



Debt Issuance
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: 45
AGENDA DATE: Thu 06/17/2004
PAGE: 1 of 2

SUBJECT: Approve an ordinance authorizing an interest rate hedge agreement related to the issuance of approximately \$140,000,000 City of Austin, Texas, Water and Wastewater System Variable Rate Revenue Bonds, Series 2004; providing for payments thereunder by a lien on and pledge of the net revenues of the City's Water & Wastewater System; establishing funds and accounts related to the payment of such interest rate hedge agreement; enacting other provisions incident thereto; and providing for an effective date.

AMOUNT & SOURCE OF FUNDING: No fiscal impact during Fiscal Year 2003-2004. \$1,735,000 estimated debt service requirement and \$600 estimated annual paying agent/registrar fee will be included in the Fiscal Year 2004-2005 Proposed Budget of the Utility Revenue Bond Redemption Fund.

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Financial and **DIRECTOR'S**
DEPARTMENT: Administrative Services - **AUTHORIZATION:** Vickie Schubert
Treasury

FOR MORE INFORMATION CONTACT: Vickie Schubert, Deputy CFO 974-3344

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

Due to current favorable conditions in the municipal bond market, the City's financial advisor, Public Financial Management, Inc., has advised that a Synthetic Fixed Rate Forward Refunding of the Combined Utility System Revenue bonds may be accomplished at a present value savings of 6.71%, exceeding the City's target guideline of 4.25% of the refunded bonds. As of May 11, 2004, the transaction produced \$5,389,429 in present value savings. The Combined Utility System Revenue bonds are not subject to optional redemption until November 15, 2004. In order to issue the refunding bonds on a tax-exempt basis, such refunding bonds must be issued and delivered on a date no earlier than 90 days prior to November 15, 2004. In order to take advantage of the current low interest rates and lock-in the economic savings to the City that will result from the issuance of the refunding bonds the City's financial advisor has recommended that the City enter into a forward interest rate swap transaction. In order to provide the City with the flexibility to quickly respond to changing market conditions, the proposed ordinance delegates the authority to the Chief Financial Officer to effect the execution of the forward interest rate swap transaction in accordance with the parameters set forth in the ordinance. The authority of the Chief Financial Officer to exercise the authority delegated thereto by the City Council under the ordinance expires on September 16, 2004.

The City will enter into the swap transaction with JPMorgan, whereby the City will pay JPMorgan a fixed rate and in return JPMorgan will pay a variable rate to the City approximating the variable rate on the City's variable rate bonds, which will be sold in August of 2004. This transaction, known as a forward interest rate swap, is the most efficient method of refunding the outstanding bonds, and provides the greatest level of debt service savings.



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This item has been posted for not later than 2:00 p.m., in order for Council action to occur prior to the close of the financial markets.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AN INTEREST RATE HEDGE AGREEMENT RELATED TO CITY OF AUSTIN WATER AND WASTEWATER SYSTEM REVENUE BONDS; PROVIDING FOR PAYMENTS THEREUNDER BY A LIEN ON AND PLEDGE OF THE NET REVENUES OF THE CITY'S WATER AND WASTEWATER SYSTEM; ESTABLISHING FUNDS AND ACCOUNTS RELATED TO THE PAYMENT OF SUCH INTEREST RATE HEDGE AGREEMENT; ENACTING OTHER PROVISIONS INCIDENT THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Austin, Texas (the "City" or "Issuer") has heretofore authorized, issued and sold the following described obligations which are being paid in whole or in part from the revenues of the City's Water/Wastewater System, to wit:

(1) City of Austin, Texas _____, Series _____, dated _____, and aggregating in principal amount \$ _____;

(2) City of Austin, Texas, _____, Series _____, dated _____, and aggregating in principal amount \$ _____;

and such bonds are hereinafter referred to collectively as the "Prior Obligations"; and

WHEREAS, the City intends to issue its variable interest rate revenue bonds (the "Bonds") under and pursuant to authority conferred by the laws of the State of Texas, including Chapters 1207, 1371, and 1502, Texas Government Code, in an aggregate principal amount to be sufficient to refinance that amount of Prior Obligations that the City determines to refund in accordance with its policies and applicable law; and

WHEREAS, the City expects to issue the Bonds on or after, but not before, the 90th day preceding November 15, 2004; and

WHEREAS, between the date hereof and the date the City is able to issue the Bonds, interest rates may rise; and

