



Debt Issuance
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: 43
AGENDA DATE: Thu 08/12/2004
PAGE: 1 of 1

SUBJECT: Approve an ordinance authorizing the issuance of approximately \$132,475,000 City of Austin, TX, Water and Wastewater System Revenue Variable Rate Refunding Bonds, Series 2004; providing for payments hereunder by a lien on and pledge of the net revenues of the City's Water & Wastewater System; and approval and authorization of all documents pertaining to the issuance.

AMOUNT & SOURCE OF FUNDING: No fiscal impact during Fiscal Year 2003-2004. \$10,590,407 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:**
Treasury

FOR MORE INFORMATION CONTACT: Vickie Schubert, Deputy Chief Financial Officer 974-3344

PRIOR COUNCIL ACTION: On June 17, 2004, Council approved the issuance of an interest rate hedge agreement related to the issuance of approximately \$140,000,000 City of Austin, Water & Wastewater System Revenue Variable Rate Refunding Bonds.

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 13.22%, exceeding the City's target guideline of 4.25% of the refunded bonds. As of July 2, 2004, the transaction produced \$16,662,566 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.

On July 2, 2004, the City entered into a swap transaction with JPMorgan, whereby the City will pay JPMorgan a fixed rate of 3.657% 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 through JPMorgan on August 12, 2004.

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.

Draft July 18, 2004

ORDINANCE NO. 040812-_____

CITY OF AUSTIN, TEXAS

**WATER AND WASTEWATER SYSTEM
[VARIABLE RATE DEMAND]
REVENUE REFUNDING BONDS, SERIES 2004**

august 12, 2004

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Exhibit A	-	Refunded Obligations
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Exhibit F	-	Bond Purchase Agreement
Exhibit G	-	Form of Notice of Redemption
Exhibit H	-	Escrow Agreement

ORDINANCE NO. 040812-_____

AN ORDINANCE authorizing the issuance and sale of "CITY OF AUSTIN, TEXAS, WATER AND WASTEWATER SYSTEM [VARIABLE RATE DEMAND] REVENUE REFUNDING BONDS, SERIES 2004," prescribing the terms, features and specifications of said Bonds; pledging the net revenues of the City's Water and Wastewater System to the payment of principal of and interest on said Bonds and to the payment of other obligations of the City; enacting other provisions incident and related to the issuance, payment, sale and delivery of such Bonds, including the purchase of bond insurance, insurance for an interest rate swap agreement, and a surety bond, and the approval and execution of a Paying Agent/Registrar Agreement, a Standby Bond Purchase Agreement, a Tender Agent Acceptance Letter, a Remarketing Agreement, and a Bond Purchase Agreement, and the approval and distribution of an Official Statement pertaining thereto; providing for the redemption of certain outstanding obligations of the City; and providing 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 and Wastewater System, and which are identified in Exhibit A hereto, and such bonds are hereinafter referred to collectively as the "Refunded Obligations"; and

WHEREAS, the City is authorized to issue bonds to refund the refunding bonds, including pursuant to U.T.C.A., Government Code, Chapters 1207, 1371 and 1502, as amended; and

WHEREAS, pursuant to and in accordance with the provisions of V.T.C.A., Government Code, Chapter 1207, as amended, the City Council hereby finds and determines refunding bonds should be issued and sold at this time to refund the Refunded Obligations, and such refunding will result in approximately \$_____ in gross savings on such indebtedness and a net present value benefit to the City of approximately \$_____; and

WHEREAS, the City Council further finds and determines the refunding bonds herein authorized to be issued 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 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 (hereinafter referred to as this "Seventh Supplement"), the terms used herein and not otherwise defined shall have the meanings given in the Master Ordinance and Prior Supplements, thereto or in Exhibit B to this Seventh Supplement. Certain terms are defined in Appendix A to this Seventh Supplement.

SECTION 2: AUTHORIZATION-DESIGNATION-PRINCIPAL AMOUNT - PURPOSE.

Revenue bonds of the City shall be and are hereby authorized to be issued in the aggregate principal amount of ONE HUNDRED THIRTY-TWO MILLION, FOUR HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$132,475,000) to be designated and, subject to the provisions of Appendix A relating to changes in Mode, bear the title "CITY OF AUSTIN, TEXAS, WATER AND WASTEWATER SYSTEM [VARIABLE RATE DEMAND] REVENUE REFUNDING BONDS, SERIES 2004" (hereinafter referred to as the "Bonds"), for the purpose of refinancing and refunding the Refunded Obligations (identified and defined in the preamble hereof), and paying costs of issuance in conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Government Code, Chapters 1207 and 1371, as amended.

SECTION 3: FULLY REGISTERED OBLIGATIONS-AUTHORIZED DENOMINATIONS - STATED MATURITIES – Interest - DATE. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated the date of their initial issuance and delivery (the "Bond Date") and shall be in Authorized Denominations for the applicable Mode as such terms are defined in and set forth in Appendix A, shall be numbered consecutively from One (1) upward and shall become due and payable on May 15, 2024 (the "Stated Maturity") subject to earlier redemption as provided herein.

The Bonds shall bear interest on the unpaid principal amounts from the Bond Date at the rate(s) per annum specified for the applicable Mode as provided in Appendix A, calculated and payable as set forth in Appendix A for the applicable Mode.

Appendix A hereto is hereby approved and confirmed. Each Authorized Official is authorized to execute and deliver Appendix A, in substantially the form attached hereto with such changes as an Authorized Official may approve.

SECTION 4: TERMS OF PAYMENT – certain agents. 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 registered owners or holders of the Bonds (hereinafter called the "Holders") appearing on the respective registration and transfer books maintained by the Paying Agent/Registrar 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.

The selection and appointment of _____ 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 herein and in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as Exhibit C, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. Each Authorized Official is authorized to execute and deliver such Paying Agent/Registrar Agreement in substantially the form attached as Exhibit C with such changes an Authorized Official may approve. 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. 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.

Principal of and premium, if any, on the Bonds shall be payable at the Stated Maturities, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices, initially in [New York, New York] (the "Designated Payment/Transfer Office"). Interest on the Bonds shall be paid to the Holders whose names appear in the Security Register at the close of business on the Record Date (the last business day of the month next preceding each interest payment date), and such interest 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. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the City where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

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 prior to 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.

The selection and appointment of _____ to serve as Remarketing Agent for the Bonds is hereby approved and confirmed, such appointment to be governed by Section 3.01 of Appendix A hereto and the Remarketing Agreement dated as of August 12, 2004 between the City and _____, substantially in the form of Exhibit 3 to Appendix A hereto. Each Authorized Official is authorized to execute and deliver such Remarketing Agreement in substantially the form attached as Exhibit 3 to Appendix A hereto with such changes as an Authorized Official may approve.

The selection and appointment of _____, _____, _____ to serve as Tender Agent for the Bonds is hereby approved and confirmed, such appointment to be governed by Section 3.02 of Appendix A hereto, and the Tender Agent Acceptance Letter dated as of August 12, 2004 between the City and _____, substantially in the form of Exhibit 4 to Appendix A hereto. Each Authorized Official is authorized to execute and deliver such Tender Agent Acceptance Letter in substantially the form attached as Exhibit 4 to Appendix A hereto with such changes as an Authorized Official may approve.

SECTION 5: REDEMPTIONS AND TENDERS. The Bonds shall be subject to redemption prior to maturity at the option of the City as provided in this Section. 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 Monthly Mode or the Weekly

Mode. Bonds in the Monthly Mode or the Weekly Mode are subject to optional redemption upon City Order in whole or in part, on any Business Day, at a redemption price equal to the principal amount thereof, plus unpaid accrued interest, if any, to the Redemption Date.

(b) Optional Redemption of Bonds in the Flexible Mode, Term Mode or the Fixed Mode.

