blue sky laws as the Remarketing Agent may designate, and the Issuer shall pay, or reimburse if paid by the Remarketing Agent, all reasonable fees and disbursement of counsel for the Remarketing Agent and all other expenses and filing fees in connection therewith; provided however, that the Issuer shall not be required to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in any jurisdiction in which it is not otherwise subject to taxation.

The Issuer shall deliver to the Remarketing Agent such additional information concerning the business and financial condition of the Issuer as the Remarketing Agent may reasonably request.

## **5. Indemnification**

### **(a) Indemnification and Contribution.**

i) To the extent permitted by law, or to the extent, if any, that a court of competent jurisdiction would enforce such agreement as not contrary to law or public policy, the Issuer agrees to indemnify and hold harmless the Remarketing Agent and each Person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended) the Remarketing Agent against any and all losses, claims, damages, expenses, and liabilities whatsoever arising out of any untrue statement or alleged untrue statement in the any Disclosure Document of a material fact or any omission or alleged omission of any material fact necessary to make the statements therein, at the time and in light of the circumstances under which they were made, not misleading, including, without limiting the generality of the foregoing, the aggregate amount paid in settlement of any litigation commenced or threatened or of any claim whatsoever based upon any such untrue statement or omission or alleged untrue statement or omission, if such settlement is effected with the written consent of the Issuer, and any amount reasonably incurred in investigating, preparing, or defending against any litigation commenced or threatened or any claim based upon any such untrue statement or omission or alleged untrue statement or omission. In case any claim should be made or action brought against any of the Remarketing Agent or any controlling Person (as aforesaid) based upon the Disclosure Document, in respect of which indemnity may be sought against the Issuer, the Remarketing Agent or such controlling Person shall, promptly notify the Issuer in writing setting forth the particulars of such claim or action and the Issuer shall assume the defense thereof, including the retaining of counsel and the payment of all expenses, provided however that failure to provide such notification shall not affect an indemnified party's right to indemnification hereunder. The Remarketing Agent or any such controlling Person shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the Remarketing Agent's expense or the expense of such controlling Person unless the retaining of such counsel has been specifically authorized in writing by the Issuer or counsel has advised the Remarketing Agent that the representation of the two parties would constitute a conflict and be inappropriate due to actual or potential differing of interests between them.

ii) The Remarketing Agent will indemnify and hold harmless the Issuer, each of its officers and employees and each Person who controls the Issuer within the meaning of Section 15 of the Securities Act of 1933, as amended (the "1933 Act"), to the same extent as the

foregoing indemnity from the Issuer to the Remarketing Agent, but only with reference to written information relating to the Remarketing Agent furnished by the Remarketing Agent specifically for use in preparation of the Remarketing Memorandum or any supplement or amendment thereto.

iii) If the indemnification provided for above is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages or liabilities referred to above, then each indemnifying party, in lieu of indemnifying such indemnified party, shall to the extent permitted by law, contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuer and the Remarketing Agent from the remarketing of the Sub-Series Bonds or (ii) in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Issuer and of the Remarketing Agent in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Issuer and the Remarketing Agent shall be deemed to be in the same respective proportions as the net proceeds from the remarketing (before deducting expenses) received by the Issuer and the total compensation received by the Remarketing Agent in the preceding twelve months, pursuant to **section 3** hereunder. The relative fault of the Issuer and the Remarketing Agent shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer or by the Remarketing Agent and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Issuer and the Remarketing Agent agree that it would not be just and equitable if contribution pursuant to this Section were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this **section 5**, the Remarketing Agent shall not be required to contribute hereunder any amount in excess of the aggregate amount of remarketing fees paid to the Remarketing Agent under Section 3 hereof. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) to the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

**6. Remarketing Agent's Liabilities.** The Remarketing Agent will incur no liability to the Issuer or any other party for its actions as Remarketing Agent pursuant to the terms hereof and of the Ordinance except for (i) the liabilities for which the Remarketing Agent has agreed to indemnify the Issuer and others pursuant to **section 5** above, and (ii) its negligence or willful misconduct. In setting the interest rates on the Sub-Series Bonds, the Remarketing Agent will not be liable for any error made in good faith. The undertaking of the Remarketing Agent to remarket any Sub-Series Bonds pursuant to the Ordinance is on a "best efforts" basis.

The duties and obligations of the Remarketing Agent will be determined solely by the express provisions of this Agreement, the Ordinance and the Remarketing Agent will not be responsible for the performance of any duties and obligations other than as are specifically set forth in this Agreement and the Ordinance, and no implied covenants or obligations will be read into this Agreement or the Ordinance against the Remarketing Agent. The Remarketing Agent may conclusively rely upon any notice or

document given or furnished to it and conforming to the requirements of this Agreement or the Ordinance and the Remarketing Agent may rely and will be protected in acting upon such notice or any document reasonably believed by it to be genuine and to have been given, signed or presented by the proper party or parties.

**7. Resignation or Removal of Remarketing Agent.** The Remarketing Agent may be removed at any time, with or without cause, by the Issuer, upon 20 days written notice by the Issuer to the Remarketing Agent, the Paying Agent, the Tender Agent, the Credit Facility Issuer, and the Liquidity Facility Issuer, if any. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Remarketing Agreement by giving at least 30 days written notice to the Issuer, the Paying Agent, the Tender Agent, and the Liquidity Facility Issuer, if any; provided that the Remarketing Agent may immediately cease to offer and sell the Sub-Series Bonds if it determines, in its reasonable judgment, that:

- (i) for any reason, a pending or proposed change in applicable tax laws or securities laws would require registration under the Securities Act in connection with the remarketing of the Sub-Series Bonds;
- (ii) a material adverse change has occurred in the condition of the City's Airport System;
- (iii) a general banking moratorium has been declared by federal or New York authorities having jurisdiction or a material disruption in commercial banking or securities settlement of clearances services shall have occurred;
- (iv) there has occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis that, in the Remarketing Agent's judgment, is material and adverse;
- (v) a rating down grade or withdrawal of the rating on the Sub-Series Bonds has occurred;
- (vi) an imposition of material restrictions on the Sub-Series Bonds has occurred;
- (vii) there is a general suspension of trading or the fixing of minimum or maximum prices for trading on the New York Stock Exchange;
- (viii) in the opinion of the Remarketing Agent, the market price of the Sub-Series Bond, or the market price generally of obligations of the general character of the Bonds, might be materially adversely affected because: (A) additional material restrictions not in force as of the date hereof is imposed upon trading in securities generally by any governmental or regulatory authority or by any national securities exchange, (B) the New York Stock Exchange or other national securities exchange, or any governmental or regulatory authority, imposes, as to the Sub-Series Bonds, any material restrictions which are neither now in force nor have been announced to become effective prior to the date of such Bonds, or increase materially those now in force and so announced, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters, or (C) the President of the United States of America, a member of his cabinet or the United States Securities and Exchange Commission, including a lesser official acting on the behalf of any of them, or a member of the Congress, announces the intended introduction of legislation to achieve the same effect as that described in subclause (A) or (B) of this clause (viii);



- (ix) a material misstatement or omission in any Disclosure Document has occurred, so that it is not advisable, in the judgment of the Remarketing Agent, to attempt to remarket the Sub-Series Bonds;
- (x) the Remarketing Agent determines, in its sole discretion upon consultation with counsel, that either (A) a disclosure document is required by applicable law to be distributed to prospective purchasers and that such document is not available or, if available, is not reasonably satisfactory to the Remarketing Agent in form or substance or (B) a continuing disclosure undertaking is required by applicable law and that such undertaking is either not then in effect or is not reasonably satisfactory to the Remarketing Agent in form or substance;
- (xi) the Remarketing Agent receives and Opinion of Bond Counsel, a copy of which will be furnished to the Issuer that such action will not impair the exclusion of interest on such Bonds from gross income for purposes of federal income taxation (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of the Bonds) or the exemption from registration under the Securities Act of 1933, as amended; or
- (xii) an event, including, without limitation, the bankruptcy or default of any other issuer of or obligor on obligations of the general character of the Sub-Series Bonds shall have occurred.

