

**ORDINANCE NO. 20080724-101**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF “CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX SUBORDINATE LIEN VARIABLE RATE REVENUE REFUNDING BONDS, SERIES 2008” AND RELATED DOCUMENTS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**ARTICLE 1. FINDINGS**

**PART 1.01. Findings.** The Council finds that:

A. The City (the “City”) has issued, sold, and delivered, and there is currently outstanding, obligations totaling in principal amount \$119,290,000 of the following series: City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Variable Rate Revenue Refunding Bonds, Series 2005, dated August 17, 2005, and scheduled to mature on November 15, 2029 (the “Refunded Bonds”);

B. The City is authorized under the provisions of V.T.C.A., Government Code, Chapter 1207 to issue refunding bonds and deposit the proceeds of sale directly with the place of payment for the Refunded Bonds, or other authorized depository, and such deposit, when made in accordance with the statute, and ordinance authorizing the issuance of the Refunded Bonds, shall constitute the making of firm banking and financial arrangements for their discharge and final payment;

C. The City is authorized under V.T.C.A., Government Code, Chapter 1371, to enter into credit agreements, including, but not limited to, interest rate management agreements;

D. The City shall by this Ordinance, in accordance with the provisions of Section 1207.007, Texas Government Code and Section 1371.056, Texas Government Code delegate to a Pricing Officer (hereinafter designated) the authority to negotiate and approve certain matters in relation to the issuance of the Bonds, including, but not limited, to (i) the approval and execution of an interest rate management agreement in connection with the Bonds, (ii) the approval and execution of necessary documentation in relation to the termination of the interest rate management agreement currently in effect for the Refunded Bonds, (iii) determine the principal amount, terms and initial interest rate for the Bonds, (iv)

the approval and execution of an escrow agreement, if any, in connection with all or a part of the Refunded Bonds, (v) determine the dates of redemption and amounts and the Refunded Bonds to be redeemed on such dates, (vi) the final forms of the Bonds and (vii) all other matters relating to the issuance, sale, and delivery of the Bonds all of which shall be specified in the Pricing Certificate.

E. It is a public purpose and in the best interests of the City to refund the Refunded Bonds in order to achieve a present value debt service savings of not less than 5.50%, with such savings, among other information and terms to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer (hereafter designated), all in accordance with the provisions of Section 1207.007, Texas Government Code; and

F. The Bonds should be issued as two subseries in substantially equal principal amounts to accommodate two underwriters and two remarketing agents for the Bonds.

## **ARTICLE 2. DEFINITIONS**

**PART 2.01. Definitions.** Capitalized terms used but not otherwise defined in this Ordinance shall mean the meanings set forth in this Part or set forth in Appendix A to this Ordinance. Unless otherwise expressly provided or unless the context otherwise requires, the terms defined in this Part for all purposes of this Ordinance, and any ordinance amendatory or supplemental hereto shall have the respective meanings specified:

"Additional Bond" means a bond issued by the City pursuant to Part 6.02 or Part 6.03.

"Amortization End Date" shall mean with respect to any Liquidity Provider Bonds held by the Initial Liquidity Facility Provider the earliest to occur of (i) the fifth anniversary of the date the related Advance (as defined in the Series 2008 Liquidity Agreement) was made, (ii) the Mode Change Date and (iii) the Substitution Date with respect to such Liquidity Provider Bonds.

"Amortization Payment Date" shall mean, with respect to any Liquidity Provider Bonds held by the Initial Liquidity Facility Provider, (i) the first Business Day of the sixth calendar month immediately succeeding the Amortization Start Date and the first Business Day of each sixth calendar month occurring thereafter prior to the Amortization End Date and (ii) the Amortization End Date.

“Amortization Start Date” shall mean, with respect to any Liquidity Provider Bonds held by the Initial Liquidity Facility Provider, the earlier to occur of (i) one hundred eighty (180) days from the related Purchase Date for such Liquidity Provider Bonds, and (ii) the Termination Date (as defined in the Series 2008 Liquidity Agreement); provided, however, that an Amortization Start Date shall occur only if (x) no Default or Event of Default (as defined in the Series 2008 Liquidity Agreement) shall have occurred and be continuing on any Amortization Start Date and (y) all representations of warranties contained in Article IV of the Series 2008 Liquidity Agreement are true and correct on any Amortization Start Date.

“Auction Period” has the meaning set forth in Appendix A.

“Auction Rate Mode” has the meaning set forth in Appendix A.

“Authorized Official” means, individually and collectively, each of the Mayor, the City Manager, the Treasurer and the Chief Financial Officer of the City.

“Bond Act” means, collectively, Vernon’s Texas Code Annotated, Government Code, Chapters 1207 and 1371, and Vernon’s Texas Code Annotated, Local Government Code, Chapter 334.

“Bond Fund” means the Fund created and established in Part 5.05 of this Ordinance for the payment of the Parity Bonds.

“Bond Purchase Agreement” means the Bond Purchase Agreements approved in Part 10.01 of this Ordinance.

“Bond Year” means the period of time that begins on the day following the interest payment date on the Bonds occurring in November of any year and ending on the interest payment date on the Bonds occurring in November of the following year.

“Bonds” mean, the “City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Variable Rate Revenue Refunding Bonds, Series 2008” authorized by this Ordinance.

“Broker-Dealer” has the meaning set forth in Appendix A.

“Broker-Dealer Agreement” has the meaning set forth in Appendix A.

“Business Day” has the meaning set forth in Appendix A.

“City” means the City of Austin, Texas, and, where appropriate, the City Council thereof, or any successor thereto.

“Clearing Bids” has the meaning set forth in Appendix A.

“Closing Date” has the meaning set forth in Appendix A.

“Commercial Paper Mode” has the meaning set forth in Appendix A.

“Convention Center/Waller Creek Venue Project” means the capital improvement project described generally as consisting of the expansion of the City’s Convention Center, including the construction of tunnel improvements along Waller Creek in the vicinity of and functionally related to the convention center and related infrastructure and being a venue project within the meaning of Chapter 334 of the Local Government Code approved at an election held in the City on May 2, 1998, and designated by Resolution No. 980205-61.

“Credit Agreement” has the meaning set forth in Chapter 1371, Texas Government Code, as the same may be amended from time to time.

“Credit Facility” has the meaning set forth in Appendix A.

“Credit Facility Provider” has the meaning set forth in Appendix A.

“Daily Mode” has the meaning set forth in Appendix A.

“Debt Service Requirements” of any series of bonds for any particular Bond Year, means an amount equal to the sum of the principal of and interest and any redemption premium on such bonds then Outstanding which will become due and owing during such Bond Year; subject, however, to adjustment as provided in Part 6.03.

“Designated Payment/Transfer Office” means the office of the Paying Agent/Registrar so designated by it from time to time.

“Favorable Opinion of Bond Counsel” has the meaning set forth in Appendix A.

“Fiscal Year” means the City’s fiscal year as from time to time designated by the City, which is currently October 1 to September 30.

“Fitch” means Fitch, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency selected by the City after consultation with the Remarketing Agent, if any, and the Broker-Dealer, if any.

“Fixed Rate Mode” has the meaning set forth in Appendix A.

“Government Obligations” mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

“Guaranty Agreement” has the meaning set forth in Part 5.06.

“Holder” or “Owner” when used with respect to any Bond (or Parity Bond) means the person or entity in whose name such Bond (or Parity Bond) is registered in the Security Register. Any reference to a particular percentage or proportion of the Holders or Owners shall mean the Holders or Owners at a particular time of the specified percentage or proportion in aggregate principal amount of all Bonds (or Parity Bonds) then Outstanding under this Ordinance.

“Hotel Occupancy Tax” means the tax, levied by the City pursuant to the Tax Act, on the cost of occupancy of any sleeping room furnished by any hotel located within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day, which tax is currently

levied at a rate of 7% of the consideration paid by the occupant of the sleeping room to the hotel.

“Interest Payment Date” has the meaning set forth in Appendix A.

“Interest Rate Management Agreement” means the Series 2008 Interest Rate Management Agreement and any other Credit Agreement between the City and another party entered into in connection with or related to the City’s Variable Rate Obligations, which Credit Agreement is in the form of an interest rate exchange agreement, pursuant to which the City pays a fixed percentage rate of a notional amount and the other party pays a variable percentage rate of the same notional amount, of which the notional amount is equal to the principal amount of such Variable Rate Obligations of the City, and of which the notional amount is reduced as the principal of such Variable Rate Obligation is paid.

“Interest Rate Management Agreement Counterparty” means the Series 2008 Interest Rate Management Agreement Counterparty and any other counterparty under any Interest Rate Management Agreement.

“Initial Liquidity Facility Provider” shall mean Dexia Credit Local, acting through its New York Branch.

“Issue Date” means the date the Bonds are issued and delivered to the initial purchasers thereof.

“Junior Obligations” means the payment obligations of the City under an Interest Rate Management Agreement, including but not limited to, the Series 2008 Interest Rate Management Agreement, that are termination payments, settlement payments or other payments that are not included in clause (iii) of the definition of Parity Obligations.

“Junior Subordinate Lien Bond” means an Additional Bond issued by the City pursuant to Part 6.03 of this Ordinance secured wholly or partly by liens on the Pledged Revenues that are junior and subordinate to the lien on Pledged Revenues securing payment of the Parity Bonds.

“Liquidity Facility” has the meaning set forth in Appendix A.

“Liquidity Facility Provider” has the meaning set forth in Appendix A.

“Liquidity Provider Bonds” means any Bonds purchased by the Liquidity Facility Provider with funds drawn on or advanced under the Liquidity Facility.

“Long-Term Mode” means a Term Rate Mode or a Fixed Rate Mode.

“Mode” has the meaning set forth in Appendix A.

“Mode Change Date” has the meaning set forth in Appendix A.

“Moody’s” shall mean Moody’s Investors Service, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the City after consultation with the Remarketing Agent, if any, and the Broker-Dealer, if any.

“Ordinance” means this Ordinance No. 20080724-101 and all exhibits, appendices, amendments and supplements hereto and the Pricing Certificate.

“Outstanding” when used with reference to any Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien Bonds means, as of a particular date, all Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien Bonds, any or all, theretofore and thereupon delivered except: (a) any such Prior Lien Bond, Parity Bond or Junior Subordinate Lien Bond paid, discharged or canceled by or on behalf of the City at or before said date; (b) any such Prior Lien Bond, Parity Bond and Junior Subordinate Lien Bond defeased pursuant to the defeasance provisions of the ordinance authorizing its issuance, or otherwise defeased as permitted by applicable law; and (c) any such Prior Lien Bond, Parity Bond or Junior Subordinate Lien Bonds in lieu of or in substitution for which another obligation shall have been delivered pursuant to the ordinances authorizing the issuance of such Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien Bonds.

“Parity Bonds” mean the Bonds and Additional Bonds secured by a lien on Pledged Hotel Occupancy Tax Revenues on a parity with the Bonds.

“Parity Obligations” mean at any time all (i) Parity Bonds, (ii) all Reimbursement Obligations, (iii) obligations of the City to make scheduled payments under an Interest Rate Management Agreement, and (iv) any future obligation of the City under Credit Agreements or other agreements to the extent such obligations are secured by a lien on Pledged Hotel Occupancy Tax Revenues on an equal and ratable basis with the lien securing the Parity Bonds.

“Paying Agent/Registrar” means with respect to the Bonds, the Paying Agent/Registrar to be appointed as provided in Part 8.01 of this Ordinance, and its successors in that capacity.

“Pledged Hotel Occupancy Tax Revenues” mean that portion of the revenues derived by the City from the Hotel Occupancy Tax which is equal to at least 4.5% of the consideration paid by occupants of sleeping rooms furnished by hotels located within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day.

“Pledged Revenues” mean collectively, (i) the Pledged Hotel Occupancy Tax Revenues, (ii) the Special Hotel Occupancy Tax deposited to the credit of the Venue Project Fund (iii) interest and other income realized from the investment of amounts on deposit in the funds and accounts to be maintained pursuant to Article 5 of this Ordinance to the extent such interest and other income are required to be transferred or credited to the Tax Fund, and (iv) any additional revenue, receipts or income hereafter pledged to the Bonds in accordance with Part 7.02 of this Ordinance.

“Pricing Certificate” means the pricing certificate to be executed by an a Pricing Officer in accordance with the provisions of Section 1207.007 and Chapter 1371.056, Texas Government Code to evidence certain approvals and determinations as authorized in this Ordinance.

“Pricing Officer” means either the City Manager or Chief Financial Officer of the City.

“Prior Lien Bonds” mean (a) with respect to the Pledged Hotel Occupancy Tax Revenues, the outstanding (i) “City of Austin, Texas



Hotel Occupancy Tax Revenue Taxable Refunding Bonds, Series 1999,” dated June 15, 1999, and originally issued in the aggregate principal amount of \$6,445,000, and (iii) “City of Austin, Texas, Hotel Occupancy Tax Revenue Refunding Bonds, Series 2004,” dated February 1, 2004, originally issued in the aggregate principal amount of \$52,715,000, and (b) with respect to the Special Hotel Occupancy Tax deposited to the credit of the Venue Project Fund, the Special Venue Project Bonds.

“Purchase Date” has the meaning set forth in Appendix A.

“Purchase Price” means an amount equal to the principal amount of any Bonds purchased on any Purchase Date, plus accrued interest to the Purchase Date (unless the Purchase Date is an Interest Payment Date, in which case the Purchase Price shall not include accrued interest, which shall be paid in the normal course).

“Rating Agency” means any nationally recognized rating agency that maintains a rating on the Bonds at the request of the City. Initially, the Rating Agencies are Moody’s and Standard & Poor’s.

“Rating Category” means one of the general rating categories of any Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

“Rating Confirmation Notice” means, with respect to an action that affects the Bonds, a writing from each Rating Agency confirming that the rating(s) issued by such Rating Agency on such series of Bonds will not be lowered or withdrawn (other than a withdrawal of a short-term rating upon a change to a Long-Term Mode) as a result of the action proposed to be taken.

“Redemption Date” has the meaning set forth in Appendix A.

“Redemption Price” means an amount equal to the principal of and premium, if any, and accrued interest, if any, on the Bonds to be paid on the Redemption Date.

“Refunded Bonds” has the meaning set forth in Part 1.01 hereof.

“Reimbursement Obligation” mean any obligation entered into by the City in connection with any Parity Bond pursuant to which the City

obligates itself to reimburse a bank, insurer, surety or other entity for amounts paid or advanced by such party pursuant to a letter of credit, line of credit, standby bond purchase agreement, credit facility, liquidity facility, insurance policy, surety bond or other similar credit agreement, guaranty or liquidity agreement to secure any portion of principal of, interest on or purchase price of any Parity Bond or reserves in connection therewith or otherwise relating to any Parity Bond. The City's obligations under a Guaranty Agreement, its obligations under a Liquidity Facility, and its obligations to reimburse a Credit Facility Provider for amounts paid under a Credit Facility constitute Reimbursement Obligations.

"Remarketing Agent" means, with respect to the Subseries 2008A Bonds, Morgan Keegan & Company, Inc. and, with respect to the Subseries 2008B Bonds, Banc of America Securities LLC, and any entities that may be appointed by the City in accordance with this Ordinance as successor remarketing agents.

"Reserve Fund" mean the Fund created and established in Part 5.03(c)(ii) of this Ordinance to provide a reserve amount for the payment of Parity Bonds.

"Reserve Fund Requirement" means the least of (i) 10% of the Outstanding principal amount of the Parity Bonds or (ii) the maximum annual Debt Service Requirements scheduled to occur in the then current and each future Fiscal Year for all Parity Bonds at any time Outstanding, or (iii) the maximum amount in a reasonably required reserve fund that can be invested without restriction as to yield pursuant to Subsection (d) of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

"Reserve Fund Surety Bond" mean any surety bond, insurance policy, letter of credit or other guaranty issued to the City for the benefit of the Holders of the Parity Bonds to satisfy any part of the Reserve Fund Requirement as provided in Part 5.06 of this Ordinance.

"Security Register" mean the books of registration maintained by the Paying Agent/Registrar for recording the names and addresses of and the principal amounts registered to each Holder.

“Series 2008 Interest Rate Management Agreement” means collectively, an ISDA Master Agreement (Local Currency – Single Jurisdiction) together with the Schedule, and Confirmation thereto, between the City and Morgan Keegan Financial Products, Inc., together with the Replacement Transaction Agreement, between the City, and the Series 2008 Interest Rate Management Agreement Counterparty and the ISDA Master Agreement and Schedule deemed entered into pursuant to the Replacement Transaction Agreement and the Credit Support Annex thereto, between the City and Deutsche Bank AG, New York Branch, substantially in the form of Exhibit B hereto.

“Series 2008 Interest Rate Management Counterparty” means Morgan Keegan Financial Products, Inc. and Deutsche Bank AG, New York Branch.

“Series 2008 Liquidity Agreement” means that certain Reimbursement Agreement, between the City and the Liquidity Facility Provider attached to and approved in this Ordinance.

“Special Hotel Occupancy Tax” means the 2% hotel occupancy tax approved at the election held May 2, 1998 to finance the Convention Center/Waller Creek Venue Project and levied by the City pursuant to Ordinance No. 980709-G, adopted by the City Council of the City on July 9, 1998, on the cost of occupancy of any sleeping room furnished by any hotel located within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day.

“Special Venue Project Bonds” mean City of Austin, Texas, Convention Center/Waller Creek Venue Project Bonds, Series 1999A, dated June 15, 1999, and originally issued in the aggregate principal amount of \$25,000,000.

“Standard & Poor’s” shall mean Standard & Poor’s Ratings Services, Inc., a division of The McGraw-Hill Companies, Inc., duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating

agency selected by the City after consultation with the Remarketing Agent, if any, and the Broker-Dealer, if any.

“Substitution Date” has the meaning set forth in Appendix A.

“Tax Act” mean Chapter 351 of the Texas Tax Code, Vernon’s Texas Codes Annotated.

“Tender Agent” means with respect to the Bonds, the Paying Agent/Registrar to be appointed as provided in Part 8.06 of this Ordinance, and its successors in that capacity.

“Term Rate Mode” has the meaning set forth in Appendix A.

“Transfer Date” mean each February 14, May 14, August 14, and November 14, beginning August 14, 2008.

“Transfer Period” mean the period of time beginning on any Transfer Date and ending on the day immediately preceding the next succeeding Transfer Date.

“Variable Rate Obligations” mean any obligation pursuant to which the City is to pay interest at an interest rate that is not fixed for the life of the obligation and any obligation, such as an interest rate exchange agreement or other Credit Agreement, pursuant to which the City is to make payments the amounts of which are not known at the time the obligation is issued or incurred.

“Venue Project Fund” mean the Fund so designated created and established pursuant to Ordinance No. 980709-G, adopted by the City Council on July 9, 1998, providing for the levy, assessment and collection of the Special Hotel Occupancy Tax.

“Weekly Mode” has the meaning set forth in Appendix A.

“Winning Bid Rate” has the meaning set forth in Appendix A.

**PART 2.02. Interpretations.** All terms defined and all pronouns used in this Ordinance applies equally to singular and plural and to all genders. The titles and headings of the articles and Parts of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. Unless otherwise specified references to Parts, Exhibits and Appendix A are to Parts,

Exhibits and Appendix A of this Ordinance. Terms “herein”, “hereof” and the like refer to this Ordinance as a whole and not just to a particular portion of it. This Ordinance and all of its terms and provisions shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the Bonds and the validity of the lien on and pledge of the Pledged Revenues to secure the payment of the Bonds and other Parity Obligations.

### **PART 2.03. Exhibits; Appendix A**

The Exhibits and Appendix A, as and when approved by an Authorized Official, as provided herein shall be considered fully incorporated in this Ordinance by reference as if fully set forth in this Ordinance.

## **ARTICLE 3. BONDS AND OTHER PARITY OBLIGATIONS**

**PART 3.01. Authorization-Designation-Principal Amount-Purpose.** Bonds are hereby authorized to be issued in the aggregate principal amount determined by the Pricing Officer and specified in the Pricing Certificate and to be designated and bear the title “CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX SUBORDINATE LIEN VARIABLE RATE REVENUE REFUNDING BONDS, SERIES 2008” (the “Bonds”) for the purpose of providing funds for the discharge, defeasance and final payment of certain outstanding obligations of the City (identified in Part 1.01 of this Ordinance and referred to as the “Refunded Bonds”), in accordance with authority conferred by the Bond Act. The Bonds shall be issued in two subseries as follows: (a) Subseries 2008A in the aggregate principal amount determined by the Pricing Officer and specified in the Pricing Certificate (“Subseries 2008A Bonds”) and (b) Subseries 2008B in the aggregate principal amount determined by the Pricing Officer and specified in the Pricing Certificate (“Subseries 2008B Bonds”). The principal amount of the Bonds shall not exceed \$130,000,000 and the principal amount of each subseries shall not exceed \$65,000,000.