- (i) Bonds in a Term Mode shall be subject to redemption, in whole or in part, on their individual Mandatory Tender Dates upon City Order at a redemption price equal to the principal amount thereof, plus unpaid accrued interest, if any, to the Redemption Date.
- (ii) Bonds in a Flexible Mode shall be subject to redemption in whole or in part on any Interest Payment Date upon City Order at a redemption price equal to the principal amount thereof, plus unpaid accrued interest, if any, to the Redemption Date.
- (iii) Upon City Order, Bonds in a Term Mode or Fixed Mode are subject to redemption, in whole or in part, on any date (and if in part, in such order of maturity as the Issuer shall specify and within a maturity by lot or by such other method as the Paying Agent determines to be fair and reasonable and in Authorized Denominations) at the redemption prices set forth below, together with unpaid accrued interest, if any, to the Redemption Date:

LENGTH OF LONG-TERM INTEREST RATE PERIOD	COMMENCEMENT OF REDEMPTION PERIOD	REDEMPTION PRICE
Greater than or equal to 15 years	Tenth anniversary of the commencement of Long-Term Interest Rate Period	102%, declining by 1.0% on each succeeding anniversary of the first day of the redemption period until reaching 100% and thereafter at 100%
Less than 15 years and greater than or equal to 10 years	Seventh anniversary of the commencement of Long-Term Interest Rate Period	102%, declining by 1.0% on each succeeding anniversary of the first day of the redemption period until reaching 100% and thereafter at 100%
Less than 10 years and greater than or equal to 5 years	Third anniversary of the commencement of Long-Term Interest Rate Period	101%, declining by 1.0% on each succeeding anniversary of the first day of the redemption period until reaching 100% and thereafter at 100%
Less than 5 years	Bonds not subject to optional redemption	

- (iv) By City Order, the City, in connection with a Mode change for the Bonds to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any Bonds so changed to a Long-Term Mode at any time without premium; provided that notice describing the waiver or alteration shall be submitted to the Notice Parties, together with an Opinion of Counsel addressed to the City that such waiver or alteration will not adversely affect the excludability of interest on the Bonds from the gross incomes of owners thereof for federal income tax purposes.
- (v) If a Credit Facility other than the initial Credit Facility is then in effect and the Redemption Price includes any premium, the right of the City to direct an optional redemption is subject to the condition that the Paying Agent/Registrar has received, prior to the date on which notice of redemption is required to be given to Holders, either Available Money or written confirmation from the Credit Provider that the Paying Agent can draw under the Credit Facility on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

(c) Certain Procedures for Optional Redemption. At least forty-five (45) days prior to a redemption date for the optional redemption of Bonds (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of the decision to redeem Bonds, the principal amount of each Stated Maturity to be redeemed, and the date of redemption therefor. The decision of the City to exercise the right to redeem Bonds shall be entered in the minutes of the governing body of the City.

(d) Mandatory Redemption. The Bonds shall be subject to mandatory redemption 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 follows:

<u>Date</u>	<u>Principal Amount (\$)</u>
11/15/2004	_____
05/15/2005	_____
11/15/2005	_____
05/15/2006	_____
11/15/2006	_____
05/15/2007	_____
11/15/2007	_____
05/15/2008	_____
11/15/2008	_____
05/15/2009	_____
11/15/2009	_____
05/15/2010	_____
11/15/2010	_____

05/15/2011	_____
11/15/2011	_____
05/15/2012	_____
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11/15/2018	_____
05/15/2019	_____
11/15/2019	_____
05/15/2020	_____
11/15/2020	_____
05/15/2021	_____
11/15/2021	_____
05/15/2022	_____
11/15/2022	_____
05/15/2023	_____
11/15/2023	_____
05/15/2024	_____*

*Paid at Stated Maturity

Approximately forty-five (45) days prior to each mandatory redemption date for the Bonds, the Paying Agent/Registrar shall select by lot the numbers of the Bonds within the applicable Stated Maturity to be redeemed on the next following May 15 or November 15, as applicable, from moneys set aside for that purpose in the Debt Service Fund (as hereinafter defined). Any Bonds not selected for prior redemption shall be paid on the date of their Stated Maturity.

The principal amount of the Bonds for a Stated Maturity 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 Stated Maturity which, at least 50 days prior to the 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 paragraph (a) of this Section and not theretofore credited against a mandatory redemption requirement.

(e) Selection of Bonds for Redemption. If less than all Outstanding Bonds of the same Stated Maturity 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 minimum Authorized Denomination thereof and shall select the Bonds to be redeemed within such Stated Maturity by

lot.

(f) Notice of Redemption. Not less than (i) while the Bonds are in a Short-Term Mode, fifteen (15) days and (ii) otherwise thirty (30) days prior to a redemption date for the 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 in whole or in part 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 duly 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 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 duly given or waived as herein provided, 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 moneys sufficient for the payment of such Bonds (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.

SECTION 6: 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 the Bonds issued under and pursuant to the provisions of this Seventh Supplement. 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 duly 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 duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

For all purposes hereunder, the ownership relating to all Bonds shall be established by the Security Register maintained by the Paying Agent, and the City, the Paying Agent and the Credit Provider shall conclusively deem the Holder to be the sole owner of all right, title and interest to the Bonds.

Upon surrender for transfer of any Bond (other than the Initial Bonds authorized in Section 9 hereof) 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 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 (other than the Initial Bonds authorized in Section 9

hereof) may be exchanged for other Bonds 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 Seventh Supplement, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, 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 canceled 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 Section 19 hereof and such new replacement Bond shall be deemed 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 transfer or exchange any Bond called for redemption, in whole or in part, within 45 days of the date fixed for redemption of such Bond; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

SECTION 7: BOOK-ENTRY ONLY TRANSFERS AND TRANSACTIONS. Notwithstanding the provisions contained in Sections 4, 5 and 6 hereof relating to the payment, 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 and any further agreement between the City and DTC necessary or appropriate in connection with the Bonds, each of which is hereby approved and confirmed and the execution and delivery of which is hereby authorized and directed (the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC who shall hold said Bonds for its participants (the "DTC Participants"). 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 ownership of each actual purchaser or owner of each

Bond (the "Beneficial Owners") being 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 of the Bonds to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. 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 Sections 4, 5 and 6 hereof.

SECTION 8: 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 Bond Date shall be deemed to be duly 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, as amended.

No Bond shall be entitled to any right or benefit under this Seventh Supplement, 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 Section 10C, manually executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 10D, manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond duly signed shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.

SECTION 9: INITIAL BONDS. The Bonds herein authorized shall be initially issued as a single fully registered bond in the total principal amount referenced in Section 2 hereof with principal installments to become due and payable as provided in Section 3 hereof and numbered T-1 (hereinafter called the "Initial Bond"). The Initial Bond shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be the Bond 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 initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, 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.

SECTION 10: FORMS. A. Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other

variations as are permitted or required by this Seventh Supplement 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 insurance legends in the event the Bonds, or any maturities thereof, are purchased with insurance 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 thereof. 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 Bond shall be printed, lithographed, or 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 thereof.

B. Form of Definitive Bond. The form of definitive Bond shall be as set forth in Exhibit 1 to Appendix A with respect to Bonds in a Flexible Mode, Weekly Mode or Monthly Mode and Exhibit 2 to Appendix A with respect to Bonds in a Flexible Mode, Term Mode or Fixed Mode.

C. *Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond 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 duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

D. Form of Certificate of Paying Agent/Registrar to Appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Holder shown above under the provisions of the within-mentioned Ordinances; 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 _____, _____ is the initial Designated Payment/Transfer Office for this Bond.

as Paying Agent/Registrar

Registration date:

By _____
Authorized Signature

E. 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.

F. The Initial Bond shall be in the form set forth in paragraph B of this Section, except that the form of a single fully registered Initial Bond shall be modified as follows:

- (i) Immediately under the name of the bond the headings "Interest Rate _____" and "Stated Maturity _____" shall both be omitted; and
- (ii) Paragraph one shall read as follows:

The City of Austin (hereinafter referred to as the "City"), a body corporate and municipal corporation in the Counties of Travis and Williamson, State of Texas, for value received, hereby promises to pay to the order of the Registered Holder named above, or the registered assigns thereof, solely from the revenues hereinafter identified, the Principal Amount hereinabove stated on May 15, 2024 (the "Stated Maturity") (or so much thereof as shall not have been prepaid prior to maturity) and to pay interest, computed on the basis of actual days elapsed in a 365-day or 366-day, as applicable, year, on the unpaid principal amounts hereof from the Bond Date at the per annum rates of interest specified above; such interest being payable on the fifteenth day of each month, commencing September 15, 2004. Principal installments of this Bond are payable

at maturity to the registered owner hereof by _____, _____ (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices in _____ (the initial "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the last Business Day of the month and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and 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.

SECTION 11: ISSUANCE OF PARITY WATER/WASTEWATER OBLIGATIONS and credit agreements. The City has provided certain criteria and established certain covenants and agreements in relation to the issuance of Parity Water/Wastewater Obligations and Credit Agreements payable from Net Revenues of the Water/Wastewater System pursuant to the Master Ordinance and Prior Supplements. This Seventh Supplement provides for the authorization, issuance, sale, delivery, form, characteristics, provisions of payment, and security of the following Parity Water/Wastewater Obligations each of which is payable from and secured by the Net Revenues:

- (a) The Bonds;
- (b) The Series 2004 Liquidity Agreement, the form of which is Exhibit 5 to Appendix A hereto; and
- (c) The Series 2004 Insurance Obligations.

Each of the Series 2004 Liquidity Agreement and the Series 2004 Insurance Obligations are "Credit Agreements" as defined in the Master Ordinance. 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 Seventh Supplement, and the Bonds, the Series 2004 Liquidity Agreement and the Series 2004 Insurance Obligations are hereby declared to be Parity Water/Wastewater Obligations under the Master Ordinance and Prior Supplements. The City 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 Bonds and the Previously Issued Parity Water/Wastewater Obligations and to meet all financial obligations of the City under the Series 2004 Liquidity Agreement and the Series 2004 Insurance Obligations relating to the Water/Wastewater System.