**8. Dealing in Securities by Remarketing Agent.** The Remarketing Agent, in its individual capacity, either as principal or agent, may buy, sell, own, hold and deal in any of the Sub-Series Bonds, and may join in any action which any owner of such Bonds may be entitled to take with like effect as it did not act in any capacity hereunder; however, the Remarketing Agent will have no obligation hereunder to buy or take any position in the Sub-Series Bonds for its own account. The Remarketing Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer and may act as depository, trustee, or agent for any committee or body of owners of such Bonds or other obligations of the Issuer freely as if it did not act in any capacity hereunder.

**9. Intention of Parties.** It is the express intention of the parties hereto that no purchase, sale or transfer of any Sub-Series Bonds as herein provided, will constitute or be construed to be the extinguishment of any such Bond or the indebtedness represented thereby or the reissuance of any Sub-Series Bond or the refunding of any indebtedness represented thereby.

**10. Amendment.**

(a) The Issuer agrees not to consent to any amendment of the provisions of the Ordinance with respect to this Agreement or the rights and duties of the Remarketing Agent hereunder or thereunder without the prior written consent of the Remarketing Agent which will not be unreasonably withheld.

(b) This Agreement may not be amended except by a writing signed by each of the parties hereto; may not be assigned without the mutual consent of the parties hereto; and will not confer any rights upon any other person or any registered or beneficial owners of the Sub-Series Bonds in their capacities as such.

**11. Notices.**

Unless otherwise provided, all notices, requests, demands and formal actions hereunder must be in writing and mailed, telegraphed or delivered, as follows:

If to the Issuer:

City of Austin  
700 Lavaca, Suite 1510  
Austin, Texas 78701  
Attention: Treasurer  
Tel: 512-974-7882  
If to the Remarketing Agent.

Morgan Keegan & Company, Inc  
50 North Front Street, 50<sup>th</sup> Floor  
Memphis, Tennessee 38103  
Attention: Thomas Galvin  
Tel: 901-579-4226  
Fax: 901-579-4363

If to the Paying Agent or the Tender Agent:

Wells Fargo Bank, N.A.  
MAC T5656-013  
400 West 15<sup>th</sup> Street  
Austin, Texas 78701  
Tel: 512-344-7306  
Fax: 512-344-8621  
Attention: Corporate, Municipal and Escrow Services

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications is sent. In addition, the parties hereto may agree to any other means by which subsequent notices, certificates, requests or other communications may be sent.

**12. Governing Law and Waiver of Trial by Jury.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO ALSO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THIS REMARKETING AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**13. Execution of Counterparts.** This Agreement may be executed in several counterparts, each of which will be regarded as an original and all of which will constitute one and the same document.

**14. Electronic Transaction.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of the original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**15. Severability.** If any clause, provision or Section hereof is ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or Section will not affect any of the remaining clauses, provisions or sections hereof.

**16.** The obligations of the respective parties hereto may not be assigned or delegated to any other person without the consent of the other parties hereto; provided, however, that the Remarketing Agent may assign its rights and obligations hereunder to an affiliate of the Remarketing Agent or to an entity succeeding to the business of the Remarketing Agent without the consent of the other parties hereto. This Agreement will inure to the benefit of and be binding upon the Issuer and the Remarketing Agent and their respective successors and assigns, and will not confer any rights upon any other person, partnership, association or corporation other than persons, if any, controlling the Remarketing Agent within the meaning of the Securities Act.

**17.** All of the representations, warranties and agreements contained in this Agreement of the Issuer and the Remarketing Agent shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of the Remarketing Agent or the Issuer, (ii) delivery of and any payment for any Sub-Series Bonds hereunder or (iii) termination or cancellation of this Agreement.

**18.** Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part this Agreement and will not be used in the interpretation of any provision of this Agreement.

**19.** This Agreement shall only be amended, supplemented or modified in a writing signed by a duly authorized representative of the parties hereto.

**20.** The Remarketing Agent may record telephone communications with the Issuer, the Paying Agent, the Trustee, or the Tender Agent, or all of them.

**21.** This Agreement shall not be deemed or construed to be modified, rescinded, canceled or waived, in whole or in part, except by a written instrument signed by a duly authorized representative of the parties hereto.

**22.** Failure of any party to this Agreement to exercise any right or remedy hereunder in the event of a breach of this Agreement by any other party shall not constitute a waiver of any such right or remedy with respect to any subsequent breach.

**IN WITNESS WHEREOF**, the parties hereto have caused this Remarketing Agreement to be duly executed by their duly authorized officers as of the day and year first above written.

**CITY OF AUSTIN, TEXAS**, as  
Issuer

By \_\_\_\_\_  
Name. \_\_\_\_\_  
Title: \_\_\_\_\_

**MORGAN KEEGAN & COMPANY, INC.**, as  
Remarketing Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**REMARKETING AGREEMENT**

**Dated as of**

**May 1, 2008**

**Between**

**CITY OF AUSTIN, TEXAS**

**And**

**MORGAN STANLEY & CO. INCORPORATED**  
**as Remarketing Agent**

**Related to:**

**CITY OF AUSTIN, TEXAS**  
**AIRPORT SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 (AMT)**

**\$70,325,000 Sub-Series 2005-3**  
**\$70,350,000 Sub-Series 2005-4**

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## REMARKETING AGREEMENT

**THIS REMARKETING AGREEMENT** dated as of May 1, 2008 (this “**Agreement**”), between **CITY OF AUSTIN, TEXAS** (the “**Issuer**”), and a **MORGAN STANLEY & CO. INCORPORATED**, as Remarketing Agent (the “**Remarketing Agent**”).

### Recitals

**A.** The Issuer issued its City of Austin, Texas, Airport System Refunding Revenue Bonds, Series 2005 (AMT) as four sub-series, in the aggregate principal amount of \$281,300,000 (the “**Bonds**”), pursuant to the provisions of Ordinance No. 20050804-039 adopted and approved by the Issuer on August 4, 2005 (the “**Ordinance**”). Wells Fargo Bank, N.A., has been appointed as paying agent and bond registrar (the “**Paying Agent**”) with respect to the Bonds under the Ordinance. All terms not otherwise defined in this Remarketing Agreement have the meanings ascribed to such terms in the Ordinance.

**B.** Pursuant to the Ordinance the Bonds may bear interest at variable interest rates and, under the circumstances, at the times and in the manner provided in the Ordinance, may be, and at certain times are required to be, tendered by the holders thereof for purchase.

**C.** The Bonds are subject to both optional and mandatory tender for purchase by the holders thereof and to remarketing, all as provided in the Ordinance.

**D.** The Bonds are more fully described in the Remarketing Memorandum, dated April 24, 2008 (the “**Remarketing Memorandum**”) and the Ordinance.

**E.** Pursuant to Section A-601 of Appendix A to the Ordinance, the Issuer desires to appoint Morgan Stanley & Co. Incorporated as its agent of the Bonds of Sub-Series 2005-3 and Sub-Series 2005-4 (collectively, the “**Sub-Series Bonds**”) to perform the services of Remarketing Agent provided for herein and in the Ordinance, and Morgan Stanley & Co. Incorporated is willing to do so on the terms and conditions set forth herein.