**PART 3.02. Full Registration-Date - Denomination - Maturities - Interest Rates.** The Bonds shall be issued in the Weekly Mode as fully registered obligations, without coupons, shall be dated August 14, 2008, or such other date specified in the Pricing Certificate and shall be in Authorized Denominations (as defined in Appendix A hereto), and shall be numbered consecutively from One (1) upward and shall become due and payable on November 15, 2029 (the “Stated Maturity”). Unpaid principal of the Bonds shall bear interest from the Issue Date until paid at the applicable per annum rates established, calculated and payable in accordance with Appendix A. The Initial Payment Date for the Bonds shall be

September 15, 2008. Any Authorized Official may approve the initial interest rate for the Bonds and all other matters relating to the aggregate principal amount, terms, issuance, sale, and delivery of the Bonds all of which shall, to the extent not otherwise specified in this Ordinance, be specified in a Pricing Certificate; provided, that the initial interest rate shall be provided for in the Bond Purchase Agreement and shall not exceed 5.00%.

**PART 3.03. Terms of Payment - Paying Agent/Registrar.** The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the Holders of the Bonds appearing on the respective Security Register maintained by the Paying Agent/Registrar for each subseries of the Bonds and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

Separate books and records relating to the registration, payment, transfer and exchange of the Subseries 2008A Bonds and Subseries 2008B Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided in this Ordinance and in accordance with the terms and provisions of the Paying Agent/Registrar Agreement authorized by Part 8.01 of this Ordinance.

Principal of and premium, if any, on the Bonds shall be payable at their Stated Maturities or redemption, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its Designated Payment/Transfer Office. Accrued and unpaid interest on the Bonds of a subseries is due on the Interest Payment Date and is payable to the Holders whose names appear in the Security Register at the close of business on the Record Date (as provided in Appendix A) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder.

In the event of a non-payment of interest on one or more maturities on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment for such maturity or maturities (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5)

business days before the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of such maturity or maturities appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

**PART 3.04. Redemptions and Tenders.** The Bonds shall be subject to optional and mandatory redemption prior to maturity as provided in this Part 3.04. The Bonds shall be subject to optional and mandatory tender for purchase as set forth in Appendix A.

(a) Optional Redemption of Bonds in the Commercial Paper Mode. The City may at its option redeem Bonds of a subseries in the Commercial Paper Mode, in whole or in part, on their respective Purchase Dates at the redemption price of the principal amount thereof, plus accrued interest from the most recent Interest Payment Date to the Redemption Date.

(b) Optional Redemption of Bonds in the Auction Rate Mode. The City may at its option redeem Bonds of a subseries in the Auction Rate Mode, in whole or in part, on any Interest Payment Date immediately following an Auction Period, at the redemption price equal to the principal amount thereof, plus accrued interest from the Closing Date or the most recent interest payment date to the Redemption Date; provided, however, that for a partial redemption of Bonds of a subseries in an Auction Rate Mode, the aggregate principal amount of Bonds of a subseries in an Auction Rate Mode which will remain outstanding shall be equal to or more than \$10,000,000 unless otherwise consented to by each Broker-Dealer.

(c) Optional Redemption of Bonds in the Daily Mode or Weekly Mode. The City may at its option redeem Bonds of a subseries in the Daily Mode or Weekly Mode, in whole or in part, on any Business Day, at the redemption price equal to the principal amount thereof, plus accrued interest from the Closing Date or the most recent interest payment date to the Redemption Date.

(d) Optional Redemption of Bonds in Term Rate Mode and Fixed Rate Mode.

(i) The City may at its option redeem Bonds of a subseries in the Term Rate Mode during an Interest

Period that is less than four years, in whole or in part on their individual Purchase Dates, at the redemption price equal to the principal amount thereof, plus interest from the most recent interest payment date to the Redemption Date.

(ii) The City may at its option redeem Bonds of a subseries in the Term Rate Mode during an Interest Period that is equal to or greater than four years or Bonds of a subseries in the Fixed Rate Mode, in whole or in part, on any date at a redemption price equal to the principal amount thereof plus interest from the most recent interest payment date to the Redemption Date following the “No Call Period” set forth below:

<b>OPTIONAL REDEMPTION DURING TERM RATE MODE AND FIXED RATED MODE</b>	
Duration of Interest Period in Term Rate Mode or Fixed Rate Mode	No Call Period (commencing on the date of commencement of the Term Rate or Fixed Rate Mode Interest Period)
Greater than or equal to 11 years.	8 years
Greater than or equal to 8 years and less than 11 years.	6 years
Greater than or equal to 4 years and less than 8 years.	3 years
Duration of Interest Period in Fixed Rate Mode is less than 4 years.	Bonds are subject to optional redemption at any time.

(e) The City may, in connection with a change to a Term Rate Mode or Fixed Rate Mode, or on any Purchase Date for Bonds of a subseries bearing interest at a Term Rate, alter its rights as described above in Part 3.4(d) to redeem any Bonds of such subseries on and after the Mode Change Date or Purchase Date, as the case may be,



without the consent of Holders of the Bonds of such subseries; provided, that notice describing the alteration must be submitted to the Tender Agent, the Paying Agent/Registrar and the Remarketing Agent, together with a Favorable Opinion of Bond Counsel, addressed to them and to the City.

(f) Mandatory Sinking Fund Redemption.

(i) The Subseries 2008A Bonds shall be subject to mandatory redemption in part prior to maturity at the redemption price of par and unpaid, accrued interest to the date of redemption on the respective dates and in principal amounts set forth in the Pricing Certificate.

(ii) The Subseries 2008B Bonds shall be subject to mandatory redemption in part prior to maturity at the redemption price of par and unpaid, accrued interest to the date of redemption on the respective dates and in principal amounts as set forth in the Pricing Certificate.

Approximately forty-five (45) days before each such mandatory redemption date specified above, the Paying Agent/Registrar shall select by lot the numbers of the Bonds of a subseries to be redeemed on the next following November 15 from money set aside for that purpose in the Bond Fund. Any Bonds not selected for prior redemption shall be paid on the date of their Stated Maturity.

The principal amount of the Bonds of a subseries required to be redeemed pursuant to the operation of such mandatory redemption provisions may be reduced, at the option of the City, by the principal amount of Bonds of like subseries which, at least 50 days before a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions set forth in this Part and not theretofore credited against a mandatory redemption requirement.

(g) Special Mandatory Redemption Provisions. Liquidity Provider Bonds held by the Initial Liquidity Facility Provider shall be

subject to special mandatory redemption after an Amortization Start Date. Such Liquidity Provider Bonds shall be redeemed in substantially equal installments of principal due and payable on each Amortization Payment Date together with the interest then accrued. Interest on such Liquidity Provider Bonds shall accrue at the rate calculated in accordance with the Series 2008 Liquidity Agreement and shall be payable on each Interest Payment Date and upon remarketing and redemption thereof.

(h) Selection of Bonds for Redemption. If less than all the Bonds of a subseries having the same maturity date and bearing the same interest rate are to be redeemed, then, unless the Liquidity Facility Provider has failed to honor a properly presented and conforming drawing under the Letter of Credit, the Paying Agent/Registrar shall (unless otherwise provided in the Liquidity Facility applicable thereto) first select for redemption all then Outstanding Liquidity Provider Bonds prior to selecting for redemption any Bonds of such subseries which are not Liquidity Provider Bonds. If the Liquidity Facility Provider has failed to honor a properly presented and conforming drawing under the Liquidity Facility, then the Paying Agent/Registrar shall at the written direction of the City, select for redemption all then Outstanding Bonds of the subseries in accordance with the City's written direction. The Paying Agent/Registrar shall promptly give the Liquidity Facility Provider, Tender Agent, and the Remarketing Agent notice by telephone (subsequently confirmed in writing) of the selection of any Liquidity Provider Bonds for redemption pursuant to the foregoing provision. If fewer than all Outstanding Bonds of the same Stated Maturity of the same subseries are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Bonds as representing the number of Bonds Outstanding which is obtained by dividing the principal amount of such Bonds by the lowest Authorized Denomination therefor and shall select the Bonds to be redeemed within such Stated Maturity by such method as the Paying Agent/Registrar may select.

(i) Notice of Redemption. Not fewer than thirty (30) days before a redemption date for the Bonds in a Long-Term Mode and not fewer than fifteen (15) for all other Bonds, a notice of redemption shall be sent by United States Mail, first class postage prepaid, in the name of the City and at the City's expense, to each Holder of a Bond

to be redeemed wholly or partly at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds of a subseries to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. If a Bond is subject by its terms to prior redemption and has been called for redemption and notice of redemption thereof has been given as provided above, such Bond (or the principal amount thereof to be redeemed) shall become due and payable and interest thereon shall cease to accrue from and after the redemption date therefor; provided money sufficient for the payment of such Bond (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

Notwithstanding anything herein to the contrary, no notice of redemption is required to be given for a redemption occurring on a Mandatory Purchase Date.

**PART 3.05. Registration - Transfer - Exchange of Bonds - Predecessor Bonds.** The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each registered owner of each subseries of the Bonds issued under and pursuant to the provisions of this Ordinance. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other Authorized Denominations upon the Security Register by the Holder, in person or by his authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a

written instrument of transfer or request for exchange executed by the Holder or by his authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds, executed on behalf of, and furnished by, the City of Authorized Denominations, of like subseries, and having the same Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of like subseries, of Authorized Denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of, and furnished by, the City, to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States Mail, first class postage prepaid, to the Holder and, upon the delivery thereof, the same shall be valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Part shall be made without expense or service charge to the Holder, except as otherwise provided in this Ordinance, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof pursuant to Part 3.09 hereof and such new

replacement Bond shall be considered to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/ Registrar shall be required to issue or transfer to an assignee of a Holder any Bond called for redemption, wholly or partly, within 45 days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

**PART 3.06. Book-Entry-Only Transfers and Transactions.** Notwithstanding the provisions contained in Parts 3.03, 3.04 and 3.05 hereof relating to the payment, redemption and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of “Book-Entry-Only” securities clearance, settlement and transfer system provided by The Depository Trust Company (“DTC”), a limited purpose trust company organized under the laws of the State of New York, in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representation by and between the City and DTC (the “Depository Agreement”).

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC who shall hold the Bonds for its participants (the “DTC Participants”) and, while the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the fact that beneficial ownership of the Bonds is recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to the Persons identified by DTC as those entitled to receive the same and to become the Holders of the Bonds. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Parts 3.03, 3.04 and 3.05 of this Ordinance.

**PART 3.07. Execution - Registration.** The Bonds shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and

countersigned by the City Clerk. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the date of the adoption of this Ordinance shall be considered to be executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in V.T.C.A., Government Code, Chapter 1201.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Part 4.03, manually executed by the Comptroller of Public Accounts of the State of Texas or his authorized agent, or a certificate of registration substantially in the form provided in Part 4.04, manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond signed shall be conclusive evidence, and the only evidence, that such Bond has been certified, registered and delivered.

**PART 3.08. Initial Bond(s).** The Subseries 2008A Bonds shall be initially issued as a single fully registered bond in the total principal amount specified in the Pricing Certificate and numbered T-1 (the "Subseries 2008A Initial Bond"), which shall be registered in the name of the initial purchaser(s) or the designee thereof. The Subseries 2008B Bonds shall be initially issued as a single fully registered bond in the total principal amount specified in the Pricing Certificate and numbered T-1 (the "Subseries 2008B Initial Bond," together with the Subseries 2008A Initial Bond, the "Initial Bonds"), which shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bonds shall be submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the respective initial purchaser(s). Any time after the delivery of the Subseries 2008A Initial Bond and the Subseries 2008B Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the respective initial purchaser(s), or the designee thereof, shall cancel the Initial Bonds delivered hereunder and exchange therefor definitive Bonds of the same subseries, of Authorized Denominations, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

**PART 3.09. Mutilated-Destroyed - Lost and Stolen Bonds.** If any Bond shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like subseries, form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost or stolen.

Every replacement Bond issued pursuant to this Part shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Part are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds.

**PART 3.10. Interest Rate Management Agreement.** The Series 2008 Interest Rate Management Agreement, substantially in the form attached hereto as Exhibit B, with such changes as the Pricing Officer executing the same may approve and such approval to be conclusively evidenced by the Pricing Officer's execution thereof, is hereby approved and confirmed. In accordance with the provisions of Section 1371.056, Texas Government Code, the Pricing Officer is hereby authorized to execute and deliver, and the City Clerk may attest to, for and on behalf of and in the name of the City, and as the act and deed of the City Council of the City, prior to, at, or after the delivery of the Bonds, but in no case later than January 24, 2009, the Series 2008 Interest Rate Management Agreement, and including such amendments to such Series 2008 Interest Rate Management Agreement after the execution and delivery thereof that are required in connection with the issuance of the Bonds, as may be approved by the Pricing Officer, as evidenced by his or her execution thereof; unless otherwise provided by ordinance of the City Council; the Pricing Officer shall further determine, which shall be determined in the Pricing Certificate; the term of such Series 2008 Interest Rate Management Agreement; the fixed rates of interest at which the obligations of the

City under the Series 2008 Interest Rate Management Agreement shall be calculated; provided, however, that the rate applicable to such fixed rates of interest may not exceed 5.00% per annum; provided that:

(1) such Series 2008 Interest Rate Management Agreement shall provide for the reduction in notional amount equivalent to the reduction in outstanding principal amount of the Bonds after the same have been issued and once the outstanding principal amount of the Bonds has been reduced to an amount, equal to or less than the original notional amount and in all events in accordance with the amortization schedule set forth as an attachment to the Interest Rate Management Agreement;

(2) such Series 2008 Interest Rate Management Agreement permits the City to terminate the same or reduce the notional amount thereof at any time, which right may be made conditional upon the payment by the City of the amount due in respect of such partial or complete termination or upon demonstration of the capacity to do so;

(3) such Series 2008 Interest Rate Management Agreement being entered into in connection with the issuance of the Bonds shall result in present value debt service savings of at least 5.50%, net of any contribution by the City;

(4) such Series 2008 Interest Rate Management Agreement or the proceedings of the City Council of the City authorizing the same shall be approved by the Attorney General of Texas and such proceedings shall be registered by the Comptroller of Public Accounts of the State of Texas prior to delivering such Credit Agreements; and



(5) the cost of credit enhancement obtained in relation to the Series 2008 Interest Rate Management Agreement, if any, shall result in present value debt service savings of at least 5.50%, net of any contribution by the City.

The obligations of the Series 2008 Interest Rate Management Agreement Counterparty to the City are hereby pledged as additional security for the Parity Obligations of the City that are secured by the Pledged Revenues, and the payments from the Series 2008 Interest Rate Management Agreement Counterparty to the City are hereby declared to constitute Pledged Revenues.

Junior Obligations are to be payable from and secured by a lien on the Pledged Revenues that is junior and subordinate to the lien on Pledged Revenues that secures the Parity Obligations.

**PART 3.11. Termination of Interest Rate Management Agreement; and Prior Interest Rate Management Agreement.** The City currently intends to issue the Bonds in a variable rate interest mode and to maintain in effect the Series 2008 Interest Rate Management Agreement. If, however the City does not, prior to, on, or within 120 days after the effective date of the Series 2008 Interest Rate Management Agreement, issue the Bonds in one or more subseries in an aggregate original principal amount equal to or greater than the notional amount of the Series 2008 Interest Rate Management Agreement and rated as required to be an "obligation" as defined in Texas Government Code, 1371.001(5), then the City shall promptly exercise its option reserved in the Series 2008 Interest Rate Management Agreement to terminate or reduce the resulting notional amount of the Series 2008 Interest Rate Management Agreement to achieve the result that the notional amount, if any, of the Series 2008 Interest Rate Management Agreement does not exceed the original principal amount of the Bonds that are issued. In addition to such required full or partial termination of the Series 2008 Interest Rate Management Agreement, to the extent the Chief Financial Officer may deem advisable he or she may, and the City Council hereby delegates to such person the authority to, at any time terminate in whole or in part the Series 2008 Interest Rate Management Agreement as permitted thereby; provided appropriate documentation is furnished the City Manager and City Attorney evidencing the amount or payment owed by the City, if any, as a result of such termination and that such amount can be paid from available funds of the City (including, without limitation, proceeds of bonds issued for such purpose) without a budget amendment, or should such termination payment require City Council action by a budget amendment or otherwise, obtaining City Council approval prior to its termination.

In accordance with the provisions of Section 1371.056, Texas Government Code, the Pricing Officer is hereby authorized to terminate the Interest Rate Management Agreements, both dated as of July 19, 2005, between the City and Lehman Brothers Derivative Products Inc., and Lehman Brothers Special Financing Inc., respectively, and may execute and deliver, if necessary, any interest rate management termination agreements, and the City Clerk may attest to, for and on behalf of and in the name of the City, and as the act and deed of the City Council of the City, prior to, at or after the delivery of the Bonds, but in no case later than January 24, 2009; provided that such termination fees owed by the City upon such terminations shall not exceed in the aggregate \$10,000,000.

**PART 3.12. Credit Facility.** The Series 2008 Liquidity Agreement in substantially the form attached hereto as Exhibit C with such changes as may be approved by an Authorized Official, is hereby approved and confirmed. Any Authorized Officials are hereby authorized and directed to executed the Series 2008 Liquidity Agreement as the City Council's act and deed.

#### **ARTICLE 4. FORM OF BONDS AND CERTIFICATES**

**PART 4.01. Forms Generally.** The Bonds of each subseries, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms provided for in this Part with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including legends reflecting the purchase of insurance for payment of the Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Bonds as evidenced by their execution. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bonds shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution.

**PART 4.02. Form of Bond.** The form of definitive Bond of each subseries shall be as set forth in Exhibit H hereto with respect to Bonds in a Weekly Mode or Daily Mode, Exhibit I hereto with respect to Bonds in a Auction Rate Mode, and Exhibit J hereto with respect to Bonds in a Commercial Paper Mode, Term Rate Mode or Fixed Rate Mode and final forms thereof may be approved by the Pricing Officer and attached to the Pricing Certificate.

**PART 4.03. Form of Registration Certificate of Comptroller of Public Accounts.** To appear on Initial Bonds only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER	)	
OF PUBLIC ACCOUNTS	)	REGISTER NO. _____
	)	
THE STATE OF TEXAS	)	

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

**PART 4.04. Form of Certificate of Paying Agent/ Registrar.** To appear on all Bonds other than the Initial Bonds.

**REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR**

This Bond has been issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar in New York, New York is the "Designated Payment/Transfer Office" for this Bond.

DEUTSCHE BANK TRUST  
COMPANY AMERICAS,  
New York, New York,  
as Paying Agent/Registrar

Registration Date:

\_\_\_\_\_

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

Authorized Signature

**PART 4.05. Form of Assignment.**

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

\_\_\_\_\_

(Social Security or other identifying number: \_\_\_\_\_)  
the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED:

\_\_\_\_\_  
Signature guaranteed:

\_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

**PART 4.06. CUSIP Numbers.** CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

## **ARTICLE 5. SECURITY AND SOURCE OF PAYMENT FOR PARITY OBLIGATIONS**

**PART 5.01. Pledge and Source of Payment.** The Bonds and other Parity Obligations shall constitute special obligations of the City payable from and, subject and subordinate to the payment of the Prior Lien Bonds and priority of uses contained in the ordinances authorizing the issuance of the Prior Lien Bonds, equally and ratably secured by a lien on the Pledged Revenues. Such Pledged Revenues or other lawfully available funds of the City shall, in the manner provided in this Ordinance, be set aside for and pledged to the payment of the Parity Obligations and Junior Obligations (as defined herein), and all expenses of providing for their full and timely payment in accordance with their terms, in the Bond Fund and the Reserve Fund as provided in this Ordinance. The City hereby grants a lien on the Pledged Revenues and Bond Fund to secure the payment of principal of and premium, if any, and interest on the Parity Bonds and all other payments due on the Parity Obligations and Junior Obligations; and the City further grants a lien on the Reserve Fund to secure the payment of principal of and premium, if any, and interest on the Parity Bonds. Except as otherwise expressly provided by their terms, all Parity Obligations shall be in all respects on a parity with and of equal dignity with one another. The liens granted under this Ordinance shall be valid and binding and fully perfected after the date of adoption of this Ordinance without physical delivery or transfer of control of the Pledged Revenues, the filing of this Ordinance or any other act; all as provided in Chapter 1208 of the Texas Government Code. The Holders of the Parity Bonds and the beneficiaries of the other Parity Obligations and Junior Obligations shall never have the right to demand payment of the principal of, interest on or any redemption premium on the Parity Bonds (or payment of other amounts owed by the City in respect of other Parity Obligations or Junior Obligations) out of any funds raised or to be raised by taxation, other than the Pledged Revenues.

If Texas law is amended at any time while the Bonds and Parity Obligations or Junior Obligations related to the Bonds are Outstanding such that the pledge of the Pledged Revenues granted by the City under this Part 5.01 is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, or other law, then to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable filing requirements to continue the perfection of such security interest.

**PART 5.02. Levy of Hotel Occupancy Tax.**

(a) The City has levied, and while any Bonds and Parity Obligations or Junior Obligations related to the Bonds remain Outstanding the City hereby levies and covenants that it shall continue to levy, a Hotel Occupancy Tax on the cost of occupancy of any sleeping room furnished by any hotel within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day, at a rate of at least 7% of the consideration paid by the occupant of the sleeping room to the hotel, all as authorized by the Tax Act. The City further covenants that it shall enforce the provisions of this Ordinance, or any other ordinance levying a hotel occupancy tax, concerning the collection, remittance and payment of the Hotel Occupancy Tax.