The Series 2004 Liquidity Agreement is hereby approved and confirmed, and each Authorized Official is authorized to execute and deliver such Series 2004 Liquidity Agreement, in substantially the form attached as Exhibit 5 to Appendix A hereto with such changes as an Authorized Official may approve.

SECTION 12: 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 Bonds, the Series 2004 Liquidity Agreement and the Series 2004 Insurance Obligations (collectively, the "Seventh Supplement Secured Obligations") and the Seventh Supplement Secured Obligations, 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 and this Seventh Supplement. Additionally, the Seventh Supplement Secured Obligations 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 and Reserve Fund in accordance with the terms of the Master Ordinance, the Prior Supplements and this Seventh Supplement. The Bonds and the Seventh Supplement Secured Obligations 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 owners of the Seventh Supplement Secured Obligations shall never have the right to demand payment out of funds raised or to be raised by taxation, or from any source other than as specified in the Master Ordinance, the Prior Supplements and this Seventh Supplement.

It is hereby ordained that the Seventh Supplement Secured Obligations, and the interest (if any) thereon, shall constitute a lien on the Net Revenues of the City's Water and Wastewater System and be valid and binding and fully perfected from and after the date of adoption of this Ordinance 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 Chapter 1208 and Chapter 1371 of the Texas Government Code, as amended. Chapters 1208 and 1371, Government Code, as amended, apply to the issuance of the Seventh Supplement Secured Obligations and the pledge of the Net Revenues of the City's Water and Wastewater System granted by the City under this Section 12, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Seventh Supplement Secured Obligations are Outstanding such that the pledge of the Net Revenues of the City's Water and Wastewater System granted by the City under this Section 12 is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Seventh Supplement Secured Obligations 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 13: DEBT SERVICE FUND. By reason of the issuance of the Seventh Supplement Secured Obligations, the City need not establish any special accounts within the Debt Service Fund and following the delivery of such obligations, 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 interest on and principal of the Bonds and amounts, if any, owed under the other Seventh Supplement Secured Obligations, falling due on or before each maturity, mandatory redemption date and interest payment date (but excluding any amounts owed to pay or reimburse a Liquidity Provider for paying Purchase Price of any Bonds), and such deposits shall be made, with respect to the Bonds, in substantially equal monthly amounts on or before the 15th day of each month beginning on or before the 15th day of the month next following the month the Bonds are delivered to the Underwriter, for which purposes, the City may assume that interest on the Bonds will continue to accrue at the rate of accrual then in effect on the date of such payment.

With respect to the other Seventh Supplement Secured Obligations, such deposits shall be made on such monthly payment dates in amounts needed (or reasonably expected to be needed) to pay the City's obligations thereunder due in the next succeeding month.

If on any date on which a payment by the City (other than in respect of Purchase Price) is due on or in respect of a Seventh Supplement Secured Obligation 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 principal of and interest on the Bonds and other payments required with respect to Parity Water/Wastewater Obligations 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 Seventh Supplement Secured Obligations are no longer outstanding, *i.e.*, fully paid as to principal, interest and other amounts owing or all the Bonds have been refunded and all other Seventh Supplement Secured Obligations have been retired or terminated in accordance with their terms without further obligation on the part of the City.

On each date on which a payment is due on the Parity Water/Wastewater Obligations, the City shall make such payment from the Debt Service Fund.

If a Credit Facility is in effect with respect to the Bonds, then, to the extent required under the applicable Credit Agreement, the City shall disburse money from the Debt Service Fund to reimburse the Credit Provider when due to the extent the same has paid or advanced funds to pay debt service on, or the redemption of, any Bonds.

If the City is required to (or if it is permitted to and elects to) advance funds to pay directly the Purchase Price of the Bonds, the City shall disburse funds for such purpose from sources other than the Debt Service Fund, the payment of the Purchase Price of Bonds not constituting the payment of principal of or interest on Bonds.

If a Liquidity Facility is in effect with respect to the Bonds, the City may pay the fees and expenses of the Liquidity Provider from the Debt Service Fund, and shall disburse funds from the Debt Service Fund as needed to pay principal and redemption price of and interest on Liquidity Provider Bonds, and, if applicable (as in the case of the initial Liquidity Facility) but without duplication, to pay principal of and interest on any advance made by the Liquidity Provider to pay the Purchase Price of Bonds.

The City shall deposit to the Debt Service Fund and credit against the City's deposit obligations under this Section 13 all money received from the counterparty to the Series 2004 Interest Rate Swap Agreement.

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

SECTION 14: RESERVE FUND. In accordance with the provisions of the Prior Supplements authorizing the issuance of the Previously Issued Water/Wastewater Obligations, the amount currently on deposit to the credit of the Reserve Fund is \$_____ (the "Current

Reserve”), which Current Reserve is funded in full with surety bonds issued by [(i) MBIA Insurance Corporation in the amount of \$3,606,942 and (ii) Financial Security Assurance Inc. in the amounts of \$7,737,801 and \$1,938,220 and (iii) FSA in the amount of \$_____.] By reason of the issuance of the Bonds, the Required Reserve Amount shall be and is hereby recalculated and determined to be \$_____. Upon the issuance of the Bonds, a surety bond (the “Reserve Fund Policy”) in an amount equal to the difference between the Required Reserve Amount and the Current Reserve issued by FSA shall be deposited to the credit of the Reserve Fund to fully fund the Required Reserve Amount.

The Insurance Agreement (the “Insurance Agreement”) by and between the City and FSA attached hereto as Exhibit D, is hereby approved as to form and content, and such Insurance Agreement in substantially the form and substance attached hereto, together with such changes or revisions as may be approved by the Authorized Official, is hereby authorized to be executed and delivered by any Authorized Official.

The provisions of Section 8 of the Master Ordinance relating to the Reserve Fund, particularly paragraphs (b), (c) and (d) thereof, are hereby incorporated by reference and made a part hereof as if the same were restated in full in this Section, and to the extent of any conflict between the provisions of said Section 8 and the provisions hereof with respect to draws on the Insurance Agreement and the reinstatement of the full amount afforded by the Insurance Agreement, the provisions of this Seventh Supplement with respect to the Insurance Agreement and such Credit Agreement entered into with FSA shall govern.

Notwithstanding paragraph (f) of Section 8 of the Master Ordinance, the Series 2004 Liquidity Agreement and the Series 2004 Insurance Obligations shall also be secured by and entitled to payment from the Reserve Fund.

SECTION 15: PAYMENT OF BONDS; Credit agreements. On or before the first scheduled interest payment date, and on or before each interest payment date and principal payment date thereafter while any of the Bonds are Outstanding, the City shall cause an amount to be transferred to the Paying Agent/Registrar in immediately available funds from the Debt Service Fund and Reserve Fund, if necessary, sufficient to pay such interest on and such principal amount of the Bonds, as shall become due on such dates, respectively, at maturity; provided, however, that if there is a Credit Facility in effect with respect to the Bonds and the Credit Facility provides for the direct payment by the Credit Provider of funds to the Paying Agent/Registrar to pay such interest and principal, the City shall, upon confirmation that the Credit Provider has made such payment, cause to be transferred in immediately available funds from the Debt Service Fund an amount sufficient to reimburse the Credit Provider for such payment and, to the extent provided in the applicable Credit Agreement, to pay any related fees and charges of the Credit Provider associated therewith. Unless otherwise directed by the City, the Paying Agent/Registrar shall destroy all paid Bonds and furnish the City with an appropriate certificate of cancellation or destruction. If the City so directs, Bonds that have been paid by the City, may remain outstanding and reissued and sold by the City.

In addition, the City shall cause to be paid when due from the Debt Service Fund to the appropriate Person each amount due such Person (other than with respect to Purchase Price of Bonds) under a Seventh Supplement Secured Obligation.

SECTION 16: COVENANTS TO MAINTAIN TAX-EXEMPT STATUS. Definitions.
When used in this Section 16, the following terms have the following meanings:

"*Closing Date*" means the date on which the Bonds are first authenticated and delivered to the Underwriter 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 1986, as amended, which are applicable to the Bonds. 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.

"*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.

(a) 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 foregoing, 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 Section.

(b) 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 prior to the last Stated Maturity of Bonds:

(1) 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 Obligations), 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

(2) 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 Obligations), 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.

(c) 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 foregoing 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.

(d) 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 prior to 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.

(e) 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.

(f) 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.

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

(1) 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.

(2) 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.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order 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 Fund 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.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), 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.

(h) 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 prior to 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 Section 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, City Manager, Director of Financial and Administrative Services or Treasurer, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem 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. (1) At the time the original obligations refunded by the Bonds were issued, the City reasonably expected to spend at least 85% of the spendable proceeds of such original obligations within three years after such obligations were issued and (2) not more than 50% of the proceeds of the original obligations refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(k) Current Refunding. The Refunded Bonds will be paid and discharged within ninety (90) days after the issuance of the Bonds. Therefore, the refunding accomplished through the Bonds is a current refunding.