**F.** The City has entered into a Standby Bond Purchase Agreement, dated as of \_\_\_\_\_, 2008, (the “**Liquidity Facility**”) with Dexia Crédit Local, acting through its New York Branch (the “**Bank**”), to provide liquidity to pay the purchase price of any tendered Bonds.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Agreement, the parties to this Agreement hereby covenant and agree as follows:

#### **1. Representations and Warranties of the Issuer. The Issuer represents and warrants to the Remarketing Agent that as of the date hereof:**

(a) The representations and warranties made by the Issuer in the Liquidity Facility dated \_\_\_\_\_, 2008, to the Bank and Wells Fargo Bank, N.A. (the “**Tender Agent**”), as representative of the purchasers of the Bonds named therein are true and correct.

(b) This Agreement has been duly authorized by the Issuer and constitutes the legal, valid and binding obligation of the Issuer, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy or other laws affecting the enforcement of creditors’ rights

generally or by general equitable principles and except as rights of indemnity or contribution hereunder may be limited by law or public policy.

**2. Acceptance of Appointment and Obligations of Remarketing Agent.**

(a) Morgan Keegan & Company, Inc. hereby accepts its appointment as the Remarketing Agent for the Sub-Series Bonds and hereby accepts and agrees to perform the duties and obligations imposed upon it as Remarketing Agent under the Ordinance.

(b) The Remarketing Agent hereby certifies that it is a member of the National Association of Securities Dealers, Inc., having a capitalization of at least \$15,000,000 and is authorized by law to perform all the duties imposed upon it as Remarketing Agent by this Agreement and the Ordinance.

(c) The Remarketing Agent will determine the Daily Rate, the Weekly Rate, the Term Rate and the Fixed Rate, all in accordance with the Ordinance, and will give notice of such rates in the manner and to the persons specified therein. In addition, the Remarketing Agent will provide all notices in the manner and at the times set forth in the Ordinance, and in addition, the Remarketing Agent will provide all notices required by the Ordinance.

(d) The Remarketing Agent will keep books and records with respect to its duties as Remarketing Agent as is consistent with prudent industry practice and will make those books and records available for inspection by the Issuer at all reasonable times during its normal business hours.

(e) The Remarketing Agent will be acting solely as an agent in the resale of the Sub-Series Bonds and will use its best efforts to remarket the Sub-Series Bonds in accordance with the Ordinance and perform all other duties assigned to it under the Ordinance. In the event of any conflict between the terms of this Agreement and the Ordinance, the Ordinance shall control.

**3. Fees and Expenses.** While any Sub-Series Bonds bear interest at a Weekly Rate, unless otherwise agreed upon from time to time by the Issuer and the Remarketing Agent, the Issuer will pay the Remarketing Agent directly as compensation for its services for any Sub-Series Bonds bearing interest at a Weekly Rate, a fee equal to \_\_\_\_ hundredths of one percent (\_\_\_\_%) per annum of the weighted average principal amount of the Sub-Series Bonds outstanding bearing interest at a Weekly Rate during each three-month period (or from the date of the remarketing of such Bonds to the payment date with respect to the initial period), payable quarterly in arrears on each January 1, April 1, July 1 and October 1, commencing May 1, 2008. If the Bonds are to bear interest at a Daily Rate, the Issuer will pay the Remarketing Agent for Sub-Series Bonds bearing interest at a Daily Rate a remarketing fee that is mutually agreed to by the Issuer and the Remarketing Agent at the time of conversion of any Sub-Series Bonds to a Daily Rate. The Remarketing Agent will not be entitled to compensation after this Agreement is terminated except for a pro rata portion of the fee in respect of the quarter in which such termination occurs. Additionally, the Issuer will reimburse the Remarketing Agent for its reasonable out-of-pocket expenses in performing its obligations hereunder, including, without limitation, expenses incurred in the preparation and distribution of the disclosure documents referred to in **section 4** and in connection with the proposed conversion of any Sub-Series Bonds from one Mode to another Mode. The parties anticipate that separate arrangements for compensation will be made for the remarketing of Bonds in connection with a conversion to the Term Rate Mode or the Fixed Rate Mode at the time of such conversion.

**4. Disclosure Document.** If required under any applicable law or as a material change in the information in a disclosure document heretofor used in connection with the sale or theretofore used in

connection with the remarketing of the Sub-Series Bonds, which may include the Official Statement or the Remarketing Memorandum (collectively, the "Disclosure Document") the Issuer promptly will provide the Remarketing Agent with a disclosure document reasonably satisfactory to the Remarketing Agent and its counsel in respect of the Sub-Series Bonds. The Issuer will supply the Remarketing Agent with such number of copies of such disclosure document as the Remarketing Agent reasonably requests from time to time, within such reasonable time period as will permit the Remarketing Agent to comply with provisions of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the "**Rule**") The Issuer will supplement and amend the disclosure document so that, at all times when used in connection with the remarketing of the Sub-Series Bonds. The disclosure document will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that no such amendment or supplement will be made prior to allowing the Remarketing Agent a reasonable opportunity to review it. The Issuer will not, however, be required to make representations or warranties as to statements or omissions based upon information furnished to the Issuer in writing by or on behalf of the Remarketing Agent relating to the Remarketing Agent expressly for use therein.

The Issuer agrees to notify the Remarketing Agent promptly in writing of the occurrence of any of the following events:

- (a) any default under the Ordinance of which it has knowledge or any event which, with notice or lapse of time or both, would constitute such an event of default;
- (b) any event with respect to the Sub-Series Bonds which requires the delivery of an opinion of Bond Counsel pursuant to the Ordinance;
- (c) any optional redemption or extraordinary optional redemption pursuant to the Ordinance;
- (d) any mandatory redemption (other than pursuant to sinking fund provisions) pursuant to the Ordinance,
- (e) any notice of each demand for payment made by the Tender Agent or the Paying Agent under the Bond Insurance Policy;
- (f) each material amendment, modification or supplement to the Ordinance,
- (g) any adverse change, or threatened adverse change, in the federal income tax treatment of interest on the Sub-Series Bonds thereof;
- (h) any fact or occurrence as a result of which the Disclosure Document would be or become false or misleading in any material respect or any representation or warranty made herein would become false;
- (i) any material adverse change in the financial condition or general affairs of the Issuer's Airport System; or
- (j) any reduction, qualification or withdrawal or any written suggestion by any rating agency that it is considering a possible reduction, qualification, or withdrawal in the rating of the Sub-Series Bonds.

The Issuer hereby acknowledges the requirements imposed on the Remarketing Agent by the Rule. The Issuer covenants and agrees that it will comply with the continuing disclosure requirements



pursuant to Section (b)(5)(i) of the Rule to the extent applicable to the Bonds, and take such other actions as is reasonably necessary to enable the Remarketing Agent to comply with the Rule, if applicable.

Upon the request of the Remarketing Agent, which may be made from time to time, the Issuer shall cooperate with the Remarketing Agent to cause the Sub-Series Bonds to qualify for offer and sale under the blue sky laws as the Remarketing Agent may designate, and the Issuer shall pay, or reimburse if paid by the Remarketing Agent, all reasonable fees and disbursement of counsel for the Remarketing Agent and all other expenses and filing fees in connection therewith; provided however, that the Issuer shall not be required to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in any jurisdiction in which it is not otherwise subject to taxation.

The Issuer shall deliver to the Remarketing Agent such additional information concerning the business and financial condition of the Issuer as the Remarketing Agent may reasonably request.