(b) In addition to the Hotel Occupancy Tax levied and to be collected pursuant to (a) above, the City has levied, and while any Parity Obligations or Junior Obligations remain Outstanding the City hereby levies and covenants that it shall continue to levy, a Special Hotel Occupancy Tax on the cost of occupancy of any sleeping room furnished by any hotel within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day, at a rate of at least 2% of the consideration paid by the occupant of the sleeping room to the hotel, to finance the costs of the Convention Center/Waller Creek Venue Project, all to the extent authorized by V.T.C.A. Local Government Code, Chapter 334, particularly Subchapter H and an election held in the City on May 2, 1998. The City further covenants that it shall enforce the provisions of this Ordinance and Ordinance No. 980709-G, or any other ordinance levying a hotel occupancy tax, concerning the collection, remittance and payment of the Special Hotel Occupancy Tax.

**PART 5.03. Special Fund.**

(a) Hotel Occupancy Tax Special Funds. In accordance with the ordinances authorizing the issuance of the Prior Lien Bonds payable from and secured by a lien on and pledge of the Pledged Hotel Occupancy Tax Revenues, the following special funds and accounts have been created, established and shall be maintained while any of the Prior Lien Bonds remain Outstanding:

(i) Convention Center Hotel Occupancy Tax Fund (“Tax Fund”);

(ii) Convention Center Hotel Occupancy Tax Bond Debt Service Fund (“Senior Debt Service Fund”);

(iii) Subordinate Lien Hotel Occupancy Tax Debt Service Fund (“Original Subordinate Debt Service Fund”, and together with the Senior Debt Service Fund, the “Debt Service Fund”);

(iv) Convention Center Hotel Occupancy Tax Bond Debt Service Reserve Fund (“Senior Debt Service Reserve Fund”) and

(v) Subordinate Lien Hotel Occupancy Tax Debt Service Reserve Fund (“Original Subordinate Debt Service Reserve Fund”, and together with the Senior Debt Service Reserve Fund, the “Debt Service Reserve Fund”).

Such funds and accounts may also include any additional accounts or subaccounts as may from time to time be designated by the City, including specifically rebate accounts or subaccounts for accumulating rebatable arbitrage payable to the federal government, provided such accounts or subaccounts are not inconsistent with the ordinances authorizing the issuance of the Prior Lien Bonds and this Ordinance.

(b) Special Hotel Occupancy Tax Special Funds. In accordance with the ordinance authorizing the issuance of the Special Venue Project Bonds, the City hereby confirms the establishment of the Venue Project Fund maintained at an official depository of the City for the Convention Center/Waller Creek Venue Project in accordance with Section 334.042 of the Venue Act and pursuant to Ordinance No. 980709-G and the establishment of the following subaccounts within such Venue Project Fund on the books of the City for the benefit of such Prior Lien Bonds, namely:

(i) Convention Center/Waller Creek Venue Project Special Hotel Occupancy Tax Account (“Tax Account”);

(ii) Convention Center/Waller Creek Venue Project Bond Debt Service Account (“Debt Service Account”); and

(iii) Convention Center/Waller Creek Venue Project Bond Debt Service Reserve Account (“Debt Service Reserve Account”).

Such funds and accounts may also include any additional accounts or subaccounts as may from time to time be designated by the City, including specifically rebate accounts or subaccounts for accumulating rebatable arbitrage payable to the federal government, provided such accounts or subaccounts are not inconsistent with the ordinance authorizing the issuance of the Special Venue Project Bonds and this Ordinance.

(c) Special Funds for Parity Obligations. For the benefit of the Holders of the Parity Bonds and the beneficiaries of the other Parity Obligations, the City hereby agrees and covenants to establish and maintain the following special funds or accounts:

(i) Subordinate Lien Hotel Occupancy Tax Fund (the “Bond Fund”) for the payment of the Parity Obligations when and as the same shall become due and payable, and

(ii) Subordinate Lien Hotel Occupancy Tax Reserve Fund (the “Reserve Fund”) to provide a reserve to pay the principal of and interest on the Parity Bonds when funds in the Bond Fund are insufficient.

The Bond Fund and Reserve Fund may also include any additional accounts or subaccounts as may from time to time be designated by the City, including specifically rebate accounts or subaccounts for accumulating rebatable arbitrage payable to the federal government, provided such accounts or subaccounts are not inconsistent with the provisions of this Ordinance.

#### **PART 5.04. Flow of Funds.**

(a) Flow of Funds regarding Pledged Hotel Occupancy Tax Revenues. The City covenants and agrees that all Pledged Hotel



Occupancy Tax Revenues shall be deposited as received into the Tax Fund. Money from time to time credited to the Tax Fund shall be applied as follows in the following order of priority:

First, to transfer all amounts to the Debt Service Fund required by the ordinances authorizing the issuance of the Prior Lien Bonds (in such relative order of priority as is required by the related ordinances).

Second, to transfer all amounts to the Debt Service Reserve Fund required by the ordinances authorizing the issuance of the Prior Lien Bonds (in such relative order of priority as is required by the related ordinances).

Third, to transfer to the Bond Fund all amounts necessary to provide for the payment of Parity Obligations.

Fourth, to transfer to the Reserve Fund the amounts required pursuant to Part 5.06 of this Ordinance.

Fifth, to the payment of all Junior Obligations secured hereunder on a pari passu basis.

Sixth, for any lawful purpose under the Tax Act.

(b) Flow of Funds regarding Special Hotel Occupancy Tax. The City covenants and agrees that all receipts and revenues collected and received by the City from the Special Hotel Occupancy Tax shall be deposited to the credit of the Venue Project Fund and more particularly to the credit of the Tax Account. Following the issuance of the Bonds and while Parity Obligations and Junior Obligations remain Outstanding, money from time to time credited to the Tax Account shall be applied as follows in the following order of priority:

First, to transfer all amounts to the Debt Service Account required by the ordinances authorizing the issuance of the Prior Lien Bonds (in such relative order of priority as is required by the related ordinances).

Second, to transfer all amounts to the Debt Service Reserve Account required by the ordinances authorizing

the issuance of the Prior Lien Bonds (in such relative order of priority as is required by the related ordinances).

Third, to transfer to the Bond Fund all amounts necessary to provide for the payment of the Parity Bonds and Parity Obligations related to the Parity Bonds.

Fourth, to transfer to the Reserve Fund the amounts required pursuant to Part 5.06 of this Ordinance.

Fifth, to the payment of all Junior Obligations secured hereunder on a *pari passu* basis.

Sixth, to pay the costs of operating or maintaining the Convention Center/Waller Creek Venue Project

**PART 5.05. Bond Fund.** Subject to satisfying the required payments for the benefit of the Prior Lien Bonds in accordance with the ordinances authorizing their issuance, the City hereby covenants and agrees that before each Interest Payment Date, stated maturity date and mandatory redemption date for the Parity Bonds (and before the dates payments are due on other Parity Obligations) there shall be deposited into the Bond Fund, which is to be an Eligible Account held for the benefit of the Parity Obligations, from the Pledged Revenues, an amount equal to one hundred percent (100%) of the amount required to fully pay the amount then due and payable on the Parity Obligations, and such deposits shall be made in substantially equal quarterly installments (based on the total annual Debt Service Requirements to be paid on the Parity Obligations divided by the number of Transfer Dates to occur during the period covered by such calculation) on or before each Transfer Date, beginning on the first Transfer Date to occur after the delivery of the Bonds.

In addition, on each Transfer Date, the City covenants and agrees to cause to be deposited into the Bond Fund from the Pledged Revenues an amount calculated to pay all expenses of providing for the full and timely payment of the principal of, premium, if any, and interest on the Parity Bonds in accordance with their terms, including without limitation, all fees charged or incurred by the Paying Agent/Registrar and any Remarketing Agent, Tender Agent, Auction Agent, Broker-Dealer and Calculation Agent, and for paying agent/registrar services rendered in connection with the Parity Bonds.

Money credited to the Bond Fund shall be used solely for the purpose of paying on a *pari passu* basis (except as otherwise provided) principal (at maturity

or prior redemption or to purchase Parity Bonds issued as term bonds in the open market to be credited against mandatory redemption requirements), interest and redemption premiums on Parity Bonds and all other amounts due on other Parity Obligations, plus all other charges, costs and expenses relating to such payment, including those described in the preceding paragraph. On the Business Day immediately preceding each payment due date for the Parity Obligations, the City shall transfer from the Bond Fund and Reserve Fund, if necessary, to the appropriate paying agent/registrar amounts equal to the amounts due on the Parity Obligations on such date.

If a Liquidity Facility is in effect with respect to the Bonds, the City may pay the fees and expenses of the Liquidity Facility Provider from the Bond Fund, and shall disburse funds from the Bond Fund as needed to pay principal and redemption price of and interest on Liquidity Provider Bonds and other amounts owed to the Liquidity Facility Provider. Amounts in the Bond Fund shall not be used to pay the Purchase Price of the Bonds.

Notwithstanding anything herein to the contrary, the City shall deposit to the Bond Fund and credit against the City's monthly deposit obligations for the payment of interest on the Bonds under this Part 5.05 all money received from the Series 2008 Interest Rate Management Counterparty to the Series 2008 Interest Rate Management Agreement, except for any moneys received due to early termination thereof.

The City may establish and utilize such accounts within the Bond Fund as it may, from time to time, deem appropriate.

**PART 5.06. Reserve Fund.**

(a) The Reserve Fund shall be established for the benefit of the Parity Bonds. The City shall establish and maintain a balance in the Reserve Fund equal to the Reserve Fund Requirement. The Reserve Fund Requirement may be funded by a Reserve Fund Surety Bond issued by an insurance company or other entity that maintains ratings (either for the long term unsecured debt of the issuer of such Reserve Fund Surety Bond or for obligations insured, secured or guaranteed by such issuer) in the highest letter category by two major municipal securities credit rating services.

(b) In any Transfer Period in which the Reserve Fund contains less than the Reserve Fund Requirement or in which the City

is obligated to repay or reimburse any issuer of a Reserve Fund Surety Bond (in the event such Reserve Fund Surety Bond is drawn upon), then after making all required transfers to the Bond Fund, there shall be transferred into the Reserve Fund from the available Pledged Revenues on each Transfer Date such amounts as shall be necessary to reestablish the Reserve Fund Requirement and satisfy any repayment obligations to the issuer of any Reserve Fund Surety Bond. After such amount has been accumulated in the Reserve Fund and after satisfying any repayment obligation to any Reserve Fund Surety Bond issuer and so long thereafter as such fund contains such amount and all such repayment obligations have been satisfied, no further transfers shall be required to be made, and any excess amounts in such fund shall be transferred to the Bond Fund. But if and whenever the balance in the Reserve Fund is reduced below the Reserve Fund Requirement or any Reserve Fund Surety Bond repayment obligations arise, transfers to the Reserve Fund shall be resumed and continued in the manner stated above to restore the Reserve Fund Requirement and to pay such reimbursement obligations.

(c) The Reserve Fund shall be used to pay the principal of and interest on the Parity Bonds at any time when there is not sufficient money available in the Bond Fund for such purpose and to make any payments required to satisfy repayment obligations to issuers of Reserve Fund Surety Bonds, and may also be used to make the final payments for the retirement or defeasance of the Parity Bonds.

(d) If an Authorized Official determines that doing so would be in the best interest of the City, the Reserve Fund Requirement may be funded wholly or partly by a Reserve Fund Surety Bond selected by an Authorized Official (the "Surety Bond Issuer"). An Authorized Official may approve the terms and form of the Reserve Fund Surety Bond and of a guaranty or other agreement pursuant to which the City is obligated to pay premiums, fees, and reimbursement obligations owing to the Surety Bond Issuer (a "Guaranty Agreement"). In connection with a Reserve Fund Surety Bond and any Additional Bonds that are Parity Bonds, the City, the Paying Agent/Registrar and the Surety Bond Issuer may approve procedures providing for a reasonable allocation among Reserve Fund Surety Bonds and funds

held in the Reserve Fund to make payments on Parity Bonds and to provide for repayments to Surety Bond Issuers.

**PART 5.07. Deficiencies in Funds or Accounts.** Subject to satisfying the required payments for the benefit of the Prior Lien Bonds in accordance with the ordinances authorizing their issuance, if on any Transfer Date there shall not be transferred into any fund or account maintained pursuant to this Article the full amounts required in this Ordinance, amounts equivalent to such deficiency shall be set apart and transferred to such fund or account from the first available and unallocated Pledged Revenues, and such transfer shall be in addition to the amounts otherwise required to be transferred to such fund or account on any succeeding Transfer Date or Transfer Dates.

**PART 5.08. Investment of Funds; Transfer of Investment Income.**

(a) Money in all funds shall, at the option of the City, be invested in the manner provided by Texas law; except all such deposits and investments shall be made in such manner that the money required to be expended from any fund will be available at the proper time or times. All such investments shall be valued no less frequently than the last business day of the City's Fiscal Year at market value, except that any direct obligations of the United States of America - State and Local Government Series shall be continuously valued at their par value or principal face amount. For purposes of maximizing investment returns, money in such funds may be invested, together with money in other funds or with other money of the City, in common investments or in a common pool of such investments maintained by the City at an official depository of the City or in any fund or investment vehicle permitted by Texas law, which shall not be considered to be a loss of the segregation of such money or funds if safekeeping receipts, certificates of participation or other documents clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such funds are held by or on behalf of each such fund. If and to the extent necessary, such investments or participations therein shall be promptly sold to prevent any default.

(b) All interest and income derived from deposits and investments credited to the Bond Fund and Reserve Fund shall remain a part of the fund from which such investment was made, and such investment interest and income shall reduce by like amount any

required transfer to such funds from the Pledged Revenues, except at any time when the Reserve Fund has on deposit an amount more than the Reserve Fund Requirement, all investment interest and income received on any investment of funds in such fund shall be deposited to the credit of the Bond Fund.

(c) Notwithstanding anything to the contrary contained in this Ordinance, any interest and income derived from deposits and investments of any amounts credited to any fund or account may be (i) transferred into any rebate account or subaccount and (ii) paid to the federal government if in the opinion of nationally recognized bond counsel such payment is required to comply with any covenant contained in an order, resolution or ordinance to prevent interest on any Parity Bonds from being includable within the gross income of the owners thereof for federal income tax purposes.

## **ARTICLE 6. ADDITIONAL BONDS**

**PART 6.01. No Prior Lien Bonds.** The City covenants that it will not issue any additional bonds or other obligations payable from and secured by a lien on and pledge of the Pledged Revenues that is senior to the lien securing the Parity Obligations.

**PART 6.02. Refunding Bonds.** The City expressly reserves the right to issue refunding bonds to refund all or a portion of the Parity Bonds or refunding bonds previously issued to refund Parity Bonds. Such refunding bonds may be secured by a lien on Pledged Revenues on a parity with or subordinate to the lien securing the Parity Bonds.

**PART 6.03. Other Additional Bonds.**

(a) In regard to the Pledged Revenues, the City reserves and retains the right to issue or incur additional obligations secured wholly or partly by a parity lien on such Pledged Revenues or by a lien junior and subordinate to the lien on such Pledged Revenues securing payment of the Parity Bonds; provided, however, that no such Parity Bonds or Junior Subordinate Lien Bonds shall be issued unless the following conditions are satisfied:

(i) the City's Chief Financial Officer (or other officer of the City having primary responsibility for the financial affairs of the City) shall provide a certificate

showing that, for the City's most recent completed Fiscal Year or for any consecutive 12-month period out of the most recent 18 months preceding the month the ordinance authorizing the issuance of the Parity Bonds or Junior Subordinate Lien Bonds is adopted (the "Coverage Period"), (A) the Pledged Hotel Occupancy Tax Revenues for the Coverage Period are equal to at least 130% of the maximum annual Debt Service Requirement of all Prior Lien Bonds and Parity Bonds then Outstanding scheduled to occur in the then current or any future Fiscal Year after taking into consideration the issuance of the Parity Bonds, if any, proposed to be issued, and deducting from the maximum annual Debt Service Requirement for such Prior Lien Bonds and Parity Bonds an amount equal to the revenues received from the Special Hotel Occupancy Tax for the Coverage Period and (B) the "Net Pledged Hotel Occupancy Tax Revenues" for the Coverage Period (i.e., the Pledged Hotel Occupancy Tax Revenues after deducting an amount equal to the maximum annual Debt Service Requirement applied in satisfying the coverage requirement in clause (A) above), together with any other revenues pledged wholly or partly to the payment of any Junior Subordinate Lien Bonds, are equal to at least 130% of the maximum annual Debt Service Requirement on all Junior Subordinate Lien Bonds then Outstanding and scheduled to occur in the then current or any future Fiscal Year after giving effect to the issuance of the Junior Subordinate Lien Bonds then being issued, if any; provided, however, at such time as the Prior Lien Bonds are no longer Outstanding, the coverage requirement in clause (A) above shall be reduced to 125% and the coverage requirement of clause (B) shall be reduced to 100%; and

(ii) provision is made in the ordinance authorizing issuance of the Parity Bonds or Junior Subordinate Lien Bonds, as the case may be, for the complete funding of any required reserves for payment of

principal of and interest on such Parity Bonds or Junior Subordinate Lien Bonds as of the initial delivery thereof.

(b) Among the future obligations authorized to be issued or incurred pursuant to Part 6.03(a) are Credit Agreements. The City may enter into such a Credit Agreement payable from and secured wholly or partly by a lien on Pledged Revenues if it obtains either (i) the consent from any Credit Facility Provider issuing a Credit Facility in support of the Bonds or (ii) written confirmation from each Rating Agency then rating the Parity Bonds at the request of the City that issuance of the Credit Agreement will not cause a withdrawal or reduction in the rating assigned to the Bonds; provided, however, that such consent in clause (i) and confirmation in clause (ii) above is not required for Interest Rate Management Agreements. The City may secure its obligations under a future Credit Agreement by a lien on Pledged Revenues if such lien is on a parity with or subordinate to the lien securing the Parity Bonds.

(c) If the City issues Variable Rate Obligations, it shall use the following procedures for purposes of determining the maximum and the average annual Debt Service Requirements of Variable Rate Obligations:

(i) At the sole discretion of the City, such Variable Rate Obligation shall be deemed to bear interest at one of the following rates: (A) an interest rate equal to the average rate borne by such obligations (or by comparable debt if such obligations have not been outstanding during the preceding 24 months) for any 24-month period ending within 30 days before the date of calculation; (B) if the City has entered into a related Credit Agreement in the nature of an Interest Rate Management Agreement, the rate payable by the City under such Credit Agreement; or (C) an interest rate equal to the 30-Year Tax-Exempt Revenue Bond Index rate as published in The Bond Buyer on any date selected by the City within 30 days before the date of calculation. If such index is no longer published in The Bond Buyer, an index of tax-exempt revenue bonds with maturities of 20 years, or more, published in a financial newspaper or



journal with national circulation may be selected by the City and used for this purpose.

(ii) If the City has entered into a Credit Agreement in connection with an issue of obligations payable from and secured by Pledged Revenues and if Clause B of paragraph (c)(i) above does not apply, (X) payments due under the Credit Agreement, from either the City or the other party to the Credit Agreement, shall be included in such calculation except to the extent that the payments are already taken into account in the debt service calculation, (Y) any payments that would otherwise be included under the debt service calculation which are to be replaced by payments under a Credit Agreement from either the City or the other party to the Credit Agreement shall be excluded from such calculation, and (Z) payments due under a Credit Agreement that are paid at a variable rate shall be deemed to be made at a fixed rate determined in a manner consistent with clause A of paragraph (c)(i) above. For any calculation of historic data, only those payments actually made in the subject period shall be taken into account in making such calculation and for prospective calculations, only those payments reasonably expected to be made in the subject period shall be taken into account in making the calculation.

(d) If the City has entered into a Credit Agreement to discharge or purchase any of its obligations payable from or secured by Pledged Revenues under arrangements whereby the City's obligation to repay the amounts advanced under the Credit Agreement for the discharge or purchase is payable over more than one year from the advance under the Credit Agreement, then the portion of the obligations committed to be discharged or purchased pursuant to the Credit Agreement shall be excluded from any calculation of debt service requirements, and the principal of and interest requirements that constitute the City's reimbursement obligation shall be added.

(e) In determining the Pledged Hotel Occupancy Tax Revenues available to satisfy the coverage requirements of condition (a) above, the City may take into consideration an increase in the

portion of the Pledged Hotel Occupancy Tax Revenues that became effective during the Coverage Period and, for purposes of satisfying the above coverage tests, make a pro forma determination of the Pledged Hotel Occupancy Tax Revenues for the Coverage Period based on such increased portion of the Pledged Hotel Occupancy Tax Revenues being in effect for the entire Coverage Period.

(f) Any Additional Bonds may bear any name or designation provided by the ordinance authorizing their issuance and be issued in such form and manner as may be authorized by law. Furthermore, any such bonds may be secured by any other source of payment lawfully available for such purposes, including a Credit Agreement, financial guaranty insurance policy or similar credit or liquidity support. Any Reimbursement Obligation or obligation under a Credit Agreement may be secured by Pledged Revenues on a basis *pari passu* with the Parity Bonds or Junior Subordinate Lien Bonds.

## **ARTICLE 7. COVENANTS AND PROVISIONS RELATING TO ALL PARITY OBLIGATIONS**

**PART 7.01. Punctual Payment of Parity Obligations.** The City covenants it will punctually pay or cause to be paid the interest and any premium on and principal of all Parity Obligations according to the terms thereof and will faithfully do and perform, and at all times fully observe, any and all covenants, undertakings, stipulations and provisions contained in this Ordinance and in any other ordinance authorizing the issuance of such Parity Obligations.