(l) Identification of Interest Rate Swap Agreement. Pursuant to Section 1.148-4(h)(2)(viii) and 1.148-5(h)(iv) of the Regulations, the Issuer hereby identifies the Series 2004 Interest Rate Swap Agreement on its books and records. The "hedged bonds" within the meaning of the Regulations are the Bonds authorized by Section 2 of this Ordinance. The hedge provider is JPMorgan Chase Bank, and the terms of the contract are set forth in the Series 2004 Interest Rate Swap Agreement. The governmental purpose of the hedged bonds is to refinance the Refunded Obligations to produce debt service savings to the Issuer. With respect to the hedged bonds, the issue price will be par, the issue date will be August 27, 2004, and the maturity date is as set forth in this Ordinance. Section 1.148-4(h)(5)(iii) applies to the hedged bonds, and interest on the hedged bonds will be computed as set forth in this Ordinance.

SECTION 17: AMENDMENT OF SEVENTH SUPPLEMENT. Required Holder Consent for Amendments. With the consent of the Credit Provider, the Liquidity Provider, and the owners of a majority in Outstanding Principal Amount of the Bonds, the City shall have the right from time to time to effect any amendment to this Seventh Supplement which may be deemed necessary or desirable by the City; provided, however, nothing contained herein shall permit or be construed to permit the amendment of the terms and conditions in this Seventh Supplement so as to:

- (1) Make any change in the maturity of any of the Outstanding Bonds;
- (2) Reduce the rate of interest borne by any of the Outstanding Bonds;
- (3) Reduce the amount of the principal payable on the Bonds;
- (4) Modify the terms of payment of principal of, premium, if any, or interest on the Outstanding Bonds or impose any conditions with respect to such payment;
- (5) Affect the rights of the owners of less than all of the Bonds then Outstanding;
- (6) Amend this subsection (a) of this Section; or
- (7) Change the minimum percentage of the principal amount of Bonds necessary for consent to any amendment;

unless such amendment or amendments be approved by the owners of all of the Bonds affected by the change or amendment then Outstanding.

(a) Notice of Amendment Requiring Consent. If at any time the City shall

desire to amend the Seventh Supplement under this Section, the City shall cause notice of the proposed amendment to be published in a financial newspaper or journal published in The City of New York, New York, and a newspaper of general circulation in the City, once during each calendar week for at least two successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file with the Paying Agent for the Bonds. Such publication is not required, however, if notice in writing is given by mail, first class postage prepaid, to each owner of the Bonds.

(b) Time Period for Obtaining Consent. If within one year from the earlier of (i) the date of the first publication of said notice or (ii) the date of the mailing by the Paying Agent of written notice to the owners of the Bonds, the City shall receive an instrument or instruments executed by the owners of at least a majority in Outstanding Principal Amount of the Bonds consenting to and approving such amendment in substantially the form of the copy thereof on file with each Paying Agent, the governing body of the City may pass the amendatory ordinance in substantially the same form.

(c) Revocation of Consent. Any consent given by the owner of a Bond pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date for measuring the one year period to obtain consents noted in paragraph (c) above, and shall be conclusive and binding upon all future owners of the same Bonds during such period. At any time after six months from the date for measuring the one year period to obtain consents noted in paragraph (c) above, such consent may be revoked by the owner who gave such consent, or by a successor in title, by filing written notice thereof with the Paying Agent for such Bonds and the City, but such revocation shall not be effective if the owners of at least a majority in Outstanding Principal Amount of the then Outstanding Bonds as determined in accordance with this Section have, prior to the attempted revocation, consented to and approved the amendment.

(d) Implementation of Amendment. Upon the passage of any amendatory ordinance pursuant to the provisions of this Section, this Seventh Supplement shall be deemed to be amended, and the respective rights, duties and obligations of the City under this Seventh Supplement and all the owners of then Outstanding Bonds shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such amendment.

(e) Amendment without Consent. The foregoing provisions of this Section notwithstanding, the City by action of its governing body may amend this Seventh Supplement, with the consent of the Credit Provider and the Liquidity Provider, but without consent of any owner of Bonds, for any one or more of the following purposes:

(1) To add to the covenants and agreements of the City in this Seventh Supplement contained, other covenants and agreements thereafter to be observed, grant additional rights or remedies to the owners of the Bonds or to surrender, restrict or limit any right or power herein reserved to or conferred upon the City;

(2) To make such provisions for the purpose of curing any ambiguity, or curing, correcting or supplementing any defective provision contained in this Seventh Supplement, or in regard to clarifying matters or questions arising under this Seventh Supplement, as are necessary or desirable and not contrary to or inconsistent with this Seventh Supplement and which shall not adversely affect the interests of the owners of the Bonds then outstanding;

(3) To modify any of the provisions of this Seventh Supplement in any other respect whatever, provided that such modification shall be, and be expressed to be, effective only after all the Bonds outstanding at the date of the adoption of such modification shall cease to be outstanding;

(4) To make such amendments to this Seventh Supplement as may be required, in the opinion of Bond Counsel, to ensure compliance with sections 103 and 141 through 150 of the Code and the regulations promulgated thereunder and applicable thereto;

(5) To make such changes, modifications or amendments as may be necessary or desirable in order to allow the owners of the Bonds to thereafter avail themselves of a book-entry system for payments, transfers and other matters relating to the Bonds, which changes, modifications or amendments are not contrary to or inconsistent with other provisions of this Seventh Supplement and which shall not adversely affect the interests of the owners of the Bonds;

(6) To make such changes, modifications or amendments as may be necessary or desirable in order to obtain or maintain the granting of a rating on the Bonds by a Rating Agency or to obtain or maintain a Credit Agreement or a Credit Facility;

(7) To make such changes, modifications or amendments as may be necessary or desirable, which shall not adversely affect the interests of the owners of the Bonds, in order, to the extent permitted by law, to facilitate the economic and practical utilization of interest rate swap agreements, foreign currency exchange agreements, or similar types of agreements with respect to the Bonds. Notice of any such amendment may be published by the City in the manner described in clause (b) of this Section; provided, however, that the publication of such notice shall not constitute a condition precedent to the adoption of such amendatory ordinance and the failure to publish such notice shall not adversely affect the implementation of such amendment as adopted pursuant to such amendatory ordinance;

(8) So long as a Credit Facility is in effect with respect to the Bonds and the Credit Provider is not in default thereunder to make any other changes, modifications or amendments (other than a change, modification or amendment described in clauses (1) through (7), inclusive of Section 17(a)) consented to by the Credit Provider, if there is delivered to the City an Opinion of Bond Counsel to the effect that such amendment will not adversely affect the excludability of interest on the Bonds from the gross incomes of the owners thereof for federal income tax purposes; and

(9) Any other changes, modifications, or amendments which take effect after a Mandatory Tender, if there is delivered to the City an Opinion of Bond Counsel to the effect that such amendment will not adversely affect the excludability of interest on the Bonds from the gross incomes of the owners thereof for federal income tax purposes.

SECTION 18: FINAL DEPOSITS; GOVERNMENTAL OBLIGATIONS. All or any of the Bonds shall be deemed to be paid, retired and no longer outstanding within the meaning of this

Seventh Supplement when payment of the principal of, and redemption premium, if any, on such Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, including the giving of any required notice of redemption, or (ii) shall have been provided by irrevocably depositing with, or making available to, the Paying Agent/Registrar, in trust and irrevocably set aside exclusively for such payment, (1) money sufficient to make such payment or (2) Government Obligations, certified by an independent public accounting firm of national reputation, to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to make such payment, and all necessary and proper fees, compensation and expenses of the Paying Agent/Registrar with respect to which such deposit is made shall have been paid or the payment thereof provided for the satisfaction of the Paying Agent/Registrar. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefit of this Seventh Supplement, the Master Ordinance or a lien on and pledge of the Net Revenues of the Water/Wastewater System, and shall be entitled to payment solely from such money or Government Obligations.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, may at the direction of the City also be invested in Government Obligations, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Government Obligations not required for the payment of the Bonds, the redemption premium, if any, and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City or deposited as directed by the City. The City covenants that no deposit will be made or accepted under clause (ii) of this Section 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 Internal Revenue Code of 1986, as amended.

Notwithstanding any other provisions of this Seventh Supplement, all money or Government Obligations set aside and held in trust pursuant to the provisions of this Section for the payment of the Bonds, the redemption premium, if any, and interest thereon, shall be applied to and used for the payment of such Bonds, the redemption premium, if any, and interest thereon and the income on such money or Government Obligations shall not be considered to be "Gross Revenues" under this Seventh Supplement.