## **5. Indemnification**

### **(a) Indemnification and Contribution.**

i) To the extent permitted by law, or to the extent, if any, that a court of competent jurisdiction would enforce such agreement as not contrary to law or public policy, the Issuer agrees to indemnify and hold harmless the Remarketing Agent and each Person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended) the Remarketing Agent against any and all losses, claims, damages, expenses, and liabilities whatsoever arising out of any untrue statement or alleged untrue statement in the any Disclosure Document of a material fact or any omission or alleged omission of any material fact necessary to make the statements therein, at the time and in light of the circumstances under which they were made, not misleading, including, without limiting the generality of the foregoing, the aggregate amount paid in settlement of any litigation commenced or threatened or of any claim whatsoever based upon any such untrue statement or omission or alleged untrue statement or omission, if such settlement is effected with the written consent of the Issuer, and any amount reasonably incurred in investigating, preparing, or defending against any litigation commenced or threatened or any claim based upon any such untrue statement or omission or alleged untrue statement or omission. In case any claim should be made or action brought against any of the Remarketing Agent or any controlling Person (as aforesaid) based upon the Disclosure Document, in respect of which indemnity may be sought against the Issuer, the Remarketing Agent or such controlling Person shall, promptly notify the Issuer in writing setting forth the particulars of such claim or action and the Issuer shall assume the defense thereof, including the retaining of counsel and the payment of all expenses; provided however that failure to provide such notification shall not affect an indemnified party's right to indemnification hereunder. The Remarketing Agent or any such controlling Person shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the Remarketing Agent's expense or the expense of such controlling Person unless the retaining of such counsel has been specifically authorized in writing by the Issuer or counsel has advised the Remarketing Agent that the representation of the two parties would constitute a conflict and be inappropriate due to actual or potential differing of interests between them.

ii) The Remarketing Agent will indemnify and hold harmless the Issuer, each of its officers and employees and each Person who controls the Issuer within the meaning of Section 15 of the Securities Act of 1933, as amended (the "1933 Act"), to the same extent as the

foregoing indemnity from the Issuer to the Remarketing Agent, but only with reference to written information relating to the Remarketing Agent furnished by the Remarketing Agent specifically for use in preparation of the Remarketing Memorandum or any supplement or amendment thereto.

iii) If the indemnification provided for above is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages or liabilities referred to above, then each indemnifying party, in lieu of indemnifying such indemnified party, shall to the extent permitted by law, contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuer and the Remarketing Agent from the remarketing of the Sub-Series Bonds or (ii) in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Issuer and of the Remarketing Agent in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Issuer and the Remarketing Agent shall be deemed to be in the same respective proportions as the net proceeds from the remarketing (before deducting expenses) received by the Issuer and the total compensation received by the Remarketing Agent in the preceding twelve months, pursuant to **section 3** hereunder. The relative fault of the Issuer and the Remarketing Agent shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer or by the Remarketing Agent and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Issuer and the Remarketing Agent agree that it would not be just and equitable if contribution pursuant to this Section were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this **section 5**, the Remarketing Agent shall not be required to contribute hereunder any amount in excess of the aggregate amount of remarketing fees paid to the Remarketing Agent under Section 3 hereof. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) to the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

**6. Remarketing Agent's Liabilities.** The Remarketing Agent will incur no liability to the Issuer or any other party for its actions as Remarketing Agent pursuant to the terms hereof and of the Ordinance except for (i) the liabilities for which the Remarketing Agent has agreed to indemnify the Issuer and others pursuant to **section 5** above, and (ii) its negligence or willful misconduct. In setting the interest rates on the Sub-Series Bonds, the Remarketing Agent will not be liable for any error made in good faith. The undertaking of the Remarketing Agent to remarket any Sub-Series Bonds pursuant to the Ordinance is on a "best efforts" basis.

The duties and obligations of the Remarketing Agent will be determined solely by the express provisions of this Agreement, the Ordinance and the Remarketing Agent will not be responsible for the performance of any duties and obligations other than as are specifically set forth in this Agreement and the Ordinance, and no implied covenants or obligations will be read into this Agreement or the Ordinance against the Remarketing Agent. The Remarketing Agent may conclusively rely upon any notice or

document given or furnished to it and conforming to the requirements of this Agreement or the Ordinance and the Remarketing Agent may rely and will be protected in acting upon such notice or any document reasonably believed by it to be genuine and to have been given, signed or presented by the proper party or parties.

**7. Resignation or Removal of Remarketing Agent.** The Remarketing Agent may be removed at any time, with or without cause, by the Issuer, upon 20 days written notice by the Issuer to the Remarketing Agent, the Paying Agent, the Tender Agent, the Credit Facility Issuer, and the Liquidity Facility Issuer, if any. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Remarketing Agreement by giving at least 30 days written notice to the Issuer, the Paying Agent, the Tender Agent, and the Liquidity Facility Issuer, if any; provided that the Remarketing Agent may immediately cease to offer and sell the Sub-Series Bonds if it determines, in its reasonable judgment, that:

- (i) for any reason, a pending or proposed change in applicable tax laws or securities laws would require registration under the Securities Act in connection with the remarketing of the Sub-Series Bonds;
- (ii) a material adverse change has occurred in the condition of the City's Airport System;
- (iii) a general banking moratorium has been declared by federal or New York authorities having jurisdiction or a material disruption in commercial banking or securities settlement of clearances services shall have occurred;
- (iv) there has occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis that, in the Remarketing Agent's judgment, is material and adverse;
- (v) a rating down grade or withdrawal of the rating on the Sub-Series Bonds has occurred;
- (vi) an imposition of material restrictions on the Sub-Series Bonds has occurred;
- (vii) there is a general suspension of trading or the fixing of minimum or maximum prices for trading on the New York Stock Exchange;
- (viii) in the opinion of the Remarketing Agent, the market price of the Sub-Series Bond, or the market price generally of obligations of the general character of the Bonds, might be materially adversely affected because: (A) additional material restrictions not in force as of the date hereof is imposed upon trading in securities generally by any governmental or regulatory authority or by any national securities exchange, (B) the New York Stock Exchange or other national securities exchange, or any governmental or regulatory authority, imposes, as to the Sub-Series Bonds, any material restrictions which are neither now in force nor have been announced to become effective prior to the date of such Bonds, or increase materially those now in force and so announced, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters, or (C) the President of the United States of America, a member of his cabinet or the United States Securities and Exchange Commission, including a lesser official acting on the behalf of any of them, or a member of the Congress, announces the intended introduction of legislation to achieve the same effect as that described in subclause (A) or (B) of this clause (viii);

- (ix) a material misstatement or omission in any Disclosure Document has occurred, so that it is not advisable, in the judgment of the Remarketing Agent, to attempt to remarket the Sub-Series Bonds;
- (x) the Remarketing Agent determines, in its sole discretion upon consultation with counsel, that either (A) a disclosure document is required by applicable law to be distributed to prospective purchasers and that such document is not available or, if available, is not reasonably satisfactory to the Remarketing Agent in form or substance or (B) a continuing disclosure undertaking is required by applicable law and that such undertaking is either not then in effect or is not reasonably satisfactory to the Remarketing Agent in form or substance;
- (xi) the Remarketing Agent receives and Opinion of Bond Counsel, a copy of which will be furnished to the Issuer that such action will not impair the exclusion of interest on such Bonds from gross income for purposes of federal income taxation (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of the Bonds) or the exemption from registration under the Securities Act of 1933, as amended, or
- (xii) an event, including, without limitation, the bankruptcy or default of any other issuer of or obligor on obligations of the general character of the Sub-Series Bonds shall have occurred.

**8. Dealing in Securities by Remarketing Agent.** The Remarketing Agent, in its individual capacity, either as principal or agent, may buy, sell, own, hold and deal in any of the Sub-Series Bonds, and may join in any action which any owner of such Bonds may be entitled to take with like effect as it did not act in any capacity hereunder; however, the Remarketing Agent will have no obligation hereunder to buy or take any position in the Sub-Series Bonds for its own account. The Remarketing Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer and may act as depository, trustee, or agent for any committee or body of owners of such Bonds or other obligations of the Issuer freely as if it did not act in any capacity hereunder.