WHEREAS, to hedge against possible increases in the rate of interest to be borne by the Bonds, the City Council of the City has determined to enter into an interest rate swap agreement in connection with and related to the payment and redemption of the Prior Obligations and the payment of the Bonds pursuant to the provisions of Chapter 1371, as amended, Texas Government Code; and

WHEREAS, the City Council further finds and determines that the regularly scheduled payments owed by the City (each, a "Hedge Payment") under the Hedge Agreement (as such term is defined in Section 2) herein authorized can and shall be on a parity with the outstanding "Parity Water/Wastewater Obligations" issued in accordance with and under the terms and provisions of Ordinance No. 000608-56A, (the "Master Ordinance") and Ordinance Nos. 000608-56B, 010419-77, 011129-65, 020718-15, and 030206-35 (the "Prior Supplements"), which authorize the issuance of the Previously Issued Parity Water/Wastewater Obligations (which Previously Issued Parity Water/Wastewater Obligations consist of the outstanding (1) "City of

Austin, Texas, Water And Wastewater System Revenue Refunding Bonds, Series 2000," (2) "City of Austin, Texas, Water And Wastewater System Revenue Refunding Bonds, Series 2001A," (3) "City of Austin, Texas, Water And Wastewater System Revenue Refunding Bonds, Series 2001B," (4) "City of Austin, Texas, Water And Wastewater System Revenue Refunding Bonds, Series 2001C," (5) "City of Austin, Texas, Water And Wastewater System Revenue Refunding Bonds, Series 2002A," and (6) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2003," each of which were authorized for issuance by the Master Ordinance and the Prior Supplements); now therefore:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN, TEXAS:

SECTION 1: DEFINITIONS. In addition to the definitions set forth in the preamble of this Ordinance or otherwise contained in this Ordinance (hereinafter referred to as this "Sixth Supplement"), or otherwise contained herein, the terms used herein and not otherwise defined shall have the meanings given in the Master Ordinance and Prior Supplements.

SECTION 2: authorization of hedge agreement. The terms and the form of the ISDA Master Agreement, Schedule to the Master Agreement, and Confirmation attached hereto as Exhibit A are hereby in all respects approved. The City Manager is hereby authorized to determine whether and when, and with respect to what notional amounts and on what terms (subject to the parameters provided below) to cause the City to enter into the Hedge Agreement. The City Manager 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 within [120] days after the date of enactment hereof, an ISDA Master Agreement, a Schedule to the Master Agreement, and one or more Confirmations (collectively referred to herein as the "Hedge Agreement"), with JPMorgan Chase Bank (together with any successor thereto as counterparty under the Hedge Agreement, the "Hedge Counterparty") substantially in such form and to such effect, with such changes and completions thereto as may be approved by the City Manager; provided that (1) the term of such Hedge Agreement shall not extend beyond _____, which is the expected final maturity of the Bonds, (2) the notional amount thereof shall not exceed \$ _____, and the Hedge Agreement shall contain a term providing 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 lesser than the original notional amount, (3) the fixed rates of interest at which the obligations of the City under the Hedge Agreement shall be calculated shall not exceed ____% per annum, (4) the Hedge Agreement shall permit 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, and (5) the Hedge Agreement and the proceedings of the City Council of the City authorizing the same shall be approved by the Attorney General of Texas and the Hedge Agreement shall be registered by the Comptroller of Public Accounts of the State of Texas prior to delivering the Hedge Agreement.

The obligations of the Hedge Counterparty to the City are hereby pledged as additional security for the obligations of the City that are secured by the Net Revenues, and the payments from the Hedge Counterparty to the City constitute Gross Revenues

SECTION 3: ISSUANCE OF credit agreement. The City has provided certain criteria and established certain covenants and agreements in relation to the issuance of Credit Agreements payable from Net Revenues of the Water/Wastewater System pursuant to the Master Ordinance and Prior Supplements. This Sixth Supplement provides for the

authorization, issuance, sale, delivery, form, characteristics, provisions of payment, and security of the Hedge Agreement, the form of which is attached as Exhibit A hereto, which Hedge Agreement constitutes a Credit Agreement in accordance with the Master Ordinance and Prior Supplements.

The Hedge Payments shall constitute Parity Water/Wastewater Obligations in accordance with the Master Ordinance, Prior Supplements, and this Sixth Supplement. The Hedge Payments shall be payable from and secured by the Net Revenues. The Master Ordinance is incorporated herein by reference and made a part hereof for all purposes, except to the extent modified and supplemented by the Prior Supplements and this Sixth Supplement. The City Council hereby finds and determines that it will have sufficient Gross Revenues to meet the obligations of the Water/Wastewater System, including sufficient Net Revenues to satisfy the Annual Debt Service Requirements of the Previously Issued Parity Water/Wastewater Obligations and to meet all financial obligations of the City under the Hedge Agreement relating to the Water/Wastewater System.