SECTION 19: DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED BONDS. In the event any Outstanding Bond is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new bond of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Bond, in replacement for such Bond in the manner hereinafter provided. An application for the replacement of damaged, mutilated, lost, stolen, or destroyed Bonds shall be made to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Bond, the applicant for a replacement bond shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Bond, the applicant shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Bond, as the case may be. In every case of damage or mutilation of a Bond, the applicant shall surrender to the Paying Agent/Registrar for cancellation the Bond so damaged or mutilated. Prior to the issuance of any replacement bond, the Paying Agent/Registrar shall charge the owner of such Bond with all legal, printing, and other expenses in connection therewith. Every replacement bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is lost, stolen, or destroyed shall

constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Bond shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Seventh Supplement equally and proportionately with any and all other Bonds duly issued under this Seventh Supplement.

Notwithstanding the foregoing provisions of this Section, in the event any such Bond shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Bond, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Bond) instead of issuing a replacement Bond, provided security or indemnity is furnished as above provided in this Section. Furthermore, in accordance with V.T.C.A., Government Code, Section 1206.022, as amended, this Section shall constitute authority for the issuance of any such replacement bond without necessity of further action by the governing body of the City or any other body or person, and the duty of the replacement of such bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such bonds in the form and manner and with the effect, as provided in Section 6 of this Seventh Supplement for Bonds issued in exchange for other Bonds.

SECTION 20: SEVENTH SUPPLEMENT TO CONSTITUTE A CONTRACT; EQUAL SECURITY. In consideration of the acceptance of the Bonds, the issuance of which is authorized hereunder, by those who shall hold the same from time to time, this Seventh Supplement shall be deemed to be and shall constitute a contract between the City and the Holders from time to time of the Bonds and the pledge made in this Seventh Supplement by the City and the covenants and agreements set forth in this Seventh Supplement to be performed by the City shall be for the equal and proportionate benefit, security, and protection of all Holders, without preference, priority, or distinction as to security or otherwise of any of the Bonds authorized hereunder over any of the others by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Seventh Supplement.

SECTION 21: CONTINUING DISCLOSURE UNDERTAKING. Definitions. As used in this Section, 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.

(a) 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, 2004) financial information and operating data with respect to the City of

the general type included in the final Official Statement approved by Section 23 of this Seventh Supplement, being the information described in Exhibit E hereto. Financial statements to be provided shall be (1) prepared in accordance with the accounting principles described in Exhibit E 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) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section 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.

(b) 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 subsection (b) of this Section by the time required by such Section.

(c) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section 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 subsection (c) hereof of any Bond calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial

owners of the Bonds, and nothing in this Section, 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 Section 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 Section or otherwise, except as expressly provided herein. 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 IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, 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 Section shall constitute a breach of or default under this Seventh Supplement for purposes of any other provision of this Seventh Supplement.

Nothing in this Section 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 Section 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 or the Water/Wastewater System*, but only if (1) the provisions of this Section, 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 (or any greater amount required by any other provision of this Seventh Supplement that authorizes such an amendment) 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. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data filed with each NRMSIR and SID pursuant to subsection (b) of this Section 21 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.

SECTION 22: 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 Reserve Fund as required by this Seventh 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 Seventh Supplement or the Master Ordinance or (c) the City declares bankruptcy, the Holders of any of the Bonds 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 Seventh 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 23: SALE OF BONDS - OFFICIAL STATEMENT APPROVAL. The Bonds authorized by this Ordinance are hereby sold by the City to JPMorgan Securities Inc. (herein referred to as the "Underwriter") in accordance with the Bond Purchase Agreement, to be dated on or about August 26, 2004, attached hereto as Exhibit F. Each Authorized Official is authorized to execute and deliver the Bond Purchase Agreement in the form attached as Exhibit F and with such changes thereto as may be approved by any Authorized Official. The Council hereby finds, determines and declares that the representations, warranties and agreements of the City contained in the Bond Purchase Agreement are true and correct in all material respects as of this date and shall be honored and performed by the City.

Furthermore, the use of the Official Statement, to be dated after August 12, 2004, the form of which has been presented to the City Council, the offering and sale of the Bonds is hereby authorized, confirmed and approved in all respects, and the City Council hereby finds that the information and data contained in said Official Statement pertaining to the City and its financial affairs is true and correct in all material respects and no material facts have been omitted therefrom which are necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Such form (together with such additions and such changes approved by an Authorized Official), shall be and is hereby in all respects approved and deemed "final" within the meaning of the Rule (as defined in Section 21) and the Underwriter is hereby authorized to use and distribute said final Official Statement, to be dated on or about the date of establishing the initial interest rate of the Bonds, in the offering, sale and delivery of the Bonds to the public.

SECTION 24: Redemption of Refunded Obligations – Escrow Agreement.

(a) The Refunded Bonds shall be redeemed and the same are hereby called for redemption on the applicable call dates specified in Exhibit A. The City Clerk is hereby authorized and directed to file a copy of this Seventh Supplement, together with a suggested form of notice of redemption to be sent to bondholders, with the paying agent for the Refunded Bonds, in accordance with the redemption provisions applicable to such bonds; such suggested form of notice of redemption being attached hereto as Exhibit G.

(b) The redemption of the obligations described above being associated with the refunding of such obligations, the approval, authorization and arrangements herein given and provided for the redemption of such obligations on the redemption date designated therefor and in the manner provided shall be irrevocable upon the issuance and delivery of the Bonds; and the City Clerk is hereby authorized and directed to make all arrangements necessary to notify the holders of such obligations of the City's decision to redeem such

obligations on the dates and in accordance herewith.

(c) As used herein, the term "Escrow Agreement" means that certain Special Escrow Agreement by and between the City and _____ (the "Escrow Agent"). Each Authorized Official is authorized to execute and deliver the Escrow Agreement substantially in the form attached hereto as Exhibit H together with any such changes thereto as any Authorized Official may approve.

(d) Appropriate officials of the City, in cooperation with the Escrow Agent, are hereby authorized and directed to make the necessary arrangements for the deposit of the proceeds of sale of the Bonds to the credit of the escrow account with the Escrow Agent; all as contemplated and provided in V.T.C.A., Government Code, Chapter 1207, as amended, this Seventh Supplement and the Escrow Agreement.

SECTION 25: CONTROL AND CUSTODY OF BONDS. The Authorized Officials, any one or more, shall be and are 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 purchasers.

Furthermore, each 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 sale 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 printing of definitive Bonds and the delivery of the Bonds to the Underwriter.

SECTION 26: PROCEEDS OF SALE. Immediately following the delivery of the Bonds, the proceeds of sale of the Bonds in an amount sufficient to pay and defease the Refunded Obligations shall be deposited with the Escrow Agent for the payment and discharge of the Refunded Obligations and the balance of such proceeds shall be used for the payment of costs of issuance, including amounts to pay premiums and fees under any Credit Agreement, all in accordance with written instructions to the Paying Agent/Registrar.

[Additionally, on or immediately prior to the date of delivery of the Bonds to the Underwriter, the Treasurer shall cause to be transferred in immediately available funds to the Escrow Agent the sum of \$_____ from money on deposit in a debt management account of the Water/Wastewater System.]

SECTION 27: LEGAL OPINION. The obligation of the Underwriter to accept delivery of the Bonds is subject to being furnished a final opinion of Fulbright & Jaworski L.L.P., approving such Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for such Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the definitive Bonds or an executed counterpart thereof shall accompany the global Bonds deposited with the Depository Trust Company.

SECTION 28: 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 said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 29: PAYMENT AND PERFORMANCE ON BUSINESS DAYS. Whenever under the terms of this Seventh Supplement or the Bonds, the performance date of any provision hereof or thereof, including the payment of principal of or interest on the Bonds, shall occur on a day other than a Business Day, then the performance thereof, including the payment of principal of and interest on the Bonds, 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.

SECTION 30: LIMITATION OF BENEFITS WITH RESPECT TO THE SEVENTH SUPPLEMENT. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Seventh Supplement or the Bonds is intended or should be construed to confer upon or give to any person other than the City, the Holders, and the Paying Agent/Registrar, any legal or equitable right, remedy, or claim under or by reason of or in respect to this Seventh Supplement or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Seventh 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, the Holders, the Credit Provider, the Liquidity Provider, the Tender Agent, the Remarketing Agent and the Paying Agent/Registrar as herein and therein provided.

SECTION 31: NOTICES TO HOLDERS-WAIVER. Wherever this Seventh Supplement provides for notice to Holders 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 each Holder appearing in the Security Register at the close of business on the Business Day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Seventh Supplement provides for notice in any manner, such notice may be waived in writing by the Holder 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. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 32: GOVERNING LAW. This Seventh Supplement shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 33: HEADINGS; exhibits. The Section headings herein are for convenience only and shall not affect the construction hereof. The Exhibits and Appendix A attached hereto are fully incorporated herein by reference as if fully set forth in this Ordinance.

SECTION 34: CONSTRUCTION OF TERMS. If appropriate in the context of this Seventh 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 35: SEVERABILITY. If any provision of this Seventh Supplement or the application thereof to any circumstance shall be held to be invalid, the remainder of this Seventh Supplement and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Seventh Supplement would have been enacted

without such invalid provision.