**9. Intention of Parties.** It is the express intention of the parties hereto that no purchase, sale or transfer of any Sub-Series Bonds as herein provided, will constitute or be construed to be the extinguishment of any such Bond or the indebtedness represented thereby or the reissuance of any Sub-Series Bond or the refunding of any indebtedness represented thereby.

**10. Amendment.**

(a) The Issuer agrees not to consent to any amendment of the provisions of the Ordinance with respect to this Agreement or the rights and duties of the Remarketing Agent hereunder or thereunder without the prior written consent of the Remarketing Agent which will not be unreasonably withheld.

(b) This Agreement may not be amended except by a writing signed by each of the parties hereto; may not be assigned without the mutual consent of the parties hereto; and will not confer any rights upon any other person or any registered or beneficial owners of the Sub-Series Bonds in their capacities as such

**11. Notices.**

Unless otherwise provided, all notices, requests, demands and formal actions hereunder must be in writing and mailed, telegraphed or delivered, as follows:

If to the Issuer:

City of Austin  
700 Lavaca, Suite 1510  
Austin, Texas 78701  
Attention: Treasurer  
Tel: 512-974-7882

If to the Remarketing Agent:

Morgan Stanley & Co. Incorporated  
1221 Avenue of the Americas  
New York, New York 10020  
Attention: Short Term Products  
Tel. 212-762-8263  
Fax: 212-507-1937  
E-Mail: muni-short-term@morganstanley.com

If to the Paying Agent or the Tender Agent:

Wells Fargo Bank, N.A.  
MAC T5656-013  
400 West 15<sup>th</sup> Street  
Austin, Texas 78701  
Tel: 512-344-7306  
Fax: 512-344-8621  
Attention: Corporate, Municipal and Escrow Services

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications is sent. In addition, the parties hereto may agree to any other means by which subsequent notices, certificates, requests or other communications may be sent.

**12. Governing Law and Waiver of Trial by Jury.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO ALSO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THIS REMARKETING AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**13. Execution of Counterparts.** This Agreement may be executed in several counterparts, each of which will be regarded as an original and all of which will constitute one and the same document.

**14. Electronic Transaction.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic

and valid counterparts of the original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**15. Severability.** If any clause, provision or Section hereof is ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or Section will not affect any of the remaining clauses, provisions or sections hereof.

**16.** The obligations of the respective parties hereto may not be assigned or delegated to any other person without the consent of the other parties hereto; provided, however, that the Remarketing Agent may assign its rights and obligations hereunder to an affiliate of the Remarketing Agent or to an entity succeeding to the business of the Remarketing Agent without the consent of the other parties hereto. This Agreement will inure to the benefit of and be binding upon the Issuer and the Remarketing Agent and their respective successors and assigns, and will not confer any rights upon any other person, partnership, association or corporation other than persons, if any, controlling the Remarketing Agent within the meaning of the Securities Act.

**17.** All of the representations, warranties and agreements contained in this Agreement of the Issuer and the Remarketing Agent shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of the Remarketing Agent or the Issuer, (ii) delivery of and any payment for any Sub-Series Bonds hereunder or (iii) termination or cancellation of this Agreement

**18.** Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part this Agreement and will not be used in the interpretation of any provision of this Agreement.

**19.** This Agreement shall only be amended, supplemented or modified in a writing signed by a duly authorized representative of the parties hereto.

**20.** The Remarketing Agent may record telephone communications with the Issuer, the Paying Agent, the Trustee, or the Tender Agent, or all of them.

**21.** This Agreement shall not be deemed or construed to be modified, rescinded, canceled or waived, in whole or in part, except by a written instrument signed by a duly authorized representative of the parties hereto.

**22.** Failure of any party to this Agreement to exercise any right or remedy hereunder in the event of a breach of this Agreement by any other party shall not constitute a waiver of any such right or remedy with respect to any subsequent breach.

**IN WITNESS WHEREOF**, the parties hereto have caused this Remarketing Agreement to be duly executed by their duly authorized officers as of the day and year first above written.

**CITY OF AUSTIN, TEXAS**, as  
Issuer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MORGAN STANLEY & CO. INCORPORATED**, as  
Remarketing Agent

By. \_\_\_\_\_  
Name: \_\_\_\_\_  
Title. \_\_\_\_\_

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**REMARKETING AGREEMENT**

**Dated as of**

**May 1, 2008**

**Between**

**CITY OF AUSTIN, TEXAS**

**And**

**MORGAN KEEGAN & COMPANY, INC.,  
as Remarketing Agent**

**Related to:**

**CITY OF AUSTIN, TEXAS  
AIRPORT SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 (AMT)**

**\$70,300,000 Sub-Series 2005-1  
\$70,325,000 Sub-Series 2005-2**

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## **TENDER AGENCY AGREEMENT**

THIS TENDER AGENCY AGREEMENT (the "Agreement"), dated as of May 1, 2008, between the City of Austin, Texas (the "City") and Wells Fargo Bank, N.A., as Tender Agent (the "Tender Agent").

WHEREAS, pursuant to Ordinance No. 20050804-039 adopted and approved on August 4, 2005 (the "Ordinance"), the City has previously issued and has outstanding its Airport System Refunding Revenue Bonds, Series 2005, issued in four subseries designated "Sub-series 2005-1," "Sub-series 2005-2," "Sub-series 2005-3" and "Sub-series 2005-4" (collectively, the "Bonds"); and

WHEREAS, the Bonds and the Ordinance provide, among other things, that the registered owners (the "Owners") of the Bonds are required to tender their Bonds to the Tender Agent for purchase at various times and under various conditions, in each case in accordance with the provisions of the Bonds and the Ordinance; and

WHEREAS, pursuant to the terms of a Remarketing Agreement, dated as of the date hereof (the "Morgan Stanley Remarketing Agreement"), between the City and Morgan Stanley & Co. Incorporated ("Morgan Stanley"), Morgan Stanley has agreed to use its best efforts to remarket any Sub-series 2005-3 Bonds and Sub-series 2005-4 Bonds tendered for purchase to the Tender Agent by the Owners thereof pursuant to the Ordinance; and

WHEREAS, pursuant to the terms of a Remarketing Agreement, dated as of the date hereof (the "Morgan Keegan Remarketing Agreement" and, together with the Morgan Stanley Remarketing Agreement, the "Remarketing Agreements"), between the City and Morgan Keegan & Company, Inc. ("Morgan Keegan" and, together with Morgan Stanley, the "Remarketing Agents"), Morgan Keegan has agreed to use its best efforts to remarket any Sub-series 2005-1 Bonds and Sub-series 2005-2 Bonds tendered for purchase to the Tender Agent by the Owners thereof pursuant to the Ordinance; and

WHEREAS, pursuant to the terms of a Standby Bond Purchase Agreement among the City, the Tender Agent and Dexia Credit Local, acting through its New York Branch (the "Bank"), dated as of May 1, 2008 (the "Standby Bond Purchase Agreement"), the Bank has agreed, subject to certain terms and conditions, to purchase Bonds which have been tendered to the Tender Agent pursuant to the Ordinance and which have not been remarketed by the Remarketing Agents; and

WHEREAS, the Bank constitutes a Liquidity Facility Issuer and the Standby Bond Purchase Agreement constitutes a Liquidity Facility pursuant to the Ordinance, as each such term are defined therein;

NOW, THEREFORE, in consideration of the premises and to provide for the coordination of said arrangements, the parties hereby agree as follows:

SECTION 1. Defined Terms. Capitalized terms used in this Agreement and not defined herein shall have the meanings assigned to them in the Ordinance, including Appendix A thereto.