**PART 7.02. Pledge and Encumbrance of Pledged Revenues.** The City covenants and represents that it has the lawful power to create a lien on and to pledge the Pledged Revenues to secure the payment of the Parity Obligations and Junior Obligations and has lawfully exercised such power under the Constitution and laws of the State of Texas. The City further covenants and represents that, other than to the payment of the Prior Lien Bonds, the bonds and obligations authorized and reserved to be issued in this Ordinance, the Pledged Revenues are not and will not be made subject to any other lien, pledge or encumbrance to secure the payment of any debt or obligation of the City unless such lien, pledge or encumbrance is junior and subordinate to the lien and pledge securing payment of the Parity Obligations.

**PART 7.03. Bondholders Remedies.** This Ordinance shall constitute a contract between the City and the Holders of the Bonds from time to time

Outstanding and the beneficiaries of other Parity Obligations and Junior Obligations and this Ordinance shall be and remain irrevocable until the Bonds and the other Parity Obligations and Junior Obligations shall be fully paid or discharged or provision therefor shall have been made as provided in this Ordinance. In the event of a default in the payment of the principal of or interest or any premium on any of the Bonds or a default in the performance of any duty or covenant provided by law or in this Ordinance, each Holder of a Bond and each beneficiary of any Parity Obligation or Junior Obligations may pursue all legal remedies afforded by the Constitution and laws of the State of Texas to compel the City to remedy such default and to prevent further default or defaults. Without in any way limiting the generality of the preceding, it is expressly provided that each Holder of a Bond and each beneficiary of any Parity Obligation or Junior Obligations may at law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required to be performed by the City under this Ordinance, including the application of Pledged Revenues in the manner required in this Ordinance; provided, however, that no Holder of a Bond and no beneficiary of a Parity Obligation or a Junior Obligation shall ever have the right to demand payment of the principal of, interest on or any redemption premium on the Bonds or any payment on any Parity Obligation or Junior Obligations out of any funds raised or to be raised by taxation, other than the Pledged Hotel Occupancy Tax Revenues and the Special Hotel Occupancy Tax.

**PART 7.04. Satisfaction of Obligation of City.** If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance, then the pledge of the Pledged Revenues under this Ordinance and all other obligations of the City to the Holders shall thereupon cease, terminate, and become void and be discharged and satisfied.

Bonds or any principal amount(s) thereof shall be considered to have been paid within the meaning and with the effect expressed above in this Part when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Obligations shall have been irrevocably deposited in trust with the Paying Agent/ Registrar, or an authorized escrow agent, which Government Obligations have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of

sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and before the Stated Maturity thereof or (if notice of redemption has been given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of money or Government Obligations will be made under this Part and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code, or Regulations.

Any money so deposited with the Paying Agent/ Registrar, or an authorized escrow agent, and all income from Government Obligations held in trust by the Paying Agent/Registrar or an authorized escrow agent, pursuant to this Part which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such money have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such money was deposited and are held in trust to pay shall, upon the request of the City, be remitted to the City against a written receipt therefor. Notwithstanding the above and preceding, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

All money or Government Obligations set aside and held in trust pursuant to the provisions of this Part 7.04 shall be used at the first practicable date to pay the Purchase Price or Redemption Price, as applicable, of the Bonds being deemed paid, retired and no longer outstanding as contemplated in the first paragraph of this Part 7.04.

No Bonds of a subseries in the Daily Mode or Weekly Mode may be defeased without prior written consent of the Credit Facility Provider and written confirmation from each Rating Agency then rating such Bonds to the effect that the deposit made pursuant to the Ordinance will not, by itself, result in a reduction or withdrawal of the short-term or long-term rating of such Bonds below the rating category of such Rating Agency then in effect with respect to such Bonds.

**PART 7.05. Non-Business Days.** In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds or the due date for the payment or performance of any obligation shall be other than a Business Day, then such payment need not be made on such due date but

may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption or other due date, and no interest shall accrue for the period from the scheduled due date to the date of actual payment. If any Transfer Date shall not be a Business Day, then the transfer otherwise required to be made on such date pursuant to Part 5.05 shall be made on the next succeeding Business Day.

## **ARTICLE 8. CONCERNING CERTAIN AGENTS**

**PART 8.01. Paying Agent/Registrar Agreement.** The selection and appointment of Deutsche Bank Trust Company Americas, New York, New York, to serve as Paying Agent/Registrar for the Bonds is hereby approved and confirmed. Books and records relating to the registration, payment, transfer and exchange of the Bonds (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided in this Ordinance and in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form attached hereto as Exhibit A, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. One or more Authorized Officials are and shall be authorized to execute and deliver such Paying Agent/Registrar Agreement with such changes as the Authorized Official executing such Paying Agent/Registrar Agreement may approve.

**PART 8.02. Trust Funds.** All money transferred by the City to the Paying Agent/Registrar under this Ordinance (except sums representing Registrar's/Paying Agent's fees) shall be held in trust for the benefit of the City, shall be the property of the City, and shall be disbursed in accordance with this Ordinance.

**PART 8.03. Bonds Presented.** Subject to the provisions of Part 8.04, all matured Bonds presented to the Paying Agent/Registrar for payment shall be paid without the necessity of further instructions from the City. Such Bonds shall be canceled as provided in this Ordinance.

**PART 8.04. Successor Paying Agent/Registrars.** The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Such successor Paying Agent/Registrar must execute a Paying Agent/Registrar Agreement having substantially the same terms as the Paying Agent/Registrar Agreement attached to this Ordinance as Exhibit A. The Paying Agent/Registrar's

resignation and removal shall not be effective until a successor Paying Agent/Registrar has been appointed by the City and such appointment accepted. Concurrently with any such resignation or removal, the Paying Agent/Registrar shall transfer any Liquidity Facility or Credit Facility to such successor Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

**PART 8.05. Remarketing Agent.** The selection and appointment of (i) Morgan Keegan & Company, Inc. to serve as remarketing agent for the Subseries 2008A Bonds and (ii) Bank of America Securities LLC to serve as remarketing agent for the Subseries 2008B Bonds is hereby approved and confirmed, and such appointments shall be governed by Part 6.1 of the Appendix A hereto and the Remarketing Agreements (each a “Remarketing Agreement,” and collectively, the “Remarketing Agreements”) in substantially the forms attached hereto as Exhibit D are hereby approved. One or more Authorized Officials are and shall be authorized to execute and deliver such Remarketing Agreements with such changes as the Authorized Official executing such Remarketing Agreements may approve.

**PART 8.06. Tender Agent.** The selection and appointment of Deutsche Bank Trust Company Americas, New York, New York, to serve as tender agent for the Bonds is hereby approved and confirmed, and such appointment shall be governed by Part 6.2 of Appendix A hereto, and a Tender Agent Agreement between the City and the Tender Agent, substantially in the form attached hereto as Exhibit E is hereby approved. One or more Authorized Officials are and shall be authorized to execute and deliver such Tender Agent Agreement with such changes as the Authorized Official executing the same may approve.

Any successor Tender Agent shall be a bank, trust company, financial institution or other entity maintaining trust powers that is qualified and authorized to serve in such capacity and perform the duties and services of Tender Agent. Such successor Tender Agent must execute a Tender Agent Agreement having substantially the same terms as the Tender Agent Agreement to be attached to this Ordinance as Exhibit E. The Tender Agent’s resignation and removal shall not be effective until a successor Tender Agent has been appointed by the City and such appointment accepted.

## **ARTICLE 9. ALTERATION OF RIGHTS AND DUTIES; AMENDMENT OF ORDINANCE**

**PART 9.01. Alteration of Rights and Duties.** The rights, duties, and obligations of the City and the Holders of the Bonds are subject in all respects to all applicable federal and state laws including, without limitation, the provisions of federal law regarding the composition of indebtedness of political subdivisions, as the same now exist or may hereafter be amended.

**PART 9.02. Amendment of Ordinance Without Consent.** The City may, without the consent of or notice to any of the Holders of the Bonds, amend this Ordinance for any one or more of the following purposes:

(a) to cure any ambiguity, defect, omission or inconsistent provision in this Ordinance or in the Bonds; or to comply with any applicable provision of law or regulation of federal agencies; provided, however, that such action shall not adversely affect the interests of the Holders of the Bonds;

(b) to change the terms or provisions of this Ordinance to the extent necessary to prevent the interest on the Bonds from being includable within the gross income of the owners thereof for federal income tax purposes;

(c) to grant to or confer upon the Holders of the Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders of the Bonds;

(d) to add to the covenants and agreements of the City contained in this Ordinance other covenants and agreements of, or conditions or restrictions upon, the City or to surrender or eliminate any right or power reserved to or conferred upon the City in this Ordinance;

(e) to amend any provisions hereof relating to the issuance of Additional Bonds if the City first obtains a Rating Confirmation Notice with respect to such amendment; and

(f) to subject to the lien and pledge of this Ordinance additional Pledged Revenues, provided such amendment does not cause any reduction in any rating assigned to the Bonds by any major municipal securities evaluation service then rating the Bonds;

provided, however, that if and to the extent required by a Credit Facility, Liquidity Facility, an Interest Rate Management Agreement, another Credit Agreement or other provision of this Ordinance, the City shall first obtain the consent of the Credit Facility Provider, any Liquidity Facility Provider and the Interest Rate Management Agreement Counterparty to any such amendment pursuant to this Part 9.02.

**PART 9.03. Amendments of Ordinance Requiring Consent.**

(a) The City may at any time adopt one or more ordinances amending, modifying, adding to or eliminating any of the provisions of this Ordinance but, if such amendment is not of the character described in Part 9.02 hereof, only with the consent given in accordance with Part 9.04 hereof of the Holders of not fewer than a majority of the aggregate unpaid principal amount of the Parity Bonds then Outstanding and affected by such amendment, modification, addition, or elimination; provided, however, that nothing in this Part shall permit (1) an extension of the maturity of the principal of or interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest on any Bond or redemption price therefor, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of the Bonds required for consent to such amendment.

(b) If and to the extent required by a Credit Facility, Liquidity Facility, an Interest Rate Management Agreement, another Credit Agreement or other provision of this Ordinance, the City shall first obtain the consent of the Credit Facility Provider, any Liquidity Provider and the Interest Rate Management Agreement Counterparty to any such amendment pursuant to this Part 9.03.

**PART 9.04. Consent of Holders.** Any consent required by Part 9.03 shall be considered given

(a) By all Holders of Outstanding Bonds if a Credit Facility is in effect, the Credit Facility Provider is not in default thereunder and the Credit Facility Provider has given its written consent to the amendments in writing,



(b) By all Holders of Outstanding Bonds if the Bonds are remarketed following a mandatory tender of all Bonds and the substance of such amendment has been disclosed to the market in connection with such remarketing,

(c) By all Holders of Outstanding Bonds if the Bonds are in a Auction Rate Mode and if written notice of the substance of the proposed amendment has been furnished to the Holders and if following such disclosure, there have occurred at least two consecutive Auctions (as defined in Appendix A) and in each such Auction either Sufficient Clearing Bids existed or the Auction Rate determined was the Winning Bid Rate;

(d) By any Holder in any number of concurrent writings of similar tenor, signed by such Holder or his authorized attorney. Proof of the execution of any such consent or of the writing appointing any such attorney and of the ownership of Parity Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted to be taken by the City under such instrument, namely:

(i) the fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution; and

(ii) the fact of the ownership by any person of any Bond and the date of the ownership of same may be proved by a certificate executed by an appropriate officer of the Paying Agent/Registrar, stating that at the date thereof such Bond was registered in the name of such party in the Security Register.

In lieu of the preceding the City may accept such other proofs of the preceding as it shall consider appropriate.

Consents obtained pursuant to Part 9.04(d) shall be valid only if given following the mailing of notice by or on behalf of the City requesting such consent and setting forth the substance of the amendment of this Ordinance in respect of which such consent is sought and stating that copies thereof are available at the office of the City Clerk for inspection. Such notice shall be mailed by certified mail to each Holder of the Parity Bonds affected at the address shown on the Security Register.

**PART 9.05. Revocation of Consent.** Any consent by any Holder of a Bond pursuant to the provisions of Part 9.04(d) shall be irrevocable for a period of six months from the date of mailing of the notice provided for in this Article, and shall be conclusive and binding upon all future Holders of the same Bond and any Bond delivered on transfer thereof or in exchange for or replacement thereof during such period. Such consent may be revoked at any time after six months from the date of the first mailing of such notice by the owner who gave such consent or by a successor in title, by filing notice thereof with the Paying Agent/Registrar, but such revocation shall not be effective if the Holders of a majority in aggregate principal amount of the Parity Bonds Outstanding as in this Ordinance defined have, before the attempted revocation, consented to and approved the amendment.

## **ARTICLE 10. PROVISIONS CONCERNING SALE AND APPLICATION OF PROCEEDS OF BONDS**

### **PART 10.01. Sale of Bonds.**

(a) The Bond Purchase Agreement between the City and Morgan Keegan & Company, Inc. (the "Subseries 2008A Underwriter") relating to the Subseries 2008A Bonds in substantially the form and content of Exhibit F attached to this Ordinance, with such changes as the Pricing Officer executing the same may approve, is hereby approved. A Pricing Officer may complete the Bond Purchase Agreement with respect to the pricing information and execute such Bond Purchase Agreement as the City Council's act and deed.

(b) The Bond Purchase Agreement between the City and Banc of America Securities LLC (the "Subseries 2008B Underwriter") relating to the Subseries 2008B Bonds in substantially the form and content of Exhibit F attached to this Ordinance, with such changes as the Pricing Officer executing the same may approve, is hereby approved. A Pricing Officer may complete the Bond Purchase Agreement with respect to the pricing information and execute such Bond Purchase Agreement as the City Council's act and deed.

The Subseries 2008A Underwriter and the Subseries 2008B Underwriter are referred to in this Ordinance collectively as the "Underwriters".

**PART 10.02. Control and Custody of Bonds.** The Mayor of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending the delivery of the Bonds, and shall take and have charge and control of the Initial Bonds pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Underwriters.

Furthermore, any Authorized Official is hereby authorized and directed to furnish and execute such documents relating to the City and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General and registration by the Comptroller of Public Accounts and, together with the City's financial advisor, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bonds to the initial purchasers thereof and the exchange thereof for obligations described in this Ordinance and in the Official Statement, described in Part 10.03 below.

**PART 10.03. Offering Documents.** An official statement relating to the Bonds is hereby authorized and may be considered final by an Authorized Official, except for such omissions as are permitted by Rule 15c2-12 of the Securities and Exchange Commission ( the "Rule"). An Authorized Official may approve the form and terms of such document and authorize its use and distribution by the Underwriters. Furthermore, if considered appropriate by an Authorized Official the use of a preliminary official statement, to be dated on or about the date of sale of the Bonds and the form of which is approved by an Authorized Official, in the offering and sale of the Bonds is hereby authorized (but not required) and approved in all respects.

**PART 10.04. Special Escrow Agreement.** A "Special Escrow Agreement" (the "Escrow Agreement") by and between the City and an authorized escrow agent (the "Escrow Agent"), if any such agreement is required in connection with the issuance of the Bonds, shall be attached to the Pricing Certificate. Such Escrow Agreement is hereby authorized to be finalized and executed by the Pricing Officer for and on behalf of the City and as the act and deed of the City Council; and such Escrow Agreement as executed by said Pricing Officer shall be deemed approved by the City Council and constitute the Escrow Agreement herein approved. With regard to the finalization of certain terms and provisions of any Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement with the Escrow Agent on the following details, among other matters:

1. The creation and funding of the Escrow Fund;
2. The Escrow Agent's compensation, administration of the Escrow Fund, and the settlement of any paying agents' charges relating to the Refunded Bonds; and
3. The determination of the redemption date(s) and method of selection of the Refunded Bonds to be redeemed on such date(s).

Furthermore, any Authorized Officials in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the escrowed securities referenced in the Escrow Agreement, if any, and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Underwriters for deposit to the credit of a "SPECIAL 2008 CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX REVENUE REFUNDING BOND ESCROW FUND" (the "Escrow Fund") or such other designation as specified in the Pricing Certificate; all as contemplated and provided in Chapter 1207, V.T.C.A., Government Code, this Ordinance, the Pricing Certificate, and the Escrow Agreement.

**PART 10.05. Proceeds of Sale.** Immediately following the delivery of the Bonds, proceeds of sale thereof, less amounts to pay costs of issuance, purchase prices and premiums of the Liquidity Facility, and related fees and expenses, and to fund the Reserve Fund, shall be deposited to the credit of the Escrow Fund, if any, or transmitted to the paying agent/registrar for the Refunded Bonds for the payment of the redemption price thereof on the redemption date specified in the Pricing Certificate. Any excess amount budgeted for such purposes shall be deposited to the credit of the Bond Fund.

Additionally, on or immediately before the date of the delivery of the Bonds to the Underwriters, an Authorized Official shall cause to be transferred in immediately available funds to the Paying Agent/Registrar from money legally available for purpose the sum specified in the Pricing Certificate to accomplish the refunding.

**PART 10.06. Redemption of Refunded Bonds.** (a) In order to provide for the refunding, discharge, and retirement of the Refunded Bonds, the Refunded Bonds will be called for redemption on the date(s) specified by the Pricing Officer in the Pricing Certificate at the price of par plus accrued interest to the redemption date(s), and notice(s) of such redemption shall be given in accordance with the applicable provisions of the ordinance adopted by the City Council of the City,

which authorized the issuance of the Refunded Bonds. The Pricing Officer is hereby authorized and directed to issue or cause to be issued a Notice or Notices of Redemption for the Refunded Bonds in substantially the form(s) set forth as an Exhibit to the Pricing Certificate, to the paying agent/registrar for Refunded Bonds, in accordance with the redemption provisions applicable to the Refunded Bonds.

(b) The paying agent/registrar for Refunded Bonds is hereby directed to provide the appropriate notice(s) of redemption as required by the ordinance authorizing the Refunded Bonds and is hereby directed to make appropriate arrangements so that the Refunded Bonds may be redeemed on the redemption date(s).

## **ARTICLE 11. CONTINUING DISCLOSURE OF INFORMATION**

**PART 11.01. Definitions.** As used in this Part, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“NRMSIR” means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“SID” means any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

**PART 11.02. Annual Reports.** The City shall provide annually to each NRMSIR and any SID, within six months after the end of each Fiscal Year (beginning with the Fiscal Year ending September 30, 2008) financial information and operating data with respect to the City of the general type included in the final Official Statement referenced by Part 10.01 of this Ordinance, being the information described in Exhibit G hereto. Financial statements to be provided shall be (1) prepared in accordance with the accounting principles described in Exhibit G hereto and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available at the time the financial

information and operating data must be provided, then the City shall provide unaudited financial statements for the applicable fiscal year to each NRMSIR and any SID with the financial information and operating data and will file the annual audit report when and if the same becomes available.

If the City changes its Fiscal Year, it will notify each NRMSIR and any SID of the change (and of the date of the new Fiscal Year end) before the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Part.

The financial information and operating data to be provided pursuant to this Part may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

**PART 11.03. Material Event Notices.** The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
7. Modifications to rights of holders of the Bonds;
8. Bond calls;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds; and
11. Rating changes.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the City to provide financial information or

operating data in accordance with Part 10.02 hereof by the time required by such Part.

**PART 11.04. Limitations, Disclaimers, and Amendments.** The City shall be obligated to observe and perform the covenants specified in this Part while, but only while, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by Part 11.03 hereof of any Bond calls and defeasance that cause the City to be no longer such an “obligated person.”

The provisions of this Part are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Part, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Part and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Part or otherwise, except as expressly provided in this Ordinance. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING WHOLLY OR PARTLY FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS PART, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Part shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Part is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Part may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Part, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount of the Outstanding Bonds consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. If the City so amends the provisions of this Part, it shall include with any amended financial information or operating data next provided in accordance with Part 10.02 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

## **ARTICLE 12. TAX MATTERS**

### **PART 12.01. Tax Exemption.**

(a) Definitions. When used in this Article 12, the following terms shall have the following meanings:

“Closing Date” means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

“Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

“Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.



“Nonpurpose Investment” means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the preceding, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Part.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times before the last Stated Maturity of Bonds:

(i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Bonds), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Bonds), other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the preceding covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds

are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time before the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Underwriter and the loan of the money represented thereby and to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Debt Service Account or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (ii) and (iii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United

States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(v) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time before the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Part because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(i) Elections. The City hereby directs and authorizes the Mayor, the City Manager, the Treasurer and the Chief Financial Officer of the City, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they consider necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(j) Bonds Not Hedge Bonds. With respect to the original bonds refinanced by the Refunded Bonds, (1) the City reasonably expected to spend at least 85% of the spendable proceeds of the original bonds within three years after such original bonds were issued and (2) not more than 50% of proceeds of the original bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(k) Current Refunding. The Bonds are issued to refund the Refunded Bonds, and the Bonds will be issued within 90 days before the redemption of the Refunded Bonds.

(l) Reimbursement. The City reasonably expects to reimburse capital expenditures with respect to the termination payment referenced in Part 3.11 hereof paid with funds on hand from the proceeds of sale of Bonds, and this paragraph shall constitute a declaration of official intent under the Treas. Reg. §1.150-2. The

maximum principal amount of the Bonds expected to be issued for the termination payment is \$10,000,000.