SECTION 36: SIGNATURES OF AUTHORIZED OFFICIALS. Any agreement, instrument, certificate or other document which this Seventh Supplement provides may be executed by each Authorized Official or by any Authorized Official shall be deemed conclusively to be duly executed and delivered on behalf of the City, as its act and deed, when it is executed and delivered by any one Authorized Official.

SECTION 37: INSURANCE FOR SERIES 2004 INTEREST RATE SWAP AGREEMENT. The purchase from FSA of insurance (the "Swap Policy") for the City's obligations under the Series 2004 Interest Rate Swap Agreement is hereby approved in accordance with the terms of the commitment for insurance issued by FSA, and such modifications thereto and such other terms as any Authorized Official may approve. Each Authorized Official is authorized to execute and deliver any and all documents necessary to accomplish the purchase of such insurance.

(a) The City shall reimburse FSA amounts paid under the Swap Policy and all costs of collection thereof and enforcement of the City's obligations under the Series 2004 Interest Rate Swap Agreement at the Insurer Payment Rate. "Insurer Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, N.A. ("Chase") at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by Chase) plus 3 percent, and (ii) the then applicable highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Insurer Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event that Chase ceases to announce its Prime Rate publicly, Prime Rate shall be the publicly announced prime or base lending rate of such national bank as FSA shall specify.

SECTION 38: INSURANCE FOR BONDS. The Bonds have been sold with the principal of and interest thereon being insured by FSA pursuant to a municipal bond insurance policy (the "Bond Policy"). In accordance with the terms and conditions applicable to insurance provided by FSA, the City covenants and agrees that, in the event the principal and interest due on the Bonds shall be paid by FSA pursuant to the policy referred to this Section, the assignment and pledge of all funds and all covenants, agreements and other obligations of the City to the Holders shall continue to exist and FSA shall be subrogated to the rights of such Holders; and furthermore, the City covenants and agrees that:

(a) Consent of FSA where Holder Consent Required. FSA shall be deemed to be the holder of the Bonds insured by FSA at all times for the purpose of the execution and delivery of any amendment, waiver, change or modification of this Seventh Supplement or the initiation by Holders of any action to be taken under this Seventh Supplement at the Holder's request other than consenting on behalf of the Holders to an amendment described in Section 17(a)(1)-(7), which under this Seventh Supplement requires the written approval or consent of or can be initiated by the Holders of a majority in aggregate principal amount of the Bonds at the time Outstanding.

(b) No Defeasance. In the event that the principal and redemption price, if applicable, and interest due on the Bonds shall be paid by FSA pursuant to the policy referred to in this Section, all covenants, agreements and other obligations of the City to the Holders shall continue to exist and FSA shall be subrogated to the rights of such Holders.

(c) Notices to be Given to FSA. While the Bond Policy is in effect, the City shall furnish to FSA:

(1) Annual audited financial statements within [120] days after the end of the City's fiscal year and the City's annual budget within [30] days after the approval thereof;

(2) Notice of any draw upon the Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the required reserve fund balance and (ii) withdrawals in connection with a payment or refunding of Bonds;

(3) Notice of any default within five Business Days after knowledge thereof;

(4) Prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(5) Notice of the resignation or removal of the Paying Agent/Registrar and the appointment of, and acceptance of duties by, any successor thereto;

(6) the commencement of any proceeding by or against the City commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(7) the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds;

(8) A full original transcript of all proceedings relating to the execution of any amendment or supplement to the Master Ordinance; and

(9) All reports, notices and correspondence to be delivered [to a NRMSIR or SID] under the terms of the Master Ordinance.

The City will permit FSA to discuss the affairs, finances and accounts of the City, or any information FSA may reasonably request regarding the security for the Bonds with appropriate officers of the City. The City will permit FSA to have access to and make copies of all books and records relating to the Bonds at any reasonable time.

(d) Consent of FSA. Any provision of this Ordinance expressly recognizing or granting rights in or to FSA may not be amended in any manner which affects the rights of FSA hereunder without the prior written consent of FSA. Furthermore, anything in this Ordinance to the contrary notwithstanding, upon the occurrence and continuance of an event of default, FSA shall be entitled to control and direct the enforcement of all rights and remedies granted to the Holders of the Bonds for the benefit of such Holders.

(e) Concerning the Bond Policy. As long as the Bond Policy shall be in full force and effect, the City agrees to comply with the following provisions:

(1) If, on the business day prior to the related scheduled interest

payment date or principal payment date or the date to which Bond maturity has been accelerated ("Payment Date") there is not on deposit with the Paying Agent/Registrar, after making all transfers and deposits required under the Master Ordinance, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent/Registrar shall make a claim under the Bond Policy and shall give notice to FSA and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to FSA and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such Business Day by filling in the form of *Notice of Claim and Certificate delivered with the Bond Policy*.

(2) In the event the claim to be made is for a mandatory sinking fund redemption installment, upon receipt of the moneys due, the Paying Agent/Registrar shall authenticate and deliver to affected Holders who surrender their Bonds a new Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered. The Paying Agent/Registrar shall designate any portion of payment of principal on Bonds paid by FSA, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Holder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to FSA, registered in the name of Financial Security Assurance Inc., in a principal amount equal to the amount of principal paid (without regard to authorized denominations); provided that the Paying Agent/Registrar's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the City on any Bond or the subrogation rights of FSA.

(3) The Paying Agent/Registrar shall keep a complete and accurate record of all funds deposited by FSA into the Policy Payments Account and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. FSA shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent/Registrar.

(4) Upon payment of a claim under the Bond Policy the Paying Agent/Registrar shall establish a separate special purpose trust account for the benefit of Holders referred to herein as the "Policy Payments Account" and over which the Paying Agent/Registrar shall have exclusive control and sole right of withdrawal. The Paying Agent/Registrar shall receive any amount paid under the Bond Policy in trust on behalf of Holders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent/Registrar to Holders in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

(5) Funds held in the Policy Payments Account shall not be invested

by the Paying Agent/Registrar and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent/Registrar.

(6) Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to FSA.

(7) FSA shall, to the extent it makes a payment of principal of or interest on Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Policy, and to evidence such subrogation (i) in the case of subrogation as to claims for past due interest, the City shall cause the Paying Agent/Registrar to note FSA's rights as subrogee on the registration books of the City maintained by the Paying Agent/Registrar upon receipt from FSA of proof of the payment of interest thereon to the registered owners of the Bonds, and (ii) in the case of subrogation as to claims for past due principal, the City shall cause the Paying Agent/Registrar to note FSA's rights as subrogee on the registration books of the City maintained by the Paying Agent/Registrar upon surrender of the Bonds by the registered owners thereof together with proof of the payment of principal thereof.

(8) FSA shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the City (as such terms are defined in the Bond Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with the Master Ordinance, whether or not FSA has received a Notice (as defined in the Bond Policy) of Nonpayment or a claim upon the Bond Policy.

SECTION 39: notice to fsa. The notice address of FSA is: Financial Security Assurance Inc., 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director – Surveillance -- Re: Policy No. _____ Telephone: (212) 826-0100; Telecopier: (212) 339-3529. In each case in which notice or other communication refers to an Event of Default then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

SECTION 40: PUBLIC MEETING. It is officially found, determined, and declared that the meeting at which this Seventh 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 Seventh Supplement, was given; all as required by V.T.C.A., Government Code, Chapter 551, as amended.

SECTION 41: EFFECTIVE DATE. This Seventh Supplement 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.

PASSED AND ADOPTED, this August 12, 2004.

CITY OF AUSTIN, TEXAS

ATTEST:

Mayor

City Clerk

APPROVED:

(City Seal)

City Attorney

Exhibit A
Refunded Obligations

[TO BE REVISED]

Bond	Maturity Date	Called Par Amount	Call Date	Call Price
City of Austin, Texas Combined Utility System Revenue Refunding Bonds, Series 1993				
	11/15/2004	2,780,000		
	11/15/2005	6,000,000		
	05/15/2006	700,000		
	11/15/2006	7,415,000		
	11/15/2013	13,605,000		
	05/15/2018	<u>20,925,000</u>	08/18/2004	100.00
		51,425,000		
City of Austin, Texas Combined Utility System Revenue Refunding Bonds, Series 1993A				
	11/15/2005	5,000	08/18/2004	101.000
	05/15/2006	445,000	08/18/2004	101.000
	11/15/2006	2,275,000	08/18/2004	101.000
	05/15/2007	2,390,000	08/18/2004	101.000
	11/15/2007	2,050,000	08/18/2004	101.000
	11/15/2013	5,535,000	08/18/2004	101.000
	05/15/2016	<u>4,720,000</u>	08/18/2004	101.000
		17,420,000		
City of Austin, Texas Combined Utility System Revenue Refunding Bonds, Series 1994				
	05/15/2009	5,000	11/15/2004	102.000
	05/15/2010	5,000	11/15/2004	102.000
	05/15/2011	5,000	11/15/2004	102.000
	05/15/2012	440,000	11/15/2004	102.000
	05/15/2013	2,900,000	11/15/2004	102.000
	05/15/2014	5,945,000	11/15/2004	102.000
	05/15/2016	28,315,000	11/15/2004	102.000
	05/15/2024	<u>33,815,000</u>	11/15/2004	102.000
		71,430,000		