SECTION 2. Appointment of Tender Agent. Subject to the terms and conditions contained herein and in the Ordinance, Wells Fargo Bank, N.A., is hereby designated and appointed Tender Agent in the performance of its duties and obligations hereunder and under the Ordinance. Wells Fargo Bank, N.A., hereby accepts such appointment and the City consents to such designation and appointment. Wells Fargo Bank, N.A., hereby certifies that it has the capacity to, and agrees to, perform the duties and responsibilities of the Tender Agent herein and under the Ordinance. By its execution and delivery of this Agreement, the Tender Agent hereby covenants and agrees to comply with the provisions of the Ordinance applicable to the Tender Agent. To the extent of any conflict between the provision of this Agreement and the Ordinance, the Ordinance shall control.

During the term hereof, the Tender Agent hereby covenants and agrees to maintain an office where Bonds no longer held in the Book-Entry System may be delivered and tendered for purchase to the Tender Agent. The initial designated office of the Tender Agent is: 608 2<sup>nd</sup> Avenue S., Minneapolis, Minnesota 55479, Attention: REORG N9303-121.

Bonds tendered for purchase which are held in Book-Entry System shall be tendered pursuant to such Book-Entry System.

SECTION 3. Creation of Purchase Fund. There is established in the Ordinance and maintained with the Tender Agent, a separate fund to be known as the "Purchase Fund," which shall be held by the Tender Agent for the exclusive benefit of the Owners of Bonds who are entitled to be paid the Purchase Price of such Bonds from such Fund and, to the extent of any surplus, the Person who deposited the money into the applicable account of the Purchase Fund. The Tender Agent shall further establish separate accounts within the Purchase Fund to be known as the "Liquidity Facility Purchase Account" and the "Remarketing Proceeds Account."

Upon receipt from the Remarketing Agent of the proceeds of remarketing of Bonds of a Sub-series on a Purchase Date or Mandatory Purchase Date, the Tender Agent shall deposit such proceeds in the Remarketing Proceeds Account for application to the Purchase Price of the remarketed Bond. Notwithstanding the foregoing, upon the receipt of the proceeds of remarketing of Bank Bonds, the Tender Agent shall immediately pay such proceeds to or for the account of the related Liquidity Facility Issuer to the extent of any amount owing to the Liquidity Facility Issuer.

Upon receipt by the Tender Agent of immediately available funds to pay the Purchase Price of Bonds pursuant to Section A-411 of the Ordinance, the Tender Agent shall deposit such money in the Liquidity Facility Purchase Account for application to the Purchase Price of the Bonds to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in the Liquidity Facility Purchase Account and not needed with respect to the Purchase Price for any Bonds of such subseries shall be immediately returned to the order of the Liquidity Facility Issuer.

Amounts held in the Liquidity Facility Purchase Account and the Remarketing Proceeds Account by the Tender Agent shall be held uninvested and separate and apart from all other funds and accounts.

SECTION 4. Delivery of Bonds. The Bonds of a subseries shall be delivered in accordance with Section A-409 of the Ordinance.

SECTION 5. Tenders; Remarketing of the Bonds.

(a) Mandatory Tenders. At the times specified in Section A-405 of the Ordinance, notice of any mandatory tender of Bonds of a subseries shall state that such Bonds are to be purchased pursuant to Sections A-402, A-403 or A-404 of the Ordinance, and shall be provided by the Paying Agent/Registrar or caused to be provided by the Paying Agent/Registrar by mailing a copy of the notice of mandatory tender by first-class mail to each Owner of the Bonds of the Series at the respective addresses shown on the registry books. Each notice of mandatory tender for purchase shall identify the reason for the mandatory tender for purchase, and specify the CUSIP number, Mandatory Purchase Date, the Purchase Price, the place and manner of payment, that the Owner has no right to retain such Bonds and that no further interest will accrue from and after the Mandatory Purchase Date to such Owner. Each notice of mandatory tender for purchase caused by a change in the Mode applicable to the Bonds of a subseries shall in addition specify the conditions that have to be satisfied pursuant to Section A-207 of the Ordinance in

order for the New Mode to become effective and the consequences that the failure to satisfy any of such conditions would have. In the event a mandatory tender of Bonds of a subseries shall occur at or prior to the same date on which an optional tender for purchase is scheduled to occur, the terms and conditions of the applicable mandatory tender for purchase shall control. The Paying Agent/Registrar shall give a copy of any notice of mandatory tender given by it to the other Notice Parties. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner of any Bond receives the notice, and the failure of such Owner to receive any such notice shall not affect the validity of the action described in such notice. Failure by the Paying Agent/Registrar to give a notice as provided in this Section shall not affect the obligation of the Tender Agent to purchase the Bonds of a subseries subject to mandatory tender for purchase on the Mandatory Purchase Date.

(b) Optional Tenders. Any Bond of a subseries (or portions thereof in Authorized Denominations) in the Daily Rate Mode that is not a Bank Bond is subject to purchase, on the demand of the Owner thereof, at a price equal to the Purchase Price on any Business Day (such purchase to be made on the Business Day upon which such demand is made), upon irrevocable notice submitted by Electronic Means to the Tender Agent and the Remarketing Agent (promptly confirmed in writing by such Owner), delivered to the Tender Agent and the Remarketing Agent by telecopier by 11:00 a.m., New York City time, at their respective Principal Offices, which states the number and principal amount of such Bond being tendered and the Purchase Date. Such tender notice, once transmitted to the Tender Agent, shall be irrevocable with respect to the tender for which such tender notice was delivered and such tender shall occur on the Business Day specified in such Tender Notice. The Tender Agent shall, as soon as practicable, notify the City of the principal amount of Bonds of the Series being tendered. The contents of any such irrevocable telephonic tender notice shall be conclusive and binding on all parties.

The Owners of Bonds of a subseries in a Weekly Rate Mode that are not Bank Bonds may elect to have such Bonds (or portions thereof in Authorized Denominations) purchased at a price equal to the Purchase Price upon delivery of an irrevocable written notice of tender to the Tender Agent and Remarketing Agent, at their respective Principal Offices, not later than 4:00 p.m., New York City time, on a Business Day not less than seven (7) days before the Purchase Date specified by the Owner. Such notice shall (i) state the number and the principal amount of such Bond being tendered and (ii) state that such Bond shall be purchased on the Purchase Date so specified by the Owner. The Tender Agent

shall notify the City by the close of business on the next succeeding Business Day of the receipt of any notice pursuant to this paragraph.

(c) Remarketing of the Bonds.

(i) The Remarketing Agent shall notify the Tender Agent by Electronic Means not later than 11:45 a.m. (12:15 p.m. in the case of Bonds of a subseries in the Daily Rate Mode), New York City time, of the registration instructions as may be necessary to re-register the Bonds.

(ii) Unless otherwise permitted by the Securities Depository and the book-entry-only system applicable to a Series of Bonds, the Tender Agent shall authenticate and have available for delivery to the Remarketing Agent prior to 12:30 p.m., New York, City time, on the Purchase Date or Mandatory Tender Date new Bonds of the Series for the respective purchasers thereof.

(iii) The Remarketing Agent shall at or before 11:45 a.m. (12:15 p.m. in the case of Bonds of a subseries in the Daily Rate Mode), New York City time, on the Purchase Date or Mandatory Purchase Date, as the case may be, confirm to the City, the Paying Agent/Registrar and the Tender Agent the transfer of the Purchase Price of remarketed Bonds of the Series to the Tender Agent in immediately available funds at or before 12:00 p.m. (12:20 p.m. in the case of Bonds of a subseries in the Daily Rate Mode), New York City time, such confirmation to include the pertinent Fed Wire reference number.