## **ARTICLE 13. MISCELLANEOUS**

**PART 13.01. Further Procedures.** The Mayor, the Mayor Pro Tem, the City Manager, the Chief Financial Officer, City Treasurer and the City Clerk, and other appropriate officials of the City, are hereby authorized and directed to do any and all things necessary or convenient to carry out the terms of this Ordinance.

**PART 13.02. Severability.** If any Part, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Part, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**PART 13.03. Meeting.** It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of the meeting of the City Council at which this Ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public at the City Hall of the City for the time required by law preceding this meeting, as required by V.T.C.A., Government Code, Chapter 551, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

**PART 13.04. Benefits of Ordinance.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, the Credit Facility Provider, the Surety Bond Issuer, the Liquidity Provider, the Interest Rate Management Agreement Counterparty(ies), the Remarketing Agent, the Tender Agent, any future Auction Agent or Broker-Dealer, the Holders and any other beneficiary of a Parity Obligation, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of such Persons.

**PART 13.05. Inconsistent Provisions.** All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained in this Ordinance.

**PART 13.06. Rating Agencies.**

(a) If Moody's, Fitch or Standard & Poor's maintain a rating on the Bonds such rating agencies shall receive notice by or on behalf of the City, of:

(i) any change to the Paying Agent/Registrar, Tender Agent or Remarketing Agent;

(ii) any amendment pursuant to Part 9.03 of Article 9 of this Ordinance or any amendment or supplement to the Series 2008 Liquidity Agreement, including, but not limited to, any expiration, termination, or extension thereof; and of defeasance of the Bonds in full.

(iii) Any changes to the Liquidity Facility, the Credit Facility, or any agreement with the Liquidity Facility Provider, Credit Facility Provider, Remarketing Agent or Tender Agent pertaining to the Bonds;

(iv) Any expiration, termination or extension of any Liquidity Facility or Credit Facility or the obtaining of an Alternate Liquidity Facility or Alternate Credit Facility pertaining to the Bonds;

(v) Any action in connection with a change to a Daily Mode, Term Rate Mode or Fixed Rate Mode or Commercial Paper Mode; and

(vi) Any redemption, defeasance, mandatory tender, Mandatory Purchase Date or acceleration of all the Outstanding Bonds.

(b) Information Provided to Rating Agencies. The City agrees to provide any Rating Agency with respect to the Bonds of a subseries such information with respect to the City as the Rating Agency reasonably requests from time to time, which information is customarily prepared by the City and publicly available

(c) Rating Agency Requirements. Notwithstanding anything herein to the contrary and as authorized by law, the Pricing Officer is

hereby authorized to include in the Pricing Certificate any provision required by Moody's, Fitch or Standard & Poor's required to obtain the initial ratings on the Bonds.

**PART 13.07. Demands; Requests.** All notices, demands and requests to be given to or made hereunder by the City, the Paying Agent/Registrar, the Tender Agent, the Remarketing Agents, the Liquidity Facility Providers, the Credit Facility Providers, the Rating Agencies shall, unless otherwise expressly provided herein, be given or made in writing and is deemed to be properly given or made if by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below. Notices, demands and requests that may be given by Electronic Means may be sent to the telephone or fax numbers, as applicable, set forth below:

As to the City:

City of Austin  
700 Lavaca, Suite 1510  
Austin, Texas 78701  
Attention: Art Alfaro, Treasurer  
Phone: (512) 974-7882  
Fax: (512) 370-3838  
E-Mail: art.alfaro@ci.austin.tx.us

As to the Paying Agent/Registrar:

Deutsche Bank  
25 DeForest Avenue, 2<sup>nd</sup> Floor  
Summit, New Jersey 07901  
Attention: Trust & Securities Services  
Phone: (908) 608-4094  
Fax: (908) 608-3220  
E-mail: debra.schwalb@db.com

As to the Tender Agent:

Deutsche Bank  
25 DeForest Avenue, 2<sup>nd</sup> Floor  
Summit, New Jersey 07901  
Attention: Trust & Securities Services  
Phone: (908) 608-4094  
Fax: (908) 608-3220  
E-mail: debra.schwalb@db.com



As to the Remarketing Agent(s):	The Address, Phone Number, Fax Number and E-mail Address Specified in the Related Remarketing Agreement
As to the Credit Facility Provider(s) and Liquidity Facility Provider(s)	The Address, Phone Number, Fax Number and E-mail Address Specified in the Related Credit Facility or Liquidity Facility, as the case may be
As to the Auction Agent:	The Address, Phone Number, Fax Number and E-mail Address Specified in the Auction Agreement

As to the Broker-Dealer(s):

The Address, Phone Number, Fax  
Number and E-mail Address Specified  
in the Related Broker-Dealer Agreement

**As to the Series 2008 Interest Rate Management Agreement Counterparty:**

Morgan Keegan Financial Products, Inc.  
50 North Front Street, 16<sup>th</sup> Floor  
Memphis, Tennessee 38103  
Attention: Swap Desk  
Fax: (901) 579-4363

and

Deutsche Bank, AG, New York Branch  
60 Wall Street  
New York, New York 10005  
Attention: Patrick Marsh  
Fax: (212) 797-2210 or (212) 797-2218

As to the Rating Agencies:

Fitch Ratings, Inc.  
One State Street Plaza  
New York, New York 10004  
Attention: Municipal Structured Finance  
Phone:  
Fax:  
Email: [trudy.zibit@fitchratings.com](mailto:trudy.zibit@fitchratings.com)

Moody's Investors Service, Inc.  
7 World Trade Center at 250 Greenwich  
Street  
Public Finance Group  
New York, New York 10007  
Attention: MSPG – 23<sup>rd</sup> Floor  
Phone:  
Fax: 212-553-1066  
Email: MSPGSurveillance@moodys  
com

Standard & Poor's  
55 Water Street, 38<sup>th</sup> Floor  
New York, New York 10041  
Phone:  
Fax:  
Email: pubfin\_structured@sandp.com

or to such other address as is provided by the entity.

The City shall provide, or cause to be provided, each rating agency then maintaining a rating on the Bonds with the notice of any redemption and the notice of any Mandatory Purchase Dates.

**PART 13.08. Public Meeting.** It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given; all as required by V.T.C.A., Government Code, Chapter 551.

**PART 13.09. Authorized Officials.** Any agreement, instrument, certificate or other document which this Ordinance provides may be approved or executed by one or more Authorized Officials, including the Pricing Certificate, shall be considered conclusively to be approved, executed and delivered on behalf of the City, as its act and deed, in the form and content executed and delivered by an Authorized Official. Any finding or determination made by an Authorized Official relating to the issuance of the Bonds and the terms and execution of documents in connection therewith, and the terms and execution of the other agreements and documents referenced in this Ordinance, shall have the same force and effect as a finding or determination made by the City Council.

**PART 13.10. Governing Law.** This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**PART 13.11. Effective Date.** This Ordinance is hereby passed one reading as authorized by V.T.C.A., Government Code, Section 1201.028 and shall be effective immediately upon its passage and adoption.

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**PASSED AND APPROVED**

July 24, 2008

§  
§  
§  
\_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk

(CITY SEAL)



## **APPENDIX A**

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### **PROVISIONS FOR MULTI-MODAL OBLIGATIONS FOR THE BONDS**

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# **PROVISIONS FOR MULTI-MODAL OBLIGATIONS FOR THE BONDS**

## **ARTICLE I**

### **DEFINITIONS**

**Part 1.1 Definitions.** Capitalized terms used but not otherwise defined in this Appendix A shall have the meanings set forth in the Ordinance to which this Appendix A is appended. Unless otherwise specified, references to Parts and articles herein are to the Parts and articles in this Appendix A and not the Ordinance. For all purposes herein and (except as the context may otherwise require) in the Ordinance, the following terms have the following meanings:

“Alternate Credit Facility” means a Credit Facility that is issued in substitution for a then-existing Credit Facility in accordance with, and pursuant to, Part 5.1 hereof, as the same may be amended or supplemented from time to time.

“Alternate Liquidity Facility” means a Liquidity Facility that is issued in substitution for a then-existing Liquidity Facility in accordance with, and pursuant to, Part 5.1 hereof, as the same may be amended or supplemented from time to time.

“Alternate Rate” means, on any Rate Determination Date, the SIFMA Index or if the SIFMA Index is no longer published, the Kenny Index, or if neither the SIFMA Index nor the Kenny Index are published, an index or a rate selected or determined by the Paying Agent/Registrar and consented to by the City and the Credit Facility Provider.

“Auction Agent” has the meaning set forth in Exhibit 1 hereto.

“Auction Agreement” has the meaning set forth in Exhibit 1 hereto.

“Auction Date” has the meaning set forth in Exhibit 1 hereto.

“Auction Period” has the meaning set forth in Exhibit 1 hereto.

“Auction Period Rate” has the meaning set forth in Exhibit 1 hereto.

“Auction Procedures” has the meaning set forth in Exhibit 1 hereto.

“Auction Rate Mode” means the mode during which the duration of the Auction Period and the interest rate is determined in accordance with Part 2.7 hereof and Exhibit 1 hereto.

“Authorized Denominations” means with respect to Bonds of a subseries (i) in an Auction Rate Mode, \$25,000 and any integral multiple thereof, (ii) in a Commercial Paper Mode, Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof and (iii) in a Term Rate Mode or Fixed Rate Mode, \$5,000 and any integral multiple thereof, provided, however, that if as a result of the change in the Mode of the Bonds of a subseries from a Term Rate Mode to a Commercial Paper Mode, Daily Mode or Weekly Mode, it is not possible to deliver all the Bonds of a subseries required or permitted to be Outstanding in a denomination permitted above, Bonds of a subseries may be delivered, to the extent necessary, in different denominations.

“Available Amount” means the amount available under the Credit Facility or Liquidity Facility, as applicable, to pay the principal of and interest on the Bonds or the Purchase Price of the Bonds, as applicable.

“Broker-Dealer” has the meaning set forth in Exhibit 1 hereto.

“Broker-Dealer Agreement” has the meaning set forth in Exhibit 1 hereto.

“Business Day” shall mean 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 Credit Provider or the Liquidity Provider 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.

“Closing Date” when used with respect to the Bonds of a subseries, means the date on which such Bonds are first issued, sold and delivered.

“Commercial Paper Mode” means the mode during which the duration of the Interest Periods and the interest rates are determined under Part 2.2 hereof.

“Commercial Paper Rate Bond” means any Bond of a subseries while in a Commercial Paper Mode.

“Credit Facility” shall mean a letter of credit, insurance policy, surety bond, line of credit or other instrument then in effect which secures or guarantees the

payment of principal of and interest on the Bonds. The initial Credit Facility for the Bonds is the Series 2008 Liquidity Agreement.

“Credit Facility Provider” shall mean any bank, insurance company, pension fund or other financial institution which provides a Credit Facility or Alternate Credit Facility for the Bonds. The initial Credit Facility Provider shall be Dexia Crédit Local, acting through its New York branch.

“Current Mode” has the meaning specified in Part 2.8(b) hereof.

“Daily Mode” means the mode during which Bonds of a subseries bear interest at a Daily Rate.

“Daily Rate” means an interest rate determined pursuant to Part 2.3 hereof.

“Delayed Remarketing Period” has the meaning stated in Part 2.5(b).

“Differential Interest Amount” has the meaning specified in Part 2.1 hereof.

“Direct-Pay Liquidity Facility” means a Liquidity Facility that is issued in the form of a direct-pay letter of credit.

“Direct-Pay Liquidity Facility Drawing Account” means the Account that may be established pursuant to Part 5.2 hereof.

“DTC” means The Depository Trust Company, New York, New York, or its successors.

“Electronic Means” means telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

“Eligible Account” means an account that must be maintained either with (i) a federal or state-chartered depository institution or trust company that has a Standard & Poor’s short-term debt rating of at least “A-2” (or, if no short-term debt rating, a long-term debt rating of “BBB+”); or (b) the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the U.S. Code of Federal Regulation Part 9.10(b), which, in either case, has corporate trust powers and is acting in its fiduciary capacity.

“Expiration Date” means, with respect to a Credit Facility or Liquidity Facility with respect to the Bonds of a subseries, the stated expiration date of such Credit Facility or Liquidity Facility, or such stated expiration date as it may be extended from time to time as provided therein; provided, however, that the “Expiration Date” does not mean any date upon which a Credit Facility or Liquidity Facility is no longer effective by reason of its Termination Date, the date on which all Bonds of such subseries bear interest at a Fixed Rate or an Auction Period Rate or the expiration of such Credit Facility or Liquidity Facility by reason of the obtaining of an Alternate Credit Facility or Alternate Liquidity Facility.

“Expiration Tender Date” has the meaning set forth in Part 4.5(a) hereof.

“Favorable Opinion of Bond Counsel” means, with respect to any action the occurrence of which requires such an opinion, an unqualified opinion of counsel to the effect that such action is permitted under the Ordinance and 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).

“Fixed Rate” means an interest rate fixed to the Maturity Date of the Bonds of a subseries.

“Fixed Rate Mode” means the period during which Bonds of a subseries bear interest at a Fixed Rate.

“Interest Payment Date” means the following dates upon which interest is payable on Bonds of a subseries:

- (a) the Maturity Date or any Mode Change Date;
- (b) with respect to a Commercial Paper Rate Bond, the Business Day following the last day of the Interest Period therefor;
- (c) with respect to the Daily Mode and the Weekly Mode, the fifteenth day of each calendar month (provided that if such day is not a Business Day, interest shall be paid on the next Business Day), provided, however, the initial Interest Payment Date for the Bonds shall be September 15, 2008;
- (d) with respect to the Term Rate Mode, each May 15 and November 15 prior to the Purchase Date and the Purchase Date;

(e) with respect to the Auction Rate Mode, each date that is specified as an “Interest Payment Date” in Exhibit 1 hereto;

(f) with respect to the Fixed Rate Mode, each May 15 and November 15, provided that the Interest Payment Dates for the Fixed Rate Mode may be changed in connection with the conversion to such Mode upon receipt of a Favorable Opinion of Bond Counsel; and

(g) with respect to a Liquidity Provider Bond, each date that is specified as a date on which interest is payable thereon pursuant to the Liquidity Facility under which such Liquidity Provider Bond was purchased.

“Interest Period” means the period of time that any interest rate remains in effect, which period:

(a) with respect to a Commercial Paper Rate Bond, is the period of time established by the Remarketing Agent pursuant to Part 2.2 hereof;

(b) with respect to Bonds of a subseries in the Daily Mode, is the period from and including the Closing Date (if initially issued in the Daily Mode), the Mode Change Date that they began to bear interest at the Daily Rate to and excluding the next Business Day and thereafter commencing on each Business Day to and excluding the next Business Day;

(c) with respect to Bonds of a subseries in the Weekly Mode, is the period from and including the Closing Date (if initially issued in the Weekly Mode), the Mode Change Date that they began to bear interest at the Weekly Rate to and including the following Wednesday and thereafter commencing on each Thursday to and including the earlier of the Wednesday of the following week or the day preceding any Mandatory Purchase Date or the Maturity Date;

(d) with respect to Bonds of a subseries in the Term Rate Mode, is the period from and including the Closing Date (if initially issued in the Term Rate Mode), the Mode Change Date when they began to bear interest at the Term Rate, to and including the date selected by the City prior to the Closing Date or the Mode Change Date, as the case may be, as the last day upon which an interest rate determined by the Remarketing Agent pursuant to Part 2.5 hereof is in effect and thereafter is the period beginning on the day after the end of the prior Interest Period and ending on the date selected by the City prior to the end of such Interest Period as the last day upon which an interest rate determined by the Remarketing Agent pursuant to

Part 2.5 hereof is in effect; provided, that no Interest Period may extend beyond the day preceding any Mandatory Purchase Date or the Maturity Date; and

(e) with respect to Bonds of a subseries in the Fixed Rate Mode, is the period from and including the Mode Change Date that they began to bear interest at the Fixed Rate to and including the Maturity Date.

“Kenny Index” means the rate determined on the basis of the Kenny 30-Day High Grade Index announced on Tuesday or the next preceding Business Day and as computed by Kenny Information Systems, Inc.

“Liquidity Facility” means any letter of credit, line of credit, standby purchase agreement or other instrument then in effect which provides for the payment of the purchase price of Bonds upon the tender thereof in the event remarketing proceeds are insufficient therefor. The initial Liquidity Facility for the Bonds is the Series 2008 Liquidity Agreement issued by the Initial Liquidity Facility Provider. The City is required by this Ordinance to provide a Liquidity Facility for all modes other than Auction Mode, a Term Rate Mode of greater than four years and the Fixed Rate Mode.

“Liquidity Facility Provider” shall mean any bank, insurance company, pension fund or other financial institution which provides a Liquidity Facility or Alternate Liquidity Facility for the Bonds, including the Initial Liquidity Facility Provider.

“Liquidity Facility Purchase Account” means the account by the name created pursuant to Part 4.7 hereof.

“Liquidity Provider Bond Maximum Rate” means the greater of 15% per annum or such higher rate as may be permitted by applicable law from time to time, as evidenced by a Favorable Opinion of Bond Counsel to such effect.

“Liquidity Provider Interest Rate” means with respect to any amounts owing under any Liquidity Provider Bond, the rate of interest which is (i) applicable to the amounts owing under such Liquidity Provider Bond as specified in and computed in accordance with the Liquidity Facility and (ii) not in excess of the Maximum Rate.

“Mandatory Purchase Date” means (i) the Purchase Date of Bonds of a subseries in the Commercial Paper Mode or the Term Rate Mode, (ii) any Mode Change Date, (iii) the Interest Non-Reinstatement Tender Date, (iv) the

Substitution Date, (v) the Expiration Tender Date and (vi) the Termination Tender Date.

“Maturity Date” means, with respect to any Bond of a subseries, the final date specified therefor in the Ordinance.

“Maximum Auction Rate” has the meaning set forth in Exhibit 1 hereto.

“Maximum Rate” means, (i) the Tax-Exempt Maximum Rate or such lesser rate as may be specified in the Liquidity Facility for the Bonds of such subseries and (ii) with respect to Bonds of a subseries that are Liquidity Provider Bonds, the Liquidity Provider Bond Maximum Rate; provided, however, that if the Bonds are in the Auction Mode, the Maximum Rate shall be the Maximum Auction Rate; provided, further, that in no event may the Maximum Rate on any such Bonds exceed the maximum rate permitted by applicable law.

“Mode” means the Commercial Paper Mode, the Daily Mode, the Weekly Mode, the Term Rate Mode, the Auction Rate Mode or the Fixed Rate Mode.

“Mode Change Date” means, with respect to Bonds of a subseries, the date one Mode terminates and another Mode begins.

“Mode Change Notice” has the meaning specified in Part 2.8(a) hereof.

“New Mode” has the meaning specified in Part 2.8(b) hereof.

“Notice Parties,” if not the Person providing the notice, means the City, the Paying Agent/Registrar, the Remarketing Agent (if any), the Tender Agent, the Auction Agent (if any), all Broker-Dealers (if any), the Credit Facility Provider (if any), and the Liquidity Facility Provider (if any).

“Officers Pricing Certificate” means a certificate or certificates to be signed by the City Manager or Chief Financial Officer pursuant to the Ordinance containing pricing information and other terms for one or more series of Bonds.

“One Week LIBOR Rate” means, as of any date of determination, the offered rate for deposits in U.S. dollars for a seven-day period which appears on the Telerate Page 3750 at approximately 11:00 a.m., London time, on such date, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market.

“Paying Agent/Registrar” has the meaning stated in the Ordinance.

“Purchase Date” means with respect to any Bond of a subseries (i) in the Commercial Paper Mode or the Term Rate Mode, the Business Day after the last day of the Interest Period applicable thereto and (ii) during the Daily Mode or Weekly Mode, any Business Day upon which such Bond is tendered or deemed tendered for purchase pursuant to Part 4.1 hereof.

“Purchase Fund” means the fund created in Part 4.7 hereof.

“Purchase Price” means an amount equal to the principal amount of any Bond of a subseries purchased on any Purchase Date or Mandatory Purchase Date, plus, in the case of any Bond of a subseries that has been tendered pursuant to Part 4.1 hereof, unless the Purchase Date for such Bond is also an Interest Payment Date, accrued interest to the Purchase Date.

“Rate Determination Date” means any date on which the interest rate on any Bonds of a subseries is required to be determined, being: (i) in the case of any Commercial Paper Rate Bond, the first day of each Interest Period for any Commercial Paper Rate Bond; (ii) in the case of Bonds of a subseries in the Daily Mode, each Business Day; (iii) in the case of any Bonds of a subseries in the Weekly Mode, for any Interest Period commencing on a Mode Change Date, the Business Day immediately preceding the Mode Change Date, and for any other Interest Period, each Wednesday or, if such Wednesday is not a Business Day, the Business Day next preceding such Wednesday; and (iv) in the case of any Bonds of a subseries to be, or continue to be, in the Term Rate Mode or Fixed Rate Mode, a Business Day prior to the first day of an Interest Period.