City of Austin, Texas Subordinate Lien Revenue Bonds,
Series 1994

11/15/2004	165,000	08/18/2004	100.000
11/15/2005	170,000	08/18/2004	100.000
11/15/2006	180,000	08/18/2004	100.000
11/15/2007	190,000	08/18/2004	100.000
11/15/2008	200,000	08/18/2004	100.000
11/15/2009	210,000	08/18/2004	100.000
11/15/2010	220,000	08/18/2004	100.000
11/15/2011	235,000	08/18/2004	100.000
11/15/2012	245,000	08/18/2004	100.000
11/15/2013	260,000	08/18/2004	100.000
11/15/2014	<u>270,000</u>	08/18/2004	100.000
	2,345,000	08/18/2004	100.000

Exhibit B

Definitions

That, as used in this Seventh Supplement, the following terms shall have the meanings set forth below, unless the text hereof specifically indicates otherwise:

"Authorized Official" means each of the Mayor, the City Manager, the Treasurer and the Chief Financial Officer of the City.

"Bonds" means the "CITY OF AUSTIN, TEXAS, WATER AND WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES 2002B" authorized for issuance by the Seventh Supplement.

"Business Day" has the meaning set forth in Appendix A.

"Credit Facility" has the meaning set forth in Appendix A.

"Credit Provider" has the meaning set forth in Appendix A.

"FSA" means Financial Security Assurance, Inc.

"Insurance Agreement" means _____.

"Liquidity Facility" has the meaning set forth in Appendix A.

"Liquidity Provider" has the meaning set forth in Appendix A.

"Master Ordinance" means Ordinance No. 000608-56A providing for the issuance of "Parity Water/Wastewater Obligations," as defined therein, passed by the City on June 8, 2000.

"Mode" has the meaning set forth in Appendix A.

"Opinion of Counsel" means a written opinion of counsel who may (except as otherwise expressly provided in this Bond Indenture) be counsel for the City, and, when given with respect to the status of interest on any Bond under federal income tax law, means counsel of nationally recognized standing in the field of municipal bond law. Any requirement for an Opinion of Counsel may be satisfied if the required opinions are delivered separately by different firms or by one firm, so long as, taking all the opinions together, the requirement is met.

"Paying Agent/Registrar" means the financial institution specified in Section 4 of the Seventh Supplement.

"Previously Issued Parity Water/Wastewater Obligations" mean 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," (6) "City of Austin, Texas, Water And Wastewater System

Revenue Refunding Bonds, Series 2003," and (7) the City's obligations to make regularly scheduled payments under the Series 2004 Interest Rate Swap Agreement authorized for issuance by the Prior Supplements.

"Prior Supplements" mean Ordinances Nos. 000608-56B, 010419-77, 011129-65, 020718-15, 030206-35, and 040617-45 authorizing the issuance of the Previously Issued Parity Water/Wastewater Obligations.

"Reserve Fund Policy" has the meaning set forth in Section 14 of the Seventh Supplement.

"Security Register" shall have the meaning given said term in Section 4 of the Seventh Supplement.

"Series 2004 Insurance Obligation" means each obligation of the City to make a payment to FSA as required under the Seventh Supplement, the Insurance Agreement, or under principles of law related to subrogation or suretyship relating to the Reserve Fund Policy, the Bond Policy or the Swap Policy.

"Series 2004 Interest Rate Swap Agreement" means that certain interest rate exchange agreement entered into between the City and JPMorgan Chase Bank consisting of the 1992 ISDA Master Agreement, dated as of June 17, 2004, the Confirmation between such parties dated as of July 2, 2004, and the Schedules and Credit Support Annex attached thereto.

"Series 2004 Liquidity Agreement" means that certain Standby Bond Purchase Agreement dated as of August 12, 2004 between the City and the Liquidity Provider.

"Seventh Supplement" means Ordinance No. [040812-___] authorizing the issuance of the Bonds.

"Swap Policy" has the meaning set forth in Section 37 of the Seventh Supplement.

Exhibit C

Paying Agent/Registrar Agreement

Exhibit D
Insurance Agreement

Exhibit E

Continuing Disclosure Requirements Under the Rule

Exhibit F

Bond Purchase Agreement

Exhibit G

Form of Notice of Redemption

Exhibit H
Escrow Agreement

Draft – July 18 2004

APPENDIX A
TO ORDINANCE NO. 040812-_____

CITY OF AUSTIN
WATER AND WASTEWATER SYSTEM
[variable rate demand]
REVENUE REFUNDING BONDS, SERIES 2004

august 12, 2004

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LIST OF EXHIBITS

- Exhibit 1 - Form of Variable Rate Bond
- Exhibit 2 - Form of Fixed Rate Bond
- Exhibit 3 - Remarketing Agreement
- Exhibit 4 - Tender Agent Acceptance Letter
- Exhibit 5 - Initial Liquidity Facility

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ARTICLE 1

GENERAL

Section 1.01 **Scope**. This Appendix A, dated August 12, 2004, to the City of Austin, Texas (the "City") Ordinance No. 040812-__, August 12, 2004 (the "Seventh Supplement," which term includes any and all subsequent amendments to said Ordinance), pertains to the Bonds as defined in the Seventh Supplement. This Appendix A and other portions of the Seventh Supplement are intended to be construed together as one document; provided, however, that in the event of a conflict between the terms of this Appendix A and the terms of other provisions of the Seventh Supplement with respect to the Bonds, the terms of this Appendix A shall control.

All references to this Appendix A shall be deemed to include the Exhibits hereto. Section references herein shall be to this Appendix A unless otherwise specified.

Section 1.02 **Definitions**. In addition to the words and terms defined in the Seventh Supplement, the following terms have the following meanings unless the context clearly requires otherwise. All references in this Appendix A to designated "Articles," "Sections," "Exhibits," and other provisions are to the designated Articles, Sections, Exhibits, and other provisions of this Appendix as originally executed.

"Alternate Credit Facility" or "Alternate Liquidity Facility" means a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security or liquidity instrument, as the case may be, issued in accordance with the terms hereof as a replacement or substitute for any Credit Facility or Liquidity Facility, as applicable, then in effect.

[To be Revised] "Alternate Rate" means, on any Rate Determination Date, for any Mode, of the Bonds, a rate per annum equal to (a) the BMA Municipal Swap Index of Municipal Market Data, formerly the PSA Municipal Swap Index (as such term is defined in the 1992 ISDA U.S. Municipal Counterparty Definitions) (the "BMA Rate") most recently available as of the date of determination, or (b) if such index is no longer available, or if the BMA Rate is no longer published, the Kenny Index (as such term is defined in the 1992 ISDA U.S. Municipal Counterparty Definitions), or if neither the BMA Rate or the Kenny Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Bond Market Association to determine the BMA Rate just prior to which the Bond Market Association stopped publishing the BMA Rate. The Tender Agent shall make the determinations required by this determination, upon notification from the City, if there is no Remarketing Agent or if the

Remarketing Agent fails to make any such determination.

“Authorized Denominations” mean (1) with respect to Bonds in a Short-Term Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof, and (2) with respect to Bonds in a Long-Term Mode, \$5,000 and any integral multiple thereof.

“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.

“Available Money” means (i) money continuously held by the Paying Agent/Registrar for a period of at least 91 days and not commingled with any money so held for less than said period and during which period no petition in bankruptcy was filed by or against, and no receivership, insolvency, assignment for the benefit of creditors or other similar proceeding has been commenced by or against the City, unless such petition or proceeding was dismissed and all applicable appeal periods have expired without an appeal having been filed, (ii) investment income derived from the investment of moneys described in clause (i) or (iii) any money with respect to which an opinion of nationally recognized bankruptcy counsel has been received by the Paying Agent/Registrar to the effect that payments by the Paying Agent/Registrar in respect of the Bonds derived from such moneys would not constitute transfers avoidable under 11 U.S.C. §547(b) and recoverable from the Holders under 11 U.S.C. §550(a) should the City be the debtor in a case under Title 11 of the United States Code, as amended.

“Bank” means _____.

“Book-Entry System” means the book entry system of registering ownership described in Section 7 of the Seventh Supplement.

“Business Day” means any business day other than a Saturday or Sunday or a day on which the Tender Agent (if applicable), Paying Agent/Registrar, Remarketing Agent (if applicable), Credit Provider (if applicable), or Liquidity Provider (if applicable) are required or authorized by law or executive order to be closed or on which The New York Stock Exchange is closed.

“City Consent,” “City Order,” and “City Request” mean, respectively, a written consent, order or request signed in the name of the City by any official of the City and delivered to the Notice Parties.