(iv) To the extent a Liquidity Facility is in effect, the Tender Agent shall draw on the Liquidity Facility, in accordance with the terms thereof, by 12:25 p.m., New York City time, on the Purchase Date or Mandatory Purchase Date, as the case may be, in an amount equal to the Purchase Price of all Bonds of the Series tendered or deemed tendered less the aggregate amount of remarketing proceeds confirmed to the City, the Paying Agent/Registrar and the Tender Agent by the Remarketing Agent pursuant to clause (1) of Section A-407(c) of the Ordinance and shall cause the proceeds of such draw to be transferred to the Tender Agent by no later than 2:30 p.m., New York City time. Notwithstanding the foregoing, the Paying Agent/Registrar shall draw on the Liquidity Facility, if any, in an amount equal to the Purchase Price of all Bonds of the Series tendered or deemed tendered for purchase on each Purchase Date or Mandatory Purchase Date, as the case may be, if it does not receive a confirmation from the Remarketing Agent pursuant to clause (1) of Section A-407(c) of the Ordinance.

(v) To the extent a Liquidity Facility is in effect, the Paying Agent/Registrar shall confirm to the City by 2:40 p.m., New York City time, on the Purchase Date or Mandatory Purchase Date, receipt of the proceeds of any draw on the Liquidity Facility.

**SECTION 6. Tender of Bonds to Tender Agent.** Each Owner who is required to tender its Bond to the Tender Agent must tender such Bond to the Tender Agent in accordance with Section A-410 of the Ordinance. For any Bonds required to be tendered for purchase which are not in fact delivered, the Tender Agent shall hold any funds received for purchase of those Bonds in trust in a separate account and shall pay such funds to the former Owners upon presentation of the Bonds subject to tender, and such Bonds shall be deemed tendered and cease to accrue interest as to the former Owners on the Purchase Date or Mandatory Purchase Date pursuant to the Ordinance.

**SECTION 7. Source of Funds for Purchase of Bonds of a Subseries.** On or before the close of business on the Purchase Date or Mandatory Purchase Date with respect to Bonds of a subseries, the Tender Agent shall purchase such Bonds from the Owners at the Purchase Price. Unless otherwise provided in a certificate of an Authorized Officer delivered to the Paying Agent/Registrar, the Insurer, the Tender Agent and the Remarketing Agent on a Purchase Date or Mandatory Purchase Date, funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated: (1) immediately available funds on deposit in the Remarketing Proceeds Account with respect to Bonds of such subseries; and (2) to the extent a Liquidity Facility is in effect, immediately available funds on deposit in the Liquidity Facility Purchase Account derived from the Liquidity Facility relating to Bonds of such subseries.

Notwithstanding the foregoing, unless otherwise provided in a certificate of an Authorized Officer delivered to the Tender Agent and the Remarketing Agent on a Purchase Date or Mandatory Purchase Date, the City shall have the option, but shall not be obligated, to transfer immediately available funds to the Tender Agent for the payment of the Purchase Price of any Bond that is tendered or deemed tendered for purchase in accordance with the terms of Appendix A of the Ordinance and the Purchase Price of which is not paid on the Purchase Date or Mandatory Purchase Date from the source identified above. Any Bonds purchased with such funds from the City shall be cancelled unless otherwise consented to by the Insurer. None of the City, the Tender Agent nor the Remarketing Agent shall have any liability or obligation to pay or, except from the source identified above, make available such Purchase Price. Any Bonds held by or for the account of the City shall not be entitled to the benefit of a Liquidity Facility or the Bond

Insurance Policy. Unless otherwise provided in a certificate of an Authorized Officer delivered to the Paying Agent/Registrar and Tender Agent on a Purchase Date or Mandatory Purchase Date, the failure to pay any such Purchase Price for Bonds of a subseries that have been tendered or deemed tendered for purchase from the source identified above shall not constitute an Event of Default under the Ordinance and in the case of such failure such Bonds shall not be purchased and shall remain in the Mode in effect immediately preceding such Purchase Date or Mandatory Purchase Date, as the case may be, unless such Mode is automatically converted to a Weekly Rate Mode pursuant to Section A-205 of the Ordinance; provided, however, that if such Bonds were in the Auction Rate Mode immediately preceding such Date, such Bonds shall remain in the Auction Rate Mode for an Auction Period and bearing an Auction Period Rate as provided in Section A-207(c)(7) of the Ordinance.

SECTION 8. Purchase of Tendered Bonds by the Bank; Deposits into the Liquidity Facility Purchase Account of the Purchase Fund; Notice to Paying Agent/Registrar and Tender Agent; Release of Bank Bonds. The Bank, upon receipt of a Notice of Bank Purchase pursuant to the Standby Bond Purchase Agreement, has agreed in the Standby Bond Purchase Agreement to purchase such unremarketed Bonds by causing an amount equal to the aggregate Purchase Price of the unremarketed Bonds to be deposited in immediately available funds in the Liquidity Facility Purchase Account of the Purchase Fund no later than 2:30 p.m., New York City time, on the Purchase Date against delivery of such Bonds at the time and in the manner set forth in the Standby Bond Purchase Agreement.

The Tender Agent agrees to hold Bank Bonds as agent of the Bank and to release any Bank Bonds solely in accordance with Section A-409 of the Ordinance.

SECTION 9. Disbursements from the Purchase Fund. Money in the Remarketing Proceeds Account and Liquidity Facility Purchase Account of the Purchase Fund shall be applied by the Tender Agent by 3:00 p.m., New York City time, on each Purchase Date or Mandatory Purchase Date to purchase Bonds tendered to the Tender Agent at the Purchase Price in accordance with Appendix A of the Ordinance. Such Purchase Price shall be paid by wire transfer in immediately available funds on such Purchase Date or Mandatory Purchase Date; provided, however, for so long as the Bonds are held in the Book-Entry System, such payment will be in accordance with the requirements of the Book-Entry System.

SECTION 10. Transfer and Delivery of Tendered Bonds for Purchase. A principal amount of Bonds equal to the principal amount of Bonds purchased on

behalf of the Remarketing Agent pursuant to Sections 5 and 11 hereof or by the Liquidity Facility Issuer pursuant to Section 8 hereof shall be authenticated by the Tender Agent and delivered to, or as instructed by, the Remarketing Agent, and the Tender Agent shall cause the Paying Agent/Registrar to register such Bonds in the name or names provided by the Remarketing Agent or the Liquidity Facility Issuer, as applicable. The Remarketing Agent is required to redeliver such Bonds received from the Tender Agent to the respective purchasers not later than 3:30 p.m., New York City time.

Notwithstanding anything to the contrary in the foregoing paragraph, for so long as the Bonds are held in the system of book-entry of DTC in accordance with Section 3.09 of the Ordinance, (i) any Bond remarketed by the Remarketing Agent shall be delivered to the new beneficial owner thereof by a transfer in the book-entry system of DTC of such remarketed Bond to the applicable DTC Participant account for such beneficial owner; and (ii) Bank Bonds shall be delivered to the Liquidity Facility Issuer by a transfer in the book-entry system of DTC of such Bank Bonds to the DTC Participant account of the Tender Agent for the benefit of the Liquidity Facility Issuer, as beneficial owner of such Bank Bonds.

**SECTION 11. Remarketing of Bank Bonds.** The Remarketing Agent shall exercise its best efforts to solicit purchases of any Bank Bonds at a price of not less than 100% of the principal amount thereof, and upon receipt of the proceeds of any remarketing of such Bank Bonds the Tender Agent shall immediately pay such proceeds to or for the account of the related Liquidity Facility Issuer to the extent of any amount owing to the Liquidity Facility Issuer. Upon receipt by the Tender Agent of funds representing the proceeds of the remarketing of such Bank Bonds, new Bonds in place of such Bank Bonds so remarketed shall be registered in the names of the buyers thereof by the Paying Agent/Registrar and delivered by the Remarketing Agent to the buyers thereof and the proceeds of such remarketing shall, prior to or simultaneously with such delivery, be transferred by the Tender Agent to the Liquidity Facility Issuer by wire transfer.