SECTION 4: TERMINATION OF HEDGE AGREEMENT. The City currently intends to issue the Bonds in a variable rate interest mode and to maintain in effect the Hedge Agreement. If, however the City does not, prior to, on, or within 120 days after the effective date of the Hedge Agreement, issue the Bonds in one or more series in an aggregate original principal amount equal to or greater than the Hedge Agreement and rated as required to be an "obligation" as defined in V.T.C.A., Gov't Code, 1371.001(5), as amended, then the City shall promptly exercise its option reserved in the Hedge Agreement to terminate or reduce the resulting notional amount of the Hedge Agreement to achieve the result that the notional amount, if any, of the Hedge 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 Hedge Agreement, to the extent the City Manager may deem advisable she may, and the City Council hereby delegates to such person the authority to, at any time terminate in whole or in part the Hedge Agreement as permitted thereby.

SECTION 5: PLEDGE. Subject to the prior claim on and lien on the Net Revenues of the Water/Wastewater System to the payment and security of the Prior First Lien Obligations currently Outstanding, including the funding and maintenance of the special funds established and maintained for the payment and security of such Prior First Lien Obligations, the Net Revenues of the Water/Wastewater System are hereby pledged to the payment of the Hedge Payments. The Hedge Payments, together with the Prior Subordinate Lien Obligations, the Previously Issued Separate Lien Obligations and the Previously Issued Parity Water/Wastewater Obligations currently Outstanding, shall be equally and ratably secured by a parity lien on and pledge of the Net Revenues of the Water/Wastewater System in accordance with the terms of the Master Ordinance, the Prior Supplements, and this Sixth Supplement. Additionally, the Hedge Payments and the Previously Issued Parity Water/Wastewater Obligations shall be equally and ratably secured by a lien on the funds, if any, deposited to the credit of the Debt Service Fund in accordance with the terms of the Master Ordinance, the Prior Supplements and this Sixth Supplement. The Previously Issued Parity Water/Wastewater Obligations shall be secured by a lien on the funds, if any, deposited to the credit of the Reserve Fund in accordance with the terms of the Master Ordinance, the Prior Supplements, and this Sixth Supplement. The Hedge Payments are and will be secured by and payable only from the Net Revenues of the Water/Wastewater System, and are not secured by or payable from a mortgage or deed of trust on any properties, whether real, personal, or mixed, of the Water/Wastewater System. The Hedge Counterparty shall never have the right to demand payment out of funds raised or to be raised by taxation, or from any source other than specified in the Master Ordinance, the Prior Supplements and this Sixth Supplement.

It is hereby ordained that the Hedge Agreement, and the payments due thereon, shall constitute a lien on the Net Revenues of the City's Water/Wastewater System and be valid and binding and fully perfected from and after the later of the date of adoption of this Ordinance or the date the Hedge Agreement is registered by the Comptroller of Public Accounts of the State of Texas, without physical delivery or transfer or transfer of control of the Net Revenues, the filing of this Ordinance or any other act; all as provided in Section 1371.105 of the Texas Government Code. Section 1371.105, Government Code, applies to the issuance of the Hedge Agreement and the pledge of the Net Revenues of the City's Water/Wastewater System granted by the City under this Section 5, and such pledge is therefore valid, effective and perfected at the time specified herein. If Texas law is amended at any time while the Hedge Agreement is Outstanding such that the pledge of the Net Revenues of the City's Water/Wastewater System granted by the City under this Section 5 is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Hedge Counterparty 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 provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

SECTION 6: DEBT SERVICE FUND. By reason of the issuance of the Hedge Agreement, the City need not establish any special accounts within the Debt Service Fund and following the delivery of such Hedge Agreement, the City hereby agrees and covenants to cause to be deposited to the credit of the Debt Service Fund an amount equal to one hundred per cent (100%) of the amount required to fully pay the Hedge Payments, if any, owed under the Hedge Agreement, falling due on or before each payment date, and such deposits shall be made on such monthly payment dates in amounts needed (or reasonably expected to be needed) to pay the City's Hedge Payments thereunder due in the next succeeding month.

If on any date on which a Hedge Payment is due on or in respect of the Hedge Agreement and there is insufficient money in the Debt Service Fund to make such payment, the City shall deposit to the Debt Service Fund and thereafter transfer to the applicable payee or paying agent, but solely from and to the extent of available Net Revenues, sufficient money to make or complete such payment.