“Credit Agreement” means any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement, by and between the City and the Credit Provider or Liquidity Provider, as applicable. Initially, there is no Credit Agreement between the City and FSA.

“Credit Facility” means a direct-pay letter of credit, standby bond purchase agreement, 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 FSA Policy.

“Credit Facility Failure” or “Liquidity Facility Failure” means a failure of the Credit Provider or Liquidity Provider, as applicable, to pay or honor a properly presented and conforming draw, claim or request for advance under the Credit Facility or Liquidity Facility, as applicable, or the filing or commencement of any bankruptcy or insolvency proceedings by or against the Credit Provider or Liquidity Provider, as applicable, or the Credit Provider or Liquidity Provider, as applicable, shall declare a moratorium on the payment of its unsecured debt obligations or shall repudiate the Credit Facility or Liquidity Facility, as applicable.

“Credit Provider” means 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 Provider is FSA.

“Current Mode” means the Mode then prevailing with respect to the Bonds.

“Designated Day” means a day of the week designated by the Remarketing Agent in connection with a change in Mode as a day on which a particular action is to occur. It is recognized that different days of the week may be “Designated Days” for different actions.

“Electronic Means” mean 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.

“Event of Bankruptcy” means the commencement of a voluntary or involuntary bankruptcy proceeding under Title 11 U.S.C. against the City as debtor or the commencement of an insolvency or similar proceeding under any state law against either the City as debtor.

“Excluded Person” means the City and any affiliate or “insider” of the City, as defined in Section 101(31) of the United States Bankruptcy Code, Title 11, U.S.C., of any of the foregoing; any member, officer, director or controlling person in any capacity of the City or any affiliate or insider of any of the foregoing; and any person who purchases using funds provided by or obtained from or through any of the foregoing.

“Expiration Date” means the stated expiration date of the Credit Facility or the Liquidity Facility, as it may be extended from time to time as provided in the Credit Facility or the Liquidity Facility, or any earlier date on which the Credit Facility or the Liquidity Facility shall terminate, expire or be cancelled or which is identified by the City in writing to the Notice Parties as a date on which the Credit Facility or the Liquidity Facility may expire, terminate or be cancelled.

“Federal Funds Rate” means for any day the rate of interest per annum as determined by the Liquidity Provider at which overnight federal funds are offered to the Liquidity Provider from time to time in the interbank market. Each determination of the Federal Funds Rate by the Liquidity Provider shall be conclusive and binding on the City except in the case of manifest error.

“Fitch” means Fitch, Inc., a corporation organized and existing under 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 "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City after consultation with the Remarketing Agent.

"Fixed Mode" means the Mode during which the Bonds bear interest at the Fixed Rate.

"Fixed Rate" means the per annum interest rate on Bonds in the Fixed Mode determined pursuant to Section 2.06.C.

"Fixed Rate Bond" means a Bond in the Fixed Mode.

"Fixed Rate Period" means for the Bonds in the Fixed Mode, the period from the Mode Change Date upon which the Bonds were converted to the Fixed Mode to but not including the Stated Maturity for the Bonds.

"Flexible Mode" means the Mode during which the Bonds bear interest at the Flexible Rate.

"Flexible Rate" means the per annum interest rate on Bonds in the Flexible Mode determined pursuant to Section 2.06.B.

"Flexible Rate Bond" means a Bond in the Flexible Mode.

"Flexible Rate Period" means for the Bonds in the Flexible Mode, the period from the Mode Change Date upon which the Bonds were converted to the Flexible Mode through the last day in such period as established pursuant to Section 2.06.B.

"FSA" means *Financial Security Assurance, Inc.*, a New York-domiciled insurance corporation.

"FSA Policy" means the municipal bond insurance policy issued by FSA in respect of the Bonds.

"Interest Accrual Period" means the period during which a Bond accrues interest payable on the next Interest Payment Date applicable thereto. Each Interest Accrual Period shall commence on (and include) the last Interest Payment Date to which interest has been paid (or, if no interest has been paid in such Mode, from the date of original authentication and delivery of the Bonds, or the Mode Change Date, as the case may be) to, but not including, the Interest Payment Date on which interest is to be paid. If, at the time of authentication of any Bond, interest is in default or overdue on such Bond, such Bond shall bear interest from the date to which interest has previously been paid in full or made available for payment in full on such Bonds.

"Interest Payment Date" means each date on which interest is to be paid on a Bond and is (1) with respect to the Bonds in the Weekly Mode or the Monthly Mode, the 15th day of each month, commencing September 15, 2004; (2) with respect to the Bonds in a Long-Term Mode the **[fifteenth day of the sixth calendar month] [Each May 15 and November 15 commencing on the first of such dates that is at least six months]** following the month in

which such Long-Term Mode takes effect, **[and the first day of each sixth calendar month thereafter]** or, upon the receipt by the City of an Opinion of Counsel that such other six month interval will not affect the exemption from federal income taxation of interest on any Outstanding Bond, any other six-month interval chosen by the City (beginning with the first such day which is at least three months after the Mode Change Date) and, with respect to Bonds in a Term Mode, the first Business Day after the final day of the current Interest Period, if other than a regular six-month interval; (3) (without duplication as to any Interest Payment Date listed above) any Mode Change Date, other than a change between a Monthly Mode and a Weekly Mode, and each Stated Maturity; (4) with respect to Bonds in a Flexible Rate Mode the first Business Day after the last day of a Flexible Rate Period; and (5) with respect to any Liquidity Provider Bonds, the day set forth in the Credit Agreement.

“Interest Period” means, for the Bonds in a particular Mode, the period of time that the Bonds bear interest at the rate (per annum) which becomes effective at the beginning of such period, and may be a Monthly Rate Period, a Weekly Rate Period, a Flexible Rate Period, a Term Rate Period or a Fixed Rate Period. Initially, the Interest Period for the Bonds is the Weekly Rate Period.

“Liquidity Facility” means any letter of credit, line of credit, standby purchase agreement or other instrument then in effect which provides for the purchase of the Bonds upon the tender thereof in the event remarketing proceeds are insufficient therefor. The initial Liquidity Facility for the Bonds is the Standby Bond Purchase Agreement dated as of August 1, 2004 between the City and Bank Name attached as Exhibit 5 hereto.

“Liquidity Facility Failure” – see “Credit Facility Failure” defined above.

“Liquidity Provider” means any bank, insurance company, pension fund or other financial institution which provides a Liquidity Facility or Alternate Liquidity Facility for the Bonds. The initial Liquidity Provider is Bank Name.

“Liquidity Provider Bonds” mean any Bonds held by or for the benefit of the Liquidity Provider (or its assignee) following purchase of such Bonds with funds drawn on or advanced under the Liquidity Facility.

“Liquidity Provider Bonds Rate” has the meaning set forth in Section 2.02.

“Long-Term Interest Period” means a Term Rate Period or a Fixed Rate Period.

“Long-Term Mode” means a Term Mode with a duration of more than one year or a Fixed Mode.

“Mandatory Tender Date” means each of the following:

(1) for Bonds in the Term Mode, the first Business Day following the last day of each Term Rate Period,

(2) each Mode Change Date, except in connection with a change in Mode

between the Monthly Mode and the Weekly Mode,

- (3) any Substitution Date,
- (4) the Seventh Business Day prior to any Expiration Date (but there shall be no separate mandatory tender in respect of an Expiration Date if notice has been given of a mandatory tender that will occur prior to the Expiration Date and the Bonds will not subsequently be remarketed under the Liquidity Facility that is expiring),
- (5) the tenth day after the Tender Agent's receipt of notice of an event of default under the Credit Facility, Liquidity Facility, or Credit Agreement, as applicable,
- (6) the earlier of the tenth day after an Event of Bankruptcy or the first Interest Payment Date that occurs on or after an Event of Bankruptcy,
- (7) the tenth day after any default in the payment of any interest upon any Bond when such interest becomes due and payable or after any default in the payment of any Purchase Price when due or any principal of (or premium, if any, on) any Bond at its Maturity, and
- (8) each date established by the City for mandatory tender pursuant to Section 2.10.C.

Each Mandatory Tender Date must be a Business Day. If a Mandatory Tender Date described above would not be a Business Day, then the Mandatory Tender Date shall be the immediately preceding Business Day.

"Mandatory Tender Notice" means a notice delivered by Electronic Means or in writing to the Holders of all Bonds pursuant to Section 2.10 that states (i) that all Bonds are to be purchased, (ii) the Mandatory Tender Date on which such Bonds are to be purchased, and (iii) applicable instructions with respect to such purchase and the tender of Bonds for payment of the Purchase Price.

"Maximum Interest Rate" means 12% per annum.

"Mode" means, as the context may require, the Monthly Mode, the Weekly Mode, the Flexible Mode, the Term Mode or the Fixed Mode.

"Mode Change Date" means, with respect to Bonds in a particular Mode, the day on which another Mode for the Bonds