“Record Date” means, with respect to Bonds of a subseries (i) in a Commercial Paper Mode, the day (whether or not a Business Day) next preceding each Interest Payment Date, (ii) in the Auction Rate Mode, the Daily Mode or the Weekly Mode, the opening of business on the Business Day next preceding an Interest Payment Date and (iii) in the Term Rate Mode or the Fixed Rate Mode, the 15th day (whether or not a Business Day) of the calendar month next preceding each Interest Payment Date.

“Redemption Date” means the date fixed for redemption of Bonds of a subseries subject to redemption in any notice of redemption given in accordance with the terms hereof.

“Reimbursement Agreement” means the reimbursement agreement dated as of August 1, 2008, between the City and the Initial Liquidity Facility Provider, and any supplement or amendment thereof, or any replacement therefor.



“Remarketing Agents” means a remarketing agent appointed pursuant to the Ordinance and Part 6.1 of this Appendix A.

“Remarketing Agreement” means a remarketing agreement entered into by and between the City and a Remarketing Agent with respect to the Bonds of a subseries pursuant to which the Remarketing Agent has agreed to remarket the Bonds of such subseries on the Purchase Date or the Mandatory Purchase Date at a price of not less than 100% of the principal amount thereof.

“Remarketing Proceeds Account” means the account by that name created in Part 4.7 hereof.

“SIFMA Index” means the Securities Industry and Financial Markets Association Municipal Swap Index reported by the Securities Industry and Financial Markets Association. SIFMA Index was formerly called the BMA Index.

“Substitution Date” means:

(a) the second Business Day preceding the date that is specified in a written notice given to the Paying Agent/Registrar and the Tender Agent in accordance with the Liquidity Facility or the Credit Facility as the date on which the assignment of the obligation of the Liquidity Facility Provider or the Credit Facility Provider under such Liquidity Facility or Credit Facility is effective; provided, however, that any date specified in such written notice as the effective date of such assignment is treated as the effective date of such assignment even if the assignment fails to occur on such date; and

(b) the date that is specified in a written notice given by the City to the Paying Agent/Registrar and the Tender Agent as the date on which an Alternate Credit Facility or an Alternate Liquidity Facility is to be substituted for a then-existing Credit Facility or Liquidity Facility in effect pursuant to Part 5.1 hereof; provided, however, that any date so specified in the written notice is treated as a Substitution Date only if a written notice thereof is given to the Paying Agent/Registrar and the Tender Agent at least 16 days preceding such date; provided further, however, that any date so specified in the written notice is treated as a Substitution Date even if the substitution of the Alternate Credit Facility or the Alternate Liquidity Facility fails to occur on such date.

“Tax-Exempt Maximum Rate” means the greater of 12% per annum or the maximum allowed by Chapter 1204, Texas Government Code, as amended.

“Tender Agent” means the tender agent appointed pursuant to Part 6.2 hereof.

“Tender Agent Agreement” means the tender agent agreement entered into by and between the Tender Agent and the City with respect to the Bonds of a subseries.

“Term Rate” means an interest rate determined pursuant to Part 2.5 hereof.

“Term Rate Mode” means the mode during which Bonds of a subseries bear interest at a Term Rate.

“Termination Date” means, with respect to a Credit Facility or a Liquidity Facility, (i) the date on which such Credit Facility or Liquidity Facility terminates pursuant to its terms or otherwise be terminated prior to its Expiration Date, including as a result of any default or event of default under the Credit Facility or Liquidity Facility, or (ii) the date on which the obligation of the Credit Facility Provider or the Liquidity Facility Provider to provide a loan terminates; provided, however, that “Termination Date” does not mean any date upon which a Credit Facility or Liquidity Facility is no longer effective by reason of its Expiration Date.

“Termination Tender Date” has the meaning set forth in clause (ii) of Part 4.5 hereof.

“Weekly Mode” means a period of time during which Bonds of a subseries bear interest at a Weekly Rate.

“Weekly Rate” means an interest rate determined pursuant to Part 2.4 hereof.

## **Part 1.2     Rules of Construction.**

(a) This Appendix A is an integral part of the Ordinance and, except to the extent provided in the next sentence, has the same force and effect as if set forth in the Ordinance. In the event of any conflict between this Appendix A and the Ordinance, the Ordinance controls.

(b) If the Bonds of any subseries are issued in or re-designated into two or more subseries, references in the Ordinance and in this Appendix A to the Bonds of a subseries is deemed to refer to Bonds of such subseries.

(c) Unless otherwise provided in the Ordinance and this Appendix A, references in the Ordinance and in this Appendix A to “time” is deemed

to refer to New York, New York time. All times herein may be adjusted from time to time in connection with a Mandatory Tender on a Substitution Date.

## ARTICLE II

### INTEREST RATE MODES, INTEREST RATES AND PAYMENT

**Part 2.1     Denominations; Medium, Method and Place of Payment of Principal and Interest.** Interest on Bonds of a subseries issued in the Commercial Paper Mode, the Daily Mode or Weekly Mode is calculated on the basis of a 365/366-day year for the actual number of days elapsed to the Interest Payment Date. Interest on Bonds of a subseries issued in the Auction Rate Mode with an Auction Period over 180 days, the Term Rate Mode or Fixed Rate Mode is calculated on the basis of a 360-day year composed of twelve 30-day months. Interest on Bonds of a subseries issued in the Auction Rate Mode with an Auction Period of 180 days or less is calculated on the basis of a 360-day year for the actual number of days elapsed to the Interest Payment Date.

The interest rates for Bonds of a subseries contained in the records of the Paying Agent/Registrar are conclusive and binding upon the City, the Remarketing Agent, the Tender Agent, the Paying Agent/Registrar, the Auction Agent, all Broker-Dealers, the Liquidity Facility Provider, the Credit Facility Provider and the Owners.

The payment of the Purchase Price of Bonds of a subseries on any Purchase Date or Mandatory Purchase Date, as the case may be, will be made by wire transfer in immediately available funds by the Tender Agent to the account specified by the Owner in a written direction received by the Tender Agent or, if no such account number is furnished, by check mailed by the Tender Agent to the Owner at the address appearing on the books required to be kept by the Paying Agent/Registrar pursuant to the Ordinance. Any such direction will remain in effect until revoked or revised by such Owner by an instrument in writing delivered to the Paying Agent/Registrar or the Tender Agent, as the case may be.

Notwithstanding the provisions of Parts 2.2 through 2.7, inclusive, each Liquidity Provider Bond bears interest on the outstanding principal amount thereof, and on the amount (if any) of accrued and unpaid interest thereon, at the Liquidity Provider Interest Rate for each day from and including the date such Bond becomes a Liquidity Provider Bond to, but not including, the date such Bond is paid in full or is remarketed. The Owner of a Bond of a subseries other than the

Liquidity Facility Provider or its permitted assignee will be paid (and is obligated to pay as part of the price paid by such Owner in connection with the remarketing to it of such Bonds) interest thereon for an Interest Period only in the amount that would have accrued thereon at the rate or rates established pursuant to Parts 2.2, through 2.7, as applicable, regardless of whether such Bond was a Liquidity Provider Bond during any portion of such Interest Period. Accrued interest in respect to any Liquidity Provider Bond is payable to the Liquidity Facility Provider or its permitted assignee on each Interest Payment Date applicable thereto; provided that any fees, or Excess Interest (as such term is defined in the Reimbursement Agreement), due to the Liquidity Facility Provider or its permitted assignee shall be paid by the City as provided in Reimbursement Agreement.

No Bond of a subseries may bear interest at an interest rate higher than the Maximum Rate.

**Part 2.2 Determination of Interest Rates and Interest Periods During Commercial Paper Mode.** Interest Periods in a Commercial Paper Mode are of such duration, of at least one day and not more than 270 days, ending on a day next preceding a Business Day or the Maturity Date, as the Remarketing Agent determines in accordance with the provisions of this Part 2.2. In making the determinations with respect to Interest Periods, subject to the limitations imposed by the preceding sentence, the Remarketing Agent shall on each Rate Determination Date select for each Bond of a subseries then subject to such adjustment the Interest Period which, if implemented on such Rate Determination Date, would result in the Remarketing Agent being able to remarket such Bond at par in the secondary market at the lowest interest rate then available and for the longest Interest Period available at such rate, provided that if on any Rate Determination Date, the Remarketing Agent determines that current or anticipated future market conditions or anticipated future events are such that a different Interest Period would result in a lower average interest cost on such Bond, then the Remarketing Agent shall select the Interest Period which in the judgment of the Remarketing Agent would permit such Bond to achieve such lower average interest cost; provided, however, that if the Remarketing Agent receives notice from the City that any Bond of a subseries is to be changed from the Commercial Paper Mode to any other Mode or if it is to be purchased pursuant to Part 4.5, the Remarketing Agent shall, with respect to such Bond, select Interest Periods which do not extend beyond the Mandatory Purchase Date.

By 11:45 a.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Commercial Paper Rate Bond that is subject to adjustment on such date, will determine an interest rate for the Interest Period then selected for

such Bond and, no later than 11:45 a.m., must give notice by Electronic Means to the Paying Agent/Registrar of the applicable Interest Period, Purchase Date and interest rate.

Anything in this Appendix A to the contrary notwithstanding, to the extent a Liquidity Facility and/or Credit Facility is in effect, no Interest Period may be implemented and no interest rate for such Interest Period may be determined if it would cause the principal of and interest on Bonds in the Commercial Paper Mode to be Outstanding immediately thereafter to be in excess of the Available Amount therefor. No remarketing of Bonds in the Commercial Paper Mode may be given effect by the Paying Agent/Registrar if it would cause such limitation to be exceeded.

By acceptance of any Commercial Paper Rate Bond, the Owner thereof is deemed to have agreed, during each Interest Period, to the interest rate (including the Alternate Rate, if applicable), Interest Period and Purchase Date then applicable thereto and to have further agreed to tender such Bond to the Tender Agent for purchase on the next succeeding Purchase Date at the Purchase Price. Such Owner further acknowledges that if funds for such purchase are on deposit with the Tender Agent on such Purchase Date, such Owner has no rights under the Ordinance other than to receive the payment of such Purchase Price and that interest ceases to accrue to such Owner on such Purchase Date.

**Part 2.3     Determination of Interest Rate During Daily Mode.** The interest rate for any Bond of a subseries in the Daily Mode is the rate of interest per annum determined by the Remarketing Agent on or before 9:30 a.m. on the Rate Determination Date as the minimum rate of interest that, in the opinion of the Remarketing Agent, would, under then existing market conditions, result in the sale of the Bonds of the subseries in the Daily Mode on the Rate Determination Date at a price equal to the principal amount thereof, plus accrued interest, if any. The Remarketing Agent shall make the rate available by Electronic Means to each other Notice Party by 10:30 a.m. on the Rate Determination Date. With respect to any day that is not a Business Day, the interest rate is the same rate as the interest rate established for the immediately preceding Business Day. The determination of each interest rate by the Remarketing Agent, in the absence of manifest error, is conclusive and binding upon the Remarketing Agent, the Tender Agent, the Paying Agent/Registrar, the Liquidity Facility Provider, the Credit Facility Provider, the City and the Owners.

**Part 2.4     Determination of Interest Rate During Weekly Mode.** To the extent the Bonds of a subseries are initially issued in a Weekly Mode, the

interest rate for Bonds of such subseries for the initial Interest Period is the rate of interest per annum set forth in the Bond Purchase Agreement. For any Interest Period that is not an initial Interest Period, the interest rate for Bonds of a subseries in a Weekly Mode for each such Interest Period is the rate of interest per annum determined by each Remarketing Agent on and as of the applicable Rate Determination Date or, in the case of an optional tender of Bonds, the optional tender date, as the minimum rate of interest that, in the opinion of the Remarketing Agent, would, under then existing market conditions, result in the sale of the Bonds of the subseries in the Weekly Mode on the Rate Determination Date or the optional tender date, as applicable, at a price equal to the principal amount thereof, plus accrued interest, if any. The Remarketing Agent shall make the rate available by Electronic Means to each other Notice Party by 5:00 p.m. on the Rate Determination Date or the optional tender date, as applicable. The determination of each interest rate by the Remarketing Agent is conclusive and binding, in the absence of manifest error, upon the Remarketing Agent, the Tender Agent, the Paying Agent/Registrar, the Liquidity Facility Provider, the Credit Facility Provider, the City and the Owners.

**Part 2.5     Determination of Term Rate(s) and Fixed Rate.**

(a) Term Rates. The Term Rate to be effective for the Interest Period commencing on any Mode Change Date after which Bonds of a subseries will bear interest at a Term Rate or any Purchase Date while Bonds of a subseries are in the Term Rate Mode is determined by the Remarketing Agent. No later than 4:00 p.m. on the Business Day next preceding the Mode Change Date or the Purchase Date, as the case may be, the Remarketing Agent shall determine the Term Rate and shall make the Term Rate available by Electronic Means to each other Notice Party. The Term Rate shall be the minimum rate that would result in a sale of the Bonds of the subseries at a price equal to the principal amount thereof plus premium, if any, on the Rate Determination Date, taking into consideration the duration of the Interest Period, which is established by the City.

(b) Fixed Rate. The Fixed Rate to be effective for the Interest Period commencing on any Mode Change Date after which Bonds of a subseries will bear interest at a Fixed Rate, is determined by the Remarketing Agent. No later than 4:00 p.m. on the Business Day next preceding the Mode Change Date, the Remarketing Agent shall determine the Fixed Rate and shall make the Fixed Rate available by Electronic Means to each other Notice Party. The Fixed Rate is the minimum rate that, in the sole judgment of the Remarketing Agent, would result in a sale of the Bonds

of the subseries at a price equal to the principal amount thereof on the Rate Determination Date taking into consideration the duration of the Interest Period.

(c) Failure to Establish Term Rate or Fixed Rate. If, for any reason, a Term Rate or Fixed Rate cannot be established on a Mode Change Date or Purchase Date, as the case may be, the Bonds of the subseries affected, other than Bonds of a subseries in an Auction Rate Mode, will be changed automatically to the Weekly Mode on the Purchase Date. Notwithstanding the foregoing, if the Bonds of a subseries are in a Term Rate Mode and there is a failure to pay the Purchase Price of the Bonds of such subseries on the Purchase Date, the Bonds of such subseries bear interest at the Maximum Rate from the failed Purchase Date to the date that all such Bonds are successfully remarketed (the "Delayed Remarketing Period") until such Purchase Price is paid.

**Part 2.6 Alternate Rate for Interest Calculation.** If (i) the Remarketing Agent fails to determine the interest rate(s) or Interest Periods for the Bonds of a subseries, or (ii) the method of determining the interest rate(s) or Interest Periods with respect to the Bonds of a subseries is held unenforceable by a court of law of competent jurisdiction, the Bonds of a subseries, other than Bonds of a subseries in an Auction Rate Mode, shall thereupon, (i) in the case of Commercial Paper Rate Bonds and Bonds in the Daily Mode and Term Rate Mode, be automatically converted to a Weekly Rate Mode, and (ii) in the case of Bonds in the Weekly Rate Mode, or Bonds to be converted to the Weekly Mode pursuant to clause (i) above and such Weekly Rate Mode has failed to be determined, bear interest at the Alternate Rate for subsequent Interest Periods, in each case until the Remarketing Agent again makes such determination or until there is delivered to the City and the Paying Agent/Registrar a Favorable Opinion of Bond Counsel. Notwithstanding the foregoing, if the Bonds of a subseries are in a Term Rate Mode and there has been a failure to pay the Purchase Price of the Bonds of such subseries on the Purchase Date, the Bonds of such subseries shall bear interest in accordance with Part 2.8(c)(7).

**Part 2.7 Determination of Interest Rate and Auction Period During Auction Rate Mode.**

(a) During any Auction Rate Mode, the Bonds of a subseries bear interest at the Auction Period Rate for each Auction Period determined as set forth in this Part 2.7 and Exhibit 1 hereto. The provisions of such Exhibit 1

constitute an integral part of this Appendix and the Ordinance and have the same force and effect as if set forth in this Appendix A or the Ordinance.

If the Mode applicable to the Bonds of a subseries is changed to an Auction Rate Mode, the initial Auction Period immediately after such change commences from and includes the Mode Change Date and expires on and includes the initial Auction Date. The initial Auction Date (which is the day of the week on which Auctions will generally be conducted) immediately after any change in the Mode applicable to the Bonds of a subseries to an Auction Rate Mode, is the date determined and certified to the Paying Agent/Registrar (with a copy to the Remarketing Agent, the Broker-Dealer(s), the Auction Agent and the Credit Facility Provider (if any)) by the City on or before the Mode Change Date. The Auction Period Rate for any initial Auction Period immediately after any change in the Mode applicable to the Bonds of a subseries to an Auction Rate Mode is the rate of interest per annum determined and certified to the Paying Agent/Registrar (with a copy to the City, the Remarketing Agent, the Auction Agent, the other Broker-Dealers, if any, and the Credit Facility Provider (if any)) by the Broker-Dealer designated by the City on a date not later than the Mode Change Date as the minimum rate of interest which, in the opinion of such Broker-Dealer, would be necessary as of such date to market Bonds of a subseries in an Auction Rate Mode in a secondary market transaction at a price equal to the principal amount thereof; provided that such interest rate may not exceed the Maximum Rate. After the initial Auction Period, each Auction Period is an Auction Period certified to the Paying Agent/Registrar (with a copy to the Remarketing Agent, the Broker-Dealer(s), the Auction Agent and the Credit Facility Provider (if any)) by the City on or before the Mode Change Date, unless such Auction Period is adjusted or changed to a daily, 7-day, 28-day, 35-day, three-month, six-month or a Special Auction Period in accordance with Exhibit 1 hereto. For any other Auction Period that is not an initial Auction Period, the Auction Period Rate is the rate of interest determined in accordance with Exhibit 1.

(b) During any Auction Rate Mode, upon the occurrence of (i) a default of the City in the payment of principal, Sinking Fund Installment, interest or premium on any Bond of a subseries in the Auction Rate Mode after the same becomes due, whether at maturity, upon call for redemption or on an Interest Payment Date and (ii) a default of the Credit Facility Provider under the Credit Facility securing such Bond, if any, the Paying Agent/Registrar must immediately give notice of the occurrence of such



events to the Auction Agent. Immediately after the Credit Facility Provider cures its default under the Credit Facility by making payments that the City failed to make when the same became due, the Paying Agent/Registrar shall give notice of such payment to the Auction Agent.

(c) (1) Less than all of the Bonds of a subseries then subject to a particular Auction Period may be converted to another Auction Period in accordance with Exhibit 1; provided, however, that in such event such subseries is re-designated into two or more further subseries for each separate Auction Period with a new CUSIP number for each such further subseries.

(2) If less than all of the Bonds of a subseries then subject to a particular Auction Period are converted to another Auction Period in accordance with Exhibit 1, then the Auction Agent will select in its discretion the particular Bonds of a subseries or portions thereof which are to be converted to a new Auction Period subject to the provisions hereof regarding Authorized Denominations of Bonds of a subseries subject to such Mode.

(3) All Bonds of any subseries must be in the same Auction Period, except to the extent that the Bonds of any subseries are issued in or re-designated into two or more further subseries. If the Bonds of any subseries are issued in or re-designated into two or more further subseries, then all Bonds within any subseries must be in the same Auction Period.

## **Part 2.8      Changes in Mode.**

(a) Changes. Any Mode, other than a Fixed Rate Mode, may be changed to any other Mode at the times and in the manner hereinafter provided. Subsequent to such change in Mode, the Bonds of the subseries may again be changed to a different Mode at the times and in the manner hereinafter provided. Any Bonds of a subseries converted to a Fixed Rate Mode may not be changed to any other Mode.

(b) Notice of Intention to Change Mode. To effect a Mode change, the City shall give written notice (the "Mode Change Notice") to the Notice Parties of its intention to effect a change in the Mode from the Mode then prevailing (the "Current Mode") to another Mode (the "New Mode") specified in such written notice, together with the proposed Mode Change

Date. Such notice must be given at least 20 days prior to the Mode Change Date.

(c) General Provisions Applying to Changes from One Mode to Another.

(1) The Mode Change Date must be a Business Day.

(2) Additionally, the Mode Change Date:

(A) from the Commercial Paper Mode is the last Purchase Date for the Commercial Paper Rate Bonds with respect to which a change is to be made;

(B) from a Term Rate Mode is the Purchase Date of the current Interest Period; and

(C) from an Auction Rate Mode is the Interest Payment Date following the last day of an Auction Period.

(3) On or prior to the date the City provides the notice to the Notice Parties pursuant to Part 2.8(b) hereof, the City shall deliver to the Paying Agent/Registrar a letter from counsel satisfactory to the Paying Agent/Registrar and addressed to the Paying Agent/Registrar (with a copy to all other Notice Parties) to the effect that such counsel expects to be able to deliver a Favorable Opinion of Bond Counsel on the Mode Change Date.

(4) No change in Mode will become effective unless all conditions precedent thereto are met and the following items are delivered to the Paying Agent/Registrar and the Remarketing Agent by 11:00 a.m. or such later time as is acceptable to the City, the Paying Agent/Registrar and the Remarketing Agent, on the Mode Change Date:

(A) except for a change in Mode pursuant to Parts 2.5(c), 2.6 or Part 2.8(c)(6), a Favorable Opinion of Bond Counsel dated the Mode Change Date;

(B) if required, unless Tender Agent and Remarketing Agreements are already effective, executed copies of Tender Agent and Remarketing Agreements;

(C) a certificate of an authorized officer of the Tender Agent to the effect that all of the Bonds of a subseries tendered or deemed tendered, unless otherwise redeemed, have been purchased at a price at least equal to the Purchase Price thereof;

(D) with respect to a change in the Mode to an Auction Rate Mode, an executed copy of an Auction Agreement and one or more Broker-Dealer Agreements.

(5) If all conditions to the Mode change are met, the Interest Period(s) or the Auction Period for the New Mode commences on the Mode Change Date and the Interest Rate(s) (together, in the case of a change to the Commercial Paper Mode, with the Interest Period(s)) shall be determined by the Remarketing Agent in the manner provided in Parts 2.2 through 2.7, as applicable.

(6) With respect to a change in the Mode from any Mode (other than an Auction Rate Mode or a Term Rate Mode) to any other Mode, if the foregoing conditions have not been satisfied by the Mode Change Date, the New Mode shall not take effect and (1) no purchase or tender of Bonds shall be consummated on the Mandatory Purchase Date, (2) the Tender Agent shall return all tendered Bonds to the Owner thereof, and (3) the Tender Agent will return all remarketing proceeds to the Remarketing Agent for return to the Persons who provided such funds. The Bonds of the subseries that are the subject of the Mode Change Notice are changed to Bonds in the Weekly Mode on the failed Mode Change Date; provided, however, if such Bonds are in the Weekly Mode, the interest rate shall be determined in accordance with this Ordinance on and as of the failed Mode Change Date.

(7) With respect to a change in the Mode from a Term Rate Mode to any other Mode, if the foregoing conditions have not been satisfied by the Mode Change Date, the New Mode shall not take effect and (1) no purchase or tender of Bonds shall be consummated on the Mandatory Purchase Date, (2) the Tender Agent shall return all tendered Bonds to the Owner thereof, and (3) the Tender Agent will return all remarketing proceeds to the Remarketing Agent for return to the Persons providing the money. On each Business Day following the failed remarketing, the Remarketing Agent will continue to use its best efforts to remarket the applicable Bonds into the Mode

designated by the City (or such other Mode as the City thereafter designates to the Remarketing Agent and the prospective Owners). When the Remarketing Agent advises the City, the Paying Agent/Registrar, and the Tender Agent that it believes in good faith that it is able to remarket all of the Bonds into the designated Mode, the Paying Agent/Registrar will give notice meeting the requirements of Part 4.6(f) for a notice of a Mode Conversion Date to the Holders of such Bonds not later than five days prior to the new Mandatory Purchase Date. During the Delayed Remarketing Period, the Bonds will pay interest to the Owners thereof (i) as if in the Term Rate Mode on May 15 and November 15 and (ii) the new Mandatory Purchase Date, and will bear interest at the Tax Exempt Maximum Rate.

(8) With respect to a change in the Mode from an Auction Rate Mode to any other Mode, in the event the foregoing conditions have not been satisfied, the Bonds of a subseries that are subject to the Mode Change Notice will not be subject to mandatory tender for purchase, will continue to bear interest in the Auction Rate Mode and the Auction Period Rate for the Auction Period commencing on the failed Mode Change Date is equal to the Maximum Auction Rate as determined on the Auction Date for such Auction Period and the Auction Period commencing on the failed Mode Change Date is a seven-day Auction Period. Thereafter, the Auction Period Rate for each succeeding Auction Period is determined in accordance with Exhibit 1 and each Auction Period is a seven-day Auction Period until the length of the Auction Period is changed in accordance with Exhibit 1.

(d) Serial Bonds. In the notice given pursuant to Part 2.8(b) hereof in connection with any change of Bonds of a subseries to the Term Rate Mode or Fixed Rate Mode, the City may provide that all or some of such Bonds shall be Serial Bonds. The principal amount of Serial Bonds due on any date is equal to the sinking fund installment specified for such date in the Ordinance, and the remaining sinking fund installments continue to be Sinking Fund Installments for the Bonds of the subseries due on the Maturity Date, unless the City specifies otherwise in the notice. The interest rate for the Serial Bonds maturing on a particular date may differ from the interest rate or rates established for other Bonds.

(e) Partial Mode Changes and Further Subseries Designations.

(1) Less than all of the Bonds of a subseries then subject to a particular Mode may be converted to another Mode pursuant to this Part 2.8 hereof; provided, however, that in such event such subseries shall be re-designated into two or more further subseries for each separate Mode with a new CUSIP number for each further subseries.

(2) If less than all of the Bonds of a subseries then subject to a particular Mode are converted to another Mode pursuant to this Part 2.8 hereof, the particular Bonds of a subseries or portions thereof which are to be converted to a New Mode shall be selected by the Paying Agent/Registrar in its discretion subject to the provisions hereof regarding Authorized Denominations of Bonds of a subseries subject to such New Mode.

**ARTICLE III**

**[RESERVED]**

**ARTICLE IV**

**PURCHASE OF BONDS**

**Part 4.1 Optional Tenders of Bonds in Daily Mode and Weekly Mode.**

(a) Any Bond of a subseries (or portions thereof in Authorized Denominations) in the Daily Mode that is not a Liquidity Provider 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., or such other time as required by the Liquidity Facility, at their respective offices set forth in Part 13.07 of the Ordinance) 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, is 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 Paying Agent/Registrar of the principal amount of Bonds of the subseries being tendered. The contents of any such irrevocable telephonic tender notice is conclusive and binding on all parties.

(b) The Owners of Bonds of a subseries in a Weekly Mode that are not Liquidity Provider Bonds and are not owned by or on behalf of the City may elect to have such Bonds (or portions thereof in Authorized Denominations) purchased at a price equal to the Purchase Price upon irrevocable notice submitted by Electronic Means to the Tender Agent and the Remarketing Agent, promptly confirmed in writing to the Tender Agent and Remarketing Agent at their respective offices set forth in Part 13.07 of the Ordinance, not later than 4:00 p.m. on a Business Day not less than seven 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 Remarketing Agent, Paying Agent/Registrar, City, and any Liquidity Facility Provider by 11:00 a.m. on the next succeeding Business Day of the receipt of any notice pursuant to this paragraph.

(c) Notwithstanding anything herein to the contrary, during any period that the Bonds of a subseries are issued registered in the name of DTC or a nominee thereof pursuant to the Ordinance, (i) any notice of tender delivered pursuant to this Part shall identify the DTC participant through whom the beneficial owner will direct transfer; (ii) on or before the Purchase Date, the beneficial owner must direct (or if the beneficial owner is not a DTC participant, cause its DTC participant to direct) the transfer of said Bond on the records of DTC; and (iii) it shall not be necessary for Bonds of a subseries to be physically delivered on the date specified for purchase thereof, but such purchase shall be made as if such Bonds had been so delivered, and the Purchase Price thereof shall be paid to DTC. In accepting a notice of tender of any Bond of a subseries pursuant to this Part, the Paying Agent/Registrar and the Tender Agent may conclusively assume that the Person providing the notice of tender is the beneficial owner of the Bonds being tendered and therefore entitled to tender them. The Paying Agent/Registrar and Tender Agent assume no liability to anyone in accepting a notice of tender from a Person whom it reasonably believes to be such a beneficial owner of the Bonds of the subseries.

**Part 4.2 Mandatory Purchase at End of Commercial Paper Mode Interest Periods.** Except for Liquidity Provider Bonds, each Bond of a subseries in the Commercial Paper Mode is subject to mandatory tender for purchase on its Purchase Date at the Purchase Price. No notice of such mandatory purchase shall be given to the Owners.

**Part 4.3 Mandatory Purchase on Any Mode Change Date.** Except for Liquidity Provider Bonds, the Bonds of a subseries to be changed to any Mode from any other Mode are subject to mandatory tender for purchase on the Mode Change Date at the Purchase Price.

**Part 4.4 Mandatory Purchase at End of each Term Rate Mode Interest Period.** Except for Liquidity Provider Bonds, the Bonds of a subseries in the Term Rate Mode are subject to mandatory tender for purchase on each Purchase Date at the Purchase Price.

**Part 4.5 Mandatory Purchase Upon Expiration Date, Termination Tender Date, and Substitution Date.** Except for Liquidity Provider Bonds and Bonds owned by or on behalf of the City, the Bonds of a subseries are subject to mandatory tender at the Purchase Price for purchase on:

(a) the second Business Day preceding the Expiration Date of a Credit Facility or Liquidity Facility, which second Business Day is hereinafter referred to as an “Expiration Tender Date”;

(b) the fifth calendar day (or if such day is not a Business Day, the preceding Business Day) following the receipt by the Paying Agent/Registrar of a written notice from a Credit Facility Provider or Liquidity Facility Provider as a result of an event of default or other event which directs the Paying Agent/Registrar to cause a mandatory tender, which fifth calendar day is hereinafter referred to as a “Termination Tender Date”, if the Liquidity Facility permits a draw thereon on the Termination Tender Date; and

(c) the Substitution Date for a Credit Facility or a Liquidity Facility.

**Part 4.6 Notice of Mandatory Tender for Purchase.**

(a) The Paying Agent/Registrar shall, at least 15 days prior to the Expiration Tender Date with respect to Bonds of a subseries, give notice to the Owners and Notice Parties of the mandatory tender of the Bonds of such

subseries on such Expiration Tender Date if it has not theretofore received confirmation that the Expiration Date has been extended.

(b) Upon receipt of a written notice from the Credit Facility Provider, the Liquidity Facility Provider or the City that the Credit Facility or the Liquidity Facility, as the case may be, will terminate or the obligation of the Credit Facility Provider or Liquidity Facility Provider, as the case may be, to provide a loan thereunder will terminate prior to its Expiration Date, the Paying Agent/Registrar shall within one Business Day after receipt of such written notice give notice to the Owners and any other Notice Parties of the mandatory tender of the Bonds of such subseries that is to occur on such Termination Tender Date if it has not theretofore received from the Credit Facility Provider, the Liquidity Facility Provider or the City, as the case may be, a notice to the Owners stating that the event which resulted in the Credit Facility Provider, the Liquidity Facility Provider or the City giving a notice of the Termination Date has been cured and that the Credit Facility Provider, the Liquidity Facility Provider or the City has rescinded its election to terminate the Credit Facility or Liquidity Facility, as the case may be. Notwithstanding anything to the contrary in subpart (e) below, such notice shall be given by Electronic Means capable of creating a written notice. Any notice given substantially as provided in this subpart is conclusively presumed to have been duly given, whether or not actually received by each Owner.

(c) The Paying Agent/Registrar shall, at least 15 days prior to any Substitution Date with respect to a Liquidity Facility relating to any Bonds, give notice of the mandatory tender of such Bonds that is to occur on such Substitution Date to the Owners and the Notice Parties.

(d) The Paying Agent/Registrar shall, at least 15 days prior to any Mode Change Date or any Purchase Date (other than a Purchase Date for any Commercial Paper Rate Bond or a Purchase Date under Clause (ii) of the definition thereof) give notice to the Owners and the Notice Parties of the mandatory tender for purchase of such Bonds that is to occur on such date.

(e) Except as provided in Part 4.2, notice of any mandatory tender of Bonds of a subseries shall state that such Bonds are to be purchased pursuant to Parts 4.3, 4.4 or 4.5, and except as provided in Part 4.5(b) 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 Bonds of the subseries 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 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 Part 2.8 hereof 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 to Owners mailed or given as provided in this Part is 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 Part 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.

#### **Part 4.7     Purchase Fund.**

(a)     Funds and Accounts. There is hereby created and established, and there shall be maintained as an Eligible Account with the Tender Agent for the Bonds of each subseries, a separate fund to be known as the “Purchase Fund”. The Tender Agent shall further establish a separate account within such Purchase Fund to be known as the “Liquidity Facility Purchase Account” and a separate account within such Purchase Fund to be known as the “Remarketing Proceeds Account”, each of which shall be an Eligible Account. To the extent that the Bonds of a subseries are re-designated into two or more further subseries, the Tender Agent shall establish and maintain a separate Purchase Fund with separate accounts therein for the Bonds of each such further subseries, which shall be Eligible Accounts.

(b) Remarketing Proceeds Account. Upon receipt of the proceeds of a remarketing of Bonds of a subseries on a Purchase Date or Mandatory Purchase Date, the Tender Agent shall deposit such proceeds in the related Remarketing Proceeds Account for application to the payment of the Purchase Price of such Bonds. Notwithstanding the foregoing, upon receipt of the proceeds of a remarketing of Liquidity Provider Bonds, the Tender Agent shall immediately pay such proceeds to or for the account of the related Liquidity Facility Provider to the extent of any amount owing to the Liquidity Facility Provider.

(c) Liquidity Facility Purchase Account. Upon receipt by the Tender Agent of the proceeds of any draw on a Liquidity Facility supporting Bonds of a subseries that are transferred to such Tender Agent pursuant to Part 4.1(a) hereof, the Tender Agent shall deposit such moneys in the related Liquidity Facility Purchase Account for application to the payment of the Purchase Price of Bonds of such subseries. Any amounts deposited in the Liquidity Facility Purchase Account for a subseries of Bonds and not needed with respect to any Purchase Date or Mandatory Purchase Date for payment of the Purchase Price for any Bonds of such subseries shall be returned immediately to the Liquidity Facility Provider.

(d) No Investment; Amounts Applied Solely to Related Subseries. Amounts held by the Tender Agent in the Liquidity Facility Purchase Account and the Remarketing Proceeds Account relating to the Bonds of a subseries shall not be deemed as part of the Trust Estate and shall be held uninvested and separate and apart from all other funds and accounts. Amounts so held or available to be drawn under the Liquidity Facility for deposit in a Liquidity Facility Purchase Account shall not be available to pay the Purchase Price of Bonds of any subseries other than Bonds of a subseries that are supported by such Liquidity Facility.

(e) Payment of Purchase Price by Tender Agent. The Tender Agent shall pay the Purchase Price of Bonds of a subseries to their Owners from the moneys in the Liquidity Facility Purchase Account and the Remarketing Proceeds Account in accordance with this Appendix A by 3:30 p.m. on any Purchase Date or Mandatory Purchase Date, as the case may be.

(f) No Lien for Tender Agent. The Tender Agent shall have no lien on amounts in the Liquidity Purchase Account or the Remarketing Proceeds Account for payment of fees or other amounts owed to the Tender Agent.

**Part 4.8      Remarketing of Bonds of a Subseries; Notices.**

(a)    Remarketing of Bonds of a Subseries.    The Remarketing Agent(s) for Bonds of a subseries shall offer for sale at par and use its best efforts to find purchasers for (i) all Bonds of such subseries or portions thereof as to which notice of tender pursuant to Part 4.1 has been given and (ii) all Bonds required to be tendered for purchase. To the extent a Liquidity Facility is in effect, no Bonds of a subseries supported by such Liquidity Facility shall be remarketed to the City nor may any Liquidity Provider Bonds be remarketed unless the Liquidity Facility has been reinstated by the amount of the reduction that occurred when such Bonds became Liquidity Provider Bonds

(b)    Notice of Remarketing; Registration Instructions; New Bonds.

(1)    The Remarketing Agent shall notify the Tender Agent by Electronic Means not later than 12:45 p.m. on the Purchase Date or Mandatory Purchase Date of the registration instructions as may be necessary to re-register Bonds; and

(2)    Unless otherwise permitted by the Securities Depository and the book-entry-only system applicable to a subseries of Bonds, the Tender Agent shall authenticate and have available for delivery to the Remarketing Agent prior to 2:30 p.m. on the Purchase Date or Mandatory Tender Date new Bonds of the subseries for the respective purchasers thereof.

(c)    Transfer of Funds; Draw on Liquidity Facility.

(1)    The Remarketing Agent shall at or before 9:30 a.m. on the Purchase Date or Mandatory Purchase Date, as the case may be, (x) notify the City, the Paying Agent/Registrar and the Tender Agent by Electronic Means of the amount of tendered Bonds of the subseries that were not successfully remarketed, and (y) confirm by Electronic Means to the Paying Agent/Registrar and the Tender Agent the transfer of the Purchase Price of remarketed Bonds of the subseries to the Tender Agent in immediately available funds at or before 9:45 a.m., such confirmation to include the pertinent Fed Wire reference number.

(2)    To the extent a Liquidity Facility is in effect, the Paying Agent/Registrar or the Tender Agent acting on its behalf shall draw on

the Liquidity Facility, in accordance with the terms thereof before 10:30 a.m. 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 subseries tendered or deemed tendered less the aggregate amount of remarketing proceeds confirmed to the Paying Agent/Registrar and the Tender Agent by the Remarketing Agent pursuant to clause (i) of this subpart and shall cause the proceeds of such draw to be transferred to the Tender Agent by no later than 2:30 p.m. provided notice of such draw is delivered to the Paying Agent/Registrar (or the Tender Agent acting on its behalf) in accordance with the terms of the Credit Facility Agreement. Notwithstanding the foregoing, the Paying Agent/Registrar (or the Tender Agent acting on its behalf) shall draw on the Liquidity Facility, if any, in an amount equal to the Purchase Price of all Bonds of the subseries 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 (i) above of this subpart.

(3) To the extent a Liquidity Facility is in effect, the Tender Agent shall confirm to the City and the Paying Agent/Registrar by 2:45 p.m. on the Purchase Date or Mandatory Purchase Date, receipt of the proceeds of any draw on the Liquidity Facility.

(d) Notice to the City of Liquidity Provider Bond Remarketing. The Remarketing Agent shall notify the City by Electronic Means of any proposed remarketing of Liquidity Provider Bonds by the close of business on the Business Day preceding the proposed date of remarketing of such Liquidity Provider Bonds.

**Part 4.9     Source of Funds for Purchase of Bonds of a Subseries.** On or before the close of business on the Purchase Date or the 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 the Ordinance or in a certificate of an Authorized Officer of the City delivered to the Paying Agent/Registrar, the Tender Agent and the Remarketing Agent on a 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:

(a) immediately available funds on deposit in the Remarketing Proceeds Account with respect to Bonds of such subseries; and

(b) 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 the Ordinance or in a certificate of an Authorized Officer of the City delivered to the Paying Agent/Registrar, the Tender Agent and the Remarketing Agent on a Mandatory Purchase Date (accompanied by an Opinion of Counsel to the effect that such payment will not constitute an avoidable preference under Part 547 of the United States Bankruptcy Code), the City and for so long as the Liquidity Facility Provider is not in default on its payment obligations under the Liquidity Facility may not transfer 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 this Appendix A and the Purchase Price of which is not paid on the Purchase Date or Mandatory Purchase Date from any of the sources identified above. None of the City, the Paying Agent/Registrar, the Tender Agent nor the Remarketing Agent shall have any liability or obligation to pay or, except from the sources identified above, make available such Purchase Price. Unless otherwise provided in the Ordinance or in a certificate of an Authorized Officer of the City delivered to the Paying Agent/Registrar and Tender Agent on a 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 any of the sources identified above shall not constitute an Event of Default under the Ordinance and in the case of such failure none of such Bonds shall be purchased and such Bonds 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 Part 2.6 hereof, or unless such Bonds are in a Term Mode.

For Bonds in a Term Mode, on each Business Day following the failed remarketing on the applicable Purchase Date, the Remarketing Agent shall continue to use its best efforts to remarket the applicable subseries of Bonds into the Mode Period designated by the City, at the direction of the Authorized Representative (or such other Interest Rate Period as the Paying Agent/Registrar, at the direction of the Authorized Representative shall thereafter designate to the Remarketing Agent). Once the Remarketing Agent has advised the City that it has a good faith belief that it is able to remarket all of the applicable subseries of Bonds into the designated Mode, the Paying Agent/Registrar, at the direction of the Authorized Representative, will give notice by mail to the Owners of such Bonds not later than five Business Days prior to the purchase date, which notice will state (1) that the Mode on such Bonds will continue to be a Term Mode or will be

adjusted to a different Mode on and after the purchase date; (2) that such Bonds will be subject to mandatory tender for purchase on the purchase date; (3) the procedures for such mandatory tender; (4) the purchase price of such Bonds on the purchase date (expressed as a percentage of the principal amount thereof); and (5) the consequences of a failed remarketing.

**Part 4.10 Delivery of Bonds.** Book-Entry Tenders. Notwithstanding any other provision of this Part 4.10 to the contrary, all tenders for purchase during any period in which the Bonds are registered in the name of Cede & Co. (or the nominee of any successor Securities Depository) shall be subject to the terms and conditions set forth in the Representations Letter and to any regulations promulgated by DTC (or any successor Securities Depository). For so long as the Bonds are registered in the name of Cede & Co., as nominee for DTC, the tender option rights of Holders of Bonds may be exercised only by DTC by giving notice of its election to tender Bonds or portions thereof at the times and in the manner described above. Beneficial Owners will not have any rights to tender Bonds directly to the Tender Agent. Procedures under which a Beneficial Owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Direct Participant of DTC, to exercise a tender option right in respect of Bonds or portions thereof in an amount equal to all or a portion of such Beneficial Owner's beneficial ownership interest therein shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. For so long as the Bonds are registered in the name of Cede & Co., as nominee for DTC, delivery of Bonds required to be tendered for purchase shall be effected by the transfer on the applicable Purchase Date of a book-entry credit to the account of the Tender Agent of a beneficial interest in such Bonds.

Except as otherwise required or permitted by the book-entry-only system of the Securities Depository, the Bonds of a subseries shall be delivered as follows:

(a) Bonds of a subseries sold by the Remarketing Agent pursuant to Part 4.8 shall be delivered by the Remarketing Agent to the purchasers of those Bonds by 3:30 p.m. on the Purchase Date or the Mandatory Purchase Date, as the case may be.

(b) The Tender Agent shall, as appropriate to the circumstances, either (i) register Bonds of a subseries purchased by the Tender Agent with moneys described in Part 4.9(b), or if any such Bond is not delivered by the Owner thereof, a new Bond of such subseries in replacement of the undelivered Bond, in the name of the Liquidity Facility Provider or, if directed in writing by the Liquidity Facility Provider, its nominee or

designee on the registry books on or before the close of business on the Purchase Date or Mandatory Purchase Date, as the case may be, and shall promptly deliver such Bonds to the custodian, if any, provided for in the Liquidity Facility or as the Liquidity Facility Provider may otherwise direct in writing, and prior to such delivery shall hold such Bonds of such subseries in trust for the benefit of the Liquidity Facility Provider or (ii) cause the beneficial ownership of such Bonds of such subseries to be credited to the account of the Liquidity Facility Provider or, if directed in writing by the Liquidity Facility Provider, its nominee or designee with DTC.

(c) When any Liquidity Provider Bonds of a subseries are remarketed, the Tender Agent shall not release the Bonds so remarketed to the Remarketing Agent until the Tender Agent has received and forwarded to or for the account of the Liquidity Facility Provider the proceeds of such remarketing and (i) the Liquidity Facility has been reinstated by an amount equal to the principal amount of Liquidity Provider Bonds so remarketed plus the interest component of the Available Amount calculated with respect to such principal amount of Bonds, which reinstatement the Tender Agent has confirmed by Electronic Means with the Liquidity Facility Provider, or (ii) if the Bonds of a subseries became Liquidity Provider Bonds on a Mandatory Purchase Date and a Liquidity Facility is no longer in effect with respect to Bonds of such subseries after the Mandatory Purchase Date, any draws on such Liquidity Facility and interest thereon have been reimbursed to the Liquidity Facility Provider.

**Part 4.11 Delivery and Payment for Purchased Bonds of a Subseries: Undelivered Bonds.** Except as otherwise required or permitted by the book-entry-only system of the Securities Depository, the Bonds of a subseries purchased pursuant to this Article shall be delivered (with all necessary endorsements) at or before 3:30 p.m. on the Purchase Date or Mandatory Purchase Date, as the case may be, at the office of the Tender Agent in New York, New York; provided, however, that payment of the Purchase Price of any Bond of a subseries purchased pursuant to Part 4.1 hereof shall be made only if such Bond so delivered to the Tender Agent conforms in all respects to the description thereof in the notice of tender. Payment of the Purchase Price shall be made by wire transfer in immediately available funds by the Tender Agent by the close of business on the Purchase Date or Mandatory Purchase Date, as the case may be, or, if the Owner has not provided or caused to be provided wire transfer instructions, by check mailed to the Owner at the address appearing in the books required to be kept by the Paying Agent/Registrar pursuant to the Ordinance. If Bonds of a subseries to be

purchased are not delivered by the Owners to the Tender Agent by 3:30 p.m. on the Purchase Date or the Mandatory Purchase Date, as the case may be, the Tender Agent shall hold any funds received for the 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. Any such amounts shall be held uninvested. Such undelivered Bonds are deemed tendered and cease to accrue interest as to the former Owners on the Purchase Date or the Mandatory Purchase Date, as the case may be, and moneys representing the Purchase Price shall be available against delivery of those Bonds at the office of the Tender Agent in New York, New York; provided, however, that any funds which are so held by the Tender Agent and which remain unclaimed by the former Owner of any such Bond not presented for purchase for a period of two years after delivery of such funds to the Tender Agent, shall, to the extent permitted by law, upon request in writing by the City and the furnishing of security or indemnity to the Tender Agent's satisfaction, be paid to the City free of any trust or lien and thereafter the former Owner of such Bond shall look only to the City and then only to the extent of the amounts so received by the City without any interest thereon and the Tender Agent shall have no further responsibility with respect to such moneys or payment of the Purchase Price of such Bonds. The Tender Agent shall authenticate a replacement Bond of a subseries for any undelivered Bond of such subseries which may then be remarketed by the Remarketing Agent.

**Part 4.12    Draws on Liquidity Facility.**

(a) To the extent a Liquidity Facility is in effect with respect to the Bonds of a subseries, on each Purchase Date or Mandatory Purchase Date with respect to Bonds of such subseries, as the case may be, the Paying Agent/Registrar or the Tender Agent shall draw on the Liquidity Facility supporting the Bonds of such subseries in accordance with the terms thereof or if provided in the Liquidity Facility the Paying Agent/Registrar shall cause to have transferred the proceeds of such draw to the Tender Agent so as to have funds deposited with the Tender Agent by 2:30 p.m. on such date in an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such Bonds on such date, to enable the Tender Agent to pay the Purchase Price in connection therewith, provided notice of such draw is delivered to the Paying Agent/Registrar in accordance with the terms of the Credit Facility Agreement. The Tender Agent shall deposit said proceeds in the related Liquidity Facility Purchase Account.

(b) Notwithstanding the foregoing provisions of this Part, the Paying Agent/Registrar shall not draw on a Liquidity Facility with respect to



the Purchase Price of Liquidity Provider Bonds or Bonds of a subseries owned by or on behalf of the City or the Liquidity Facility Provider.

## **ARTICLE V**

### **LIQUIDITY FACILITIES AND CREDIT FACILITIES**

#### **Part 5.1     Liquidity Facility and Credit Facility.**

(a) Subject to the terms of the existing Credit Facility or Liquidity Facility, as applicable, at any time the City may provide for the delivery to the Paying Agent/Registrar of (i) an initial and an Alternate Liquidity Facility with respect to the Bonds of any subseries, and/or (ii) an initial and an Alternate Credit Facility with respect to the Bonds of any subseries. The City shall not obtain a Liquidity Facility for the Bonds of a subseries or provide for the delivery of a Liquidity Facility for the Bonds of a subseries to the Paying Agent/Registrar without the prior written consent of the Credit Facility Provider for the Bonds of such subseries. Any such Liquidity Facility or Credit Facility shall provide that a Termination Date which permits the Paying Agent/Registrar to make on the Termination Tender Date a draw under the Liquidity Facility or the Credit Facility, as the case may be, shall not occur unless written notice thereof is given to the Paying Agent/Registrar and the Tender Agent at least 15 days prior to the Termination Tender Date. To the extent that any Liquidity Facility or Credit Facility permits the City thereof to assign its obligation thereunder, such Liquidity Facility or Credit Facility, as the case may be, shall provide that such assignment shall not be effective unless a written notice of such assignment is given to the Paying Agent/Registrar and the Tender Agent at least 16 days prior to the effective date of such assignment. On or prior to the date on which an Alternate Liquidity Facility, or an initial or an Alternate Credit Facility, is obtained or delivered to the Paying Agent/Registrar, the City shall furnish to the Paying Agent/Registrar a Favorable Opinion of Bond Counsel as set forth in subpart (c)(ii) herein. As provided in Part 4.5 hereof, all Outstanding Bonds of the subseries to which such Liquidity Facility or Credit Facility relates will become subject to mandatory tender for purchase on the Substitution Date.

(b) At the direction of the City, the Paying Agent/Registrar shall execute and deliver any instrument that, upon such execution and delivery by the Paying Agent/Registrar, would constitute a "Credit Facility" or "Liquidity Facility."

(c) The City shall deliver to the Paying Agent/Registrar, the Tender Agent, the Credit Facility Provider and the Remarketing Agent a copy of each Liquidity Facility or Credit Facility obtained pursuant to this article on the effective date of such Liquidity Facility or Credit Facility. If at any time there shall have been delivered to the Paying Agent/Registrar (i) an Alternate Credit Facility or Alternate Liquidity Facility in substitution for the Credit Facility or Liquidity Facility with respect to Bonds of a subseries then in effect and (ii) a Favorable Opinion of Bond Counsel, then, providing that any condition to substitution contained in the existing Credit Facility or Liquidity Facility shall have been satisfied, the Paying Agent/Registrar shall accept such Alternate Credit Facility or Alternate Liquidity Facility and, subject to subpart (d) of this Part, shall surrender the Credit Facility or Liquidity Facility then in effect to the Credit Facility Provider or Liquidity Facility Provider on the effective date of the Alternate Credit Facility or Alternate Liquidity Facility. In the event of an extension of the Expiration Date, the City shall give the Paying Agent/Registrar, the Tender Agent, the Credit Facility Provider and the Remarketing Agent a written notice of the new Expiration Date at least 16 days prior to the Expiration Tender Date. In the event of a substitution of a Liquidity Facility with an Alternate Liquidity Facility or of a Credit Facility with an Alternate Credit Facility, the City shall give the Paying Agent/Registrar, the Tender Agent and the Remarketing Agent a written notice of the Substitution Date at least 16 days prior to such Substitution Date. The City shall give the Paying Agent/Registrar, Tender Agent and the Remarketing Agent a written notice of its election to terminate the Credit Facility or the Liquidity Facility at least 16 days prior to the Termination Tender Date resulting from its election to terminate such Credit Facility or Liquidity Facility.

(d) In no event shall the Paying Agent/Registrar surrender or cancel a Liquidity Facility relating to the Bonds of any subseries unless it has received funds, either from proceeds of remarketing or a draw under such Liquidity Facility to be surrendered or cancelled, sufficient to pay the Purchase Price of such Bonds to the applicable Mandatory Purchase Date. In no event shall the Paying Agent/Registrar surrender or cancel a Credit Facility relating to the Bonds of any subseries unless it has received funds sufficient to pay the Purchase Price of such Bonds to the applicable Mandatory Purchase Date.

(e) The Paying Agent/Registrar shall not sell, assign or otherwise transfer the Credit Facility or Liquidity Facility, except to a successor

Paying Agent/Registrar hereunder and in accordance with the terms of the Credit Facility or Liquidity Facility and the Ordinance.

(f) To the extent that both the Liquidity Facility Provider for the Bonds of a subseries is not at the same time also the Credit Facility Provider with respect to such Bonds and the Credit Facility Provider is an insurance company, neither the City, nor the Paying Agent/Registrar shall consent to the substitution of a new Credit Facility Provider for the then-existing Credit Facility Provider, or the surrender, cancellation, termination, amendment or modification of the then-existing Credit Facility, without the prior written consent of the Liquidity Facility Provider.

(g) On or prior to the Substitution Date, no drawing under an Alternate Liquidity Facility shall be made by the Paying Agent/Registrar if the predecessor Liquidity Facility is effective and available to make drawings thereunder on the date of such drawing. After the Substitution Date, no drawing under a predecessor Liquidity Facility shall be made by the Paying Agent/Registrar if the Alternate Liquidity Facility is effective and available to make drawings thereunder on the date of such drawing.

(h) In connection with a mandatory tender for purchase upon substitution of an Alternate Credit Facility or Liquidity Facility pursuant to Part 4.5(iv), the City may provide that any Credit Facility or Liquidity Facility is terminated on and after such substitution, and that provided that no amounts are then owed to the Credit Facility Provider or Liquidity Facility Provider and that no Liquidity Provider Bonds are then held under the Liquidity Facility, the rights of the Liquidity Facility Provider or Credit Facility Provider under the Ordinance and with respect to the Bonds thereafter cease.

## **Part 5.2     Direct-Pay Liquidity Facility Drawing Account.**

(a) If a Direct-Pay Liquidity Facility is in effect with respect to the Bonds of any subseries, there is hereby created and established, and there shall be maintained as an Eligible Account and held for the benefit of the holders of the Bonds with the Paying Agent/Registrar for the Bonds of each subseries, a separate fund to be known as “City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Variable Rate Revenue Refunding Bonds, Series 2008 Direct-Pay Liquidity Facility Drawing Account” (the “Direct-Pay Liquidity Facility Drawing Account”).

(b) The City shall make payments of principal and redemption price of and interest on the Bonds of a subseries in accordance with the Ordinance into the Bond Fund and transfer such amounts to the respective paying agent/registrars in accordance with Part 5.05 of the Ordinance as and when the same becomes due and payable regardless of whether a Direct-Pay Liquidity Facility is in effect with respect to the Bonds of such subseries.

(c) If a Direct-Pay Liquidity Facility is in effect with respect to the Bonds of a subseries, the Paying Agent/Registrar shall take all action necessary to draw or make a claim on the related Direct-Pay Liquidity Facility in such amounts, at such times, and in such manner as is necessary to pay the principal and redemption price (including, to the extent amounts are available therefor under the Direct-Pay Liquidity Facility, from Sinking Fund Installments) of and interest on all Bonds payable therefrom as and when the same becomes due and payable. The Paying Agent/Registrar shall promptly deposit into the related Direct-Pay Liquidity Facility Drawing Account all moneys so drawn by the Paying Agent/Registrar under the related Direct-Pay Liquidity Facility, which may not be with any other moneys held by Paying Agent/Registrar and which must be applied to the payment of such principal, redemption price and interest. If such a draw is required, the provision of indemnification under the Paying Agent/Registrar Agreement may not be a condition precedent to such draw or any payment therefrom, including payment of Purchase Price. Further, if a Direct-Pay Liquidity Facility is in effect, the provision of indemnification under the Paying Agent/Registrar Agreement may not be a condition precedent to causing a mandatory tender hereunder or carrying out the provisions of this Ordinance to effectuate such mandatory tender.

(d) Subject to the immediately succeeding paragraph, on each principal installment due date or Redemption Date, as the case may be, and Interest Payment Date, the Paying Agent/Registrar shall make payments of principal or redemption price of and interest on the Bonds of a subseries for which a drawing on the Credit Facility has been made to their Owners in accordance with the Ordinance. Amounts of such drawing are not available to pay principal or the redemption price of or interest on Bonds of any subseries other than Bonds of a subseries which are supported by such Direct-Pay Liquidity Facility.

If a Direct-Pay Liquidity Facility is in effect with respect to the Bonds of any subseries, notwithstanding the immediately preceding paragraph, the Paying Agent/Registrar shall make payments of principal or redemption price of and

interest on the Bonds of such subseries to their Owners in the manner provided for in the Ordinance from the moneys deposited in the related Direct-Pay Liquidity Facility Drawing Account pursuant to subpart (c) of this Part. If sufficient funds are not available in the related Direct-Pay Liquidity Facility Drawing Account, and the Liquidity Facility Provider has failed to honor a properly presented drawing, the Paying Agent/Registrar shall promptly apply other moneys, if any, transferred by the City from the Bond Fund, including but not limited to the City's payments pursuant to subpart (b) of this Part (excluding moneys available in any other Direct-Pay Liquidity Facility Drawing Account established with respect to any other subseries of Bonds), to the extent necessary to make such payment. If the principal or redemption price of and interest on the Bonds of a subseries has been paid in full when due and all payments required to be made under the Direct-Pay Liquidity Facility have been made, the Paying Agent/Registrar shall apply remaining moneys, if any, transferred by the City from the Bond Fund, including but not limited to the City's payments pursuant to subpart (b) of this Part (excluding moneys available in any other Direct-Pay Liquidity Facility Drawing Account established with respect to any other subseries of Bonds) in an amount not to exceed the amount of the draw or borrowing under the Direct-Pay Liquidity Facility to reimburse Liquidity Facility Provider.

(e) Amounts held in each Direct-Pay Liquidity Facility Drawing Account must be held uninvested and separate and apart from all other funds and accounts. The Paying Agent/Registrar shall have no lien on amounts in the Direct-Pay Facility Drawing Account or any account of the Purchase Fund for payment of fees or other amounts owed to the Paying Agent/Registrar.

(f) Notwithstanding the foregoing provisions of this Part, the Paying Agent/Registrar shall not draw on a Direct-Pay Liquidity Facility with respect to principal of or interest on Liquidity Provider Bonds.

**Part 5.3    No Draws Under Credit Facility or Direct-Pay Liquidity Facility for City.** Unless permitted under the Credit Facility or Direct-Pay Liquidity Facility, the Paying Agent/Registrar may make no drawings under the Credit Facility or Direct-Pay Liquidity Facility for payment of regularly scheduled principal of or interest on Bonds owned by or on behalf of the City or any affiliate or agent of the City.

## ARTICLE VI

### AGENTS

**Part 6.1     Remarketing Agent.** The City shall appoint and employ the services of a Remarketing Agent while the Bonds of any subseries are in the Daily Mode, the Weekly Mode or the Commercial Paper Mode. The City shall appoint and employ the services of a Remarketing Agent prior to any Purchase Date or Mode Change Date while the Bonds of any subseries are in the Term Rate Mode or the Auction Rate Mode.

Any Remarketing Agent may at any time resign and be discharged of the duties and obligations created by the Ordinance by giving notice to the related Liquidity Facility Provider, the Paying Agent/Registrar, the City, the related Credit Facility Provider and the Tender Agent in accordance with the Remarketing Agreement. Any Remarketing Agent may be removed at any time, at the direction of the City, by an instrument filed with the Paying Agent/Registrar, the related Remarketing Agent and the related Tender Agent in accordance with the Remarketing Agreement.

Any Remarketing Agent and any successor Remarketing Agent shall be selected by the City, with the prior written consent of the Credit Facility Provider, and shall be a member of the National Association of Securities Dealers, Inc., shall have a capitalization of at least \$15,000,000, and shall be authorized by law to perform all the duties set forth in the Ordinance. The City's delivery to the Paying Agent/Registrar of a Certificate setting forth the effective date of the appointment of a Remarketing Agent and the name, address and telephone number of such Remarketing Agent is conclusive evidence that (i) such Remarketing Agent has been appointed and is qualified to act as Remarketing Agent under the terms of the Ordinance and (ii) if applicable, the predecessor Remarketing Agent has been removed in accordance with the provisions of the Ordinance.

Each Remarketing Agent shall keep such books and records as are consistent with prudent industry practice and make such books and records available for inspection by the City, the Paying Agent/Registrar, the related Credit Facility Provider and the related Liquidity Facility Provider at all reasonable times.

**Part 6.2     Tender Agent.** The City shall appoint and employ the services of the Tender Agent while the Bonds of any subseries are in the Daily Mode, the Weekly Mode or the Commercial Paper Mode. The City shall appoint and employ the services of the Tender Agent prior to any Purchase Date or Mode Change Date while the Bonds of any subseries are in the Term Rate Mode or the Auction Rate Mode.

The Tender Agent may at any time resign and be discharged of the duties and obligations created by the Ordinance by giving at least 15 days' notice to the related Liquidity Facility Provider, the Paying Agent/Registrar, the City and the related Credit Facility Provider, provided that a successor Tender Agent is appointed and acting hereunder on or prior to the effective date of such resignation or discharge, any Liquidity Facility has been transferred to such successor Tender Agent, and the City has received from such successor written notice of acceptance of the duties of Tender Agent. The Tender Agent may be removed at any time, at the direction of the City, by an instrument filed with the Paying Agent/Registrar and the related Remarketing Agent and upon at least 15 days' notice to the Tender Agent, provided that a successor Tender Agent is appointed and acting hereunder on or prior to the effective date of such removal, any Liquidity Facility has been transferred to such successor Tender Agent, and the City has received from such successor written notice of acceptance of the duties of Tender Agent, which may be in the form of a new Tender Agent Agreement.

A successor Tender Agent shall be selected by the City, with the prior written consent of any Credit Facility Provider, and shall be a bank or other financial institution that satisfies the qualifications set forth in the Ordinance for a Paying Agent/Registrar. The City's delivery to the Paying Agent/Registrar of a Certificate setting forth the effective date of the appointment of a Tender Agent and the name, address and telephone number of such Tender Agent shall be conclusive evidence that (i) such Tender Agent has been appointed and is qualified to act as Tender Agent under the terms of the Ordinance and (ii) if applicable, the predecessor Tender Agent has been removed in accordance with the provisions of the Ordinance.

The Tender Agent shall keep such books and records as are consistent with prudent industry practice and make such books and records available for inspection by the City, the Paying Agent/Registrar, the related Credit Facility Provider and the related Liquidity Facility Provider at all reasonable times.

The Tender Agent shall be a fiduciary. Unless otherwise provided, the Paying Agent/Registrar is deemed the Tender Agent for purposes of this Appendix A and Exhibit 1 hereto.

**Part 6.3    Auction Agent.**    The City shall direct the Paying Agent/Registrar in writing to appoint and employ the services of an Auction Agent while the Bonds of any subseries are in the Auction Rate Mode. The Paying Agent/Registrar shall upon such direction appoint the Auction Agent. No appointment of the Auction Agent for the Bonds of a subseries is effective without

the consent of the Credit Facility Provider for the Bonds of such subseries. Such consent is deemed to have been given if such Credit Facility Provider delivers the Credit Facility on the Closing Date or Mode Change Date, as the case may be, or unreasonably withholds its consent. The Paying Agent/Registrar shall have the right to remove the Auction Agent as provided in the Auction Agreement. The Paying Agent/Registrar shall, upon a written direction of the Credit Facility Provider for the Bonds of a subseries, remove the Auction Agent for the Bonds of such subseries if the Auction Agent fails to comply with its obligations under the Auction Agreement.

**Part 6.4    Broker-Dealers.**    The City shall appoint and employ the services of one or more Broker-Dealers for the Bonds of each subseries that are in the Auction Rate Mode.