The required monthly deposits to the Debt Service Fund for the payment of Hedge Payments shall continue to be made in the manner provided herein until such time as (i) the total amount on deposit in the Debt Service Fund is equal to the amount required to fully pay and discharge all Parity Water/Wastewater Obligations then Outstanding or (ii) the Hedge Agreement has been retired or terminated in accordance with its terms without further obligation on the part of the City.

The City shall deposit to the Debt Service Fund all money received from the Hedge Counterparty.

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

SECTION 7: RESERVE FUND. The provisions of Section 8 of the Master Ordinance relating to the Reserve Fund are hereby incorporated by reference and made a part hereof as if the same were restated in full in this Section.

In accordance with paragraph (f) of Section 8 of the Master Ordinance, the Hedge Payments shall not be secured by or entitled to payment from the Reserve Fund.

SECTION 8: PAYMENT OF Credit agreements. The City shall cause to be paid when due from the Debt Service Fund to the Hedge Counterparty each amount due such Hedge Counterparty under the Hedge Agreement.

SECTION 9: AMENDMENT. This Sixth Supplement shall constitute a contract with the Hedge Counterparty to the Hedge Agreement from and after execution and delivery of the Hedge Agreement. The City shall not amend, repeal, or otherwise modify any provision of this Sixth Supplement, the Master Ordinance or the Prior Ordinances in a manner that adversely affects the interests of the Hedge Counterparty without the consent of such person.

SECTION 10: REMEDY IN EVENT OF DEFAULT. In addition to all rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in payments to be made to the Debt Service Fund or the Reserve Fund as required by this Sixth Supplement or the Master Ordinance, (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Sixth Supplement or the Master Ordinance or (c) the City declares bankruptcy, the Hedge Counterparty shall be entitled to a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring the City and its officers to observe and perform any covenant, condition or obligation prescribed in this Sixth Supplement or the Master Ordinance. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

SECTION 11: PAYMENT AND PERFORMANCE ON BUSINESS DAYS. Whenever under the terms of this Sixth Supplement or the Bonds, the performance date of any provision hereof or thereof, including the payment of a Hedge Payment, shall occur on a day other than a day other than a Business Day then the performance thereof, including the payment of a Hedge Payment, need not be made on such day but may be performed or paid, as the case may be, on the next succeeding Business Day with the same force and effect as if made on the date of performance or payment. For purposes of this Sixth Supplement, the term "Business Day" means a day other than a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the City are authorized by law or executive order to close.

SECTION 12: LIMITATION OF BENEFITS WITH RESPECT TO THIS SIXTH SUPPLEMENT. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Sixth Supplement or the Hedge Agreement is intended or should be construed to confer upon or give to any person other than the City and the Hedge Counterparty, any legal or equitable right, remedy, or claim under or by reason of or in respect to this Sixth Supplement or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Sixth Supplement and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, and the Hedge Counterparty as herein and therein provided.

SECTION 13: NOTICES TO HEDGE COUNTERPARTY-WAIVER. Wherever this Sixth Supplement provides for notice to the Hedge Counterparty of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of such Hedge Counterparty at the close

of business on the Business Day next preceding the mailing of such notice.

Where this Sixth Supplement provides for notice in any manner, such notice may be waived in writing by the Hedge Counterparty entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice.

SECTION 14: GOVERNING LAW. This Sixth Supplement shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 15: EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 16: CONSTRUCTION OF TERMS. If appropriate in the context of this Sixth Supplement, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 17: SEVERABILITY. If any provision of this Sixth Supplement or the application thereof to any circumstance shall be held to be invalid, the remainder of this Sixth Supplement and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Sixth Supplement would have been enacted without such invalid provision.

SECTION 18: PUBLIC MEETING. It is officially found, determined, and declared that the meeting at which this Sixth Supplement 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 Sixth Supplement, was given; all as required by V.T.C.A., Government Code, Chapter 551, as amended.

SECTION 19: EFFECTIVE DATE. This Sixth Supplement is hereby passed with one reading as authorized by V.T.C.A., Government Code, Section 1201.028 and shall be effective immediately upon its passage and adoption.

PASSED AND ADOPTED, this June 17, 2004.

CITY OF AUSTIN, TEXAS

ATTEST:

WILL WYNN
Mayor

SHIRLEY A. BROWN
City Clerk

APPROVED:

(City Seal)

DAVID SMITH
City Attorney

EXHIBIT A
Hedge Agreement