**SECTION 12. Draws on Liquidity Facility.** Draws on the Liquidity Facility shall be made in accordance with the provisions of Section A-411 of the Ordinance.

**SECTION 13. Maintenance of Books and Records.** The Tender Agent agrees to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the City,



the related Credit Facility Issuer and the related Liquidity Facility Issuer at all reasonable times.

SECTION 14. Notice. Except as specifically provided in this Tender Agency Agreement, all notices, demands and formal actions under this Tender Agency Agreement shall be in writing and mailed, telecommunicated or otherwise delivered to:

The Tender Agent: Wells Fargo Bank, N.A.  
608 2<sup>nd</sup> Avenue S.  
Minneapolis, MN 55479  
Attention: REORG N9303-121  
Telephone: (612) 316-2148  
Telecopy: (612) 667-4927

with a copy to: Wells Fargo Bank, N.A.  
400 West 15<sup>th</sup> Street, Suite 150  
Austin, Texas 78701  
Attention: Jose Gaytan  
Telephone: (512) 344-7306  
Telecopy: (512) 344-8621

The City: City of Austin, Texas  
700 Lavaca, Suite 1510  
Austin, Texas 78701  
Attention: Treasurer  
Telephone: (512) 974-7883  
Telecopy: (512) 370-3838

The Liquidity Facility Issuer: Dexia Credit Local, New York Branch  
445 Park Avenue, 7<sup>th</sup> Floor  
New York, New York 10022  
Attention: Senior Vice President and  
Manager, Public Finance  
Telephone: (212) 515-7003  
Telecopy: (212) 753-7516

Attention: Vice President of Operations  
Telephone: (212) 515-7007  
Facsimile: (212) 753-7522

## SECTION 15. General.

(a) Payment of Tender Agent: Indemnification. The City shall pay all reasonable and actual out of pocket expenses of the Tender Agent for acting under and pursuant to this Tender Agency Agreement as set forth in Annex A hereto. To the extent permitted by law, the City shall indemnify and save harmless the Tender Agent and its officers and employees from and against any and all losses, costs, charges, expenses, judgments and liabilities to third parties arising out of its acting in good faith to carry out the transactions contemplated by this Tender Agency Agreement; provided, however, that such indemnification shall not apply to any losses, costs, charges, expenses, judgments or liabilities caused by the negligence or willful misconduct of the Tender Agent or its officers or employees. The terms of this Section 15(a) shall survive the termination of this Tender Agency Agreement and the payment of the all fees, expenses and amounts due hereunder shall be subject to annual appropriation of available funds by the City for the payment thereof.

(b) Tender Agent's Performance: Duty of Care. The Tender Agent consents and agrees to (i) hold all sums held by it for the payment of Bonds or Bank Bonds, as applicable, in trust for the benefit of the Owners or the Liquidity Facility Issuer, as applicable, until such sums shall be paid to the Owners or the Liquidity Facility Issuer or otherwise disposed of as herein provided, and (ii) perform and comply with all the terms and provisions on its part contained in this Tender Agency Agreement.

The duties and obligations of the Tender Agent shall be determined solely by the express provisions of this Tender Agency Agreement and the Ordinance, and no implied covenants or obligations shall be read into this Tender Agency Agreement against the Tender Agent; and in the absence of negligence or willful misconduct on the part of the Tender Agent, the Tender Agent may conclusively rely, as to the truth of the statements expressed therein, upon any document furnished to the Tender Agent and conforming to the requirements of this Tender Agency Agreement and the Tender Agent may rely and shall be protected in acting upon any document believed by it to be genuine and to have been signed or presented by the proper party or parties; but in the case of any such document which by any provision hereof is specifically required to be furnished to the Tender Agent, the Tender Agent shall be under a duty to examine the same to determine whether or not it conforms to the requirements of this Tender Agency Agreement.

No provision of this Tender Agency Agreement shall be construed to relieve the Tender Agent from liability for its own negligence or willful misconduct or that of its officers or employees.

(c) Payments. Any provision of this Tender Agency Agreement or any statute to the contrary notwithstanding, the Tender Agent hereby waives any rights to, or liens for, its fees, charges and expenses for services hereunder from funds or obligations credited to the Purchase Fund. The Tender Agent agrees that it will be reimbursed and compensated for its fees, charges and expenses for acting under and pursuant to this Tender Agency Agreement only from payments to be made by the City pursuant to Section 15(a) hereof.

(d) Term of Tender Agent Agreement. This Tender Agency Agreement shall become effective upon the conversion of the Bonds to the Weekly Rate Mode and shall remain in full force and effect until (i) such time as the principal of and premium, if any, and interest on all Bonds under the Ordinance shall have been paid or shall no longer have the right to be tendered for purchase; provided, however, that the City and the Tender Agent shall have fulfilled all their respective obligations hereunder, whereupon this Tender Agency Agreement shall terminate; or (ii) resignation by the Tender Agent or removal of the Tender Agent in accordance with Section 15(e) hereof, it being understood, in each case, that the Tender Agent does not waive or relinquish any rights it may have under Section 15(a) hereof.

(e) Resignation by or Removal of the Tender Agent. The Tender Agent may at any time resign and be discharged from the duties and obligations hereby created by giving at least sixty (60) days' written notice by first class mail, postage prepaid, to the City, the related Credit Facility Issuer and the related Liquidity Facility Issuer; provided, that resignation or removal (as set out below) shall not be effective until a successor Tender Agent, which shall be a bank or trust company duly qualified to act in the capacity as a successor Tender Agent, shall have been appointed by the City and acting under the Ordinance. The Tender Agent may be removed at any time, at the direction of the City, by an instrument filed with the Tender Agent and the Remarketing Agent.

(f) Amendments. (i) This Tender Agency Agreement may not be amended so as to adversely affect the right of the Owners or the Liquidity Facility Issuer to effect the purchase of Bonds pursuant to the Ordinance without the prior written approval of the Liquidity Facility Issuer and (ii) the City agrees to give to the Tender Agent prompt written notice of any modification or change of or supplement or amendment to the Ordinance which would affect the rights or

obligations of the Tender Agent hereunder. No such modification or change shall be effective against the Tender Agent unless the Tender Agent shall have consented thereto in writing.

(g) Successors and Assigns. The rights, duties and obligations of the City, the Paying Agent/Registrar, the Remarketing Agent and the Tender Agent hereunder shall inure, without further act, to their respective successors and permitted assigns; provided, however, that the Tender Agent may not assign or delegate its rights and obligations under this Tender Agency Agreement without the prior written consent of the City and, provided further, any successor Tender Agent shall execute a tender agent agreement substantially in the form and substance as this Tender Agency Agreement.

(h) Counterparts. This Tender Agency Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

(i) Limited Liability. Any obligation of the City created by or arising out of this Tender Agency Agreement and owing to the Tender Agent shall be a limited unsecured obligation of the City, payable solely from the Net Revenues of the Airport System, in accordance with the customary payment approval procedures, policies and processes of the City.

(j) Governing Law. This Agreement shall be governed by the laws of the State of Texas.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written by their respective officers thereunto duly authorized.

WELLS FARGO BANK, N.A.

Attest:

By: \_\_\_\_\_

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

Address: \_\_\_\_\_

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

CITY OF AUSTIN, TEXAS

(CITY SEAL)

Attest:

By \_\_\_\_\_

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

Address: 700 Lavaca, Suite 1510  
Austin, Texas 78701

\_\_\_\_\_  
City Clerk

**ANNEX A**  
**FEES OF THE TENDER AGENT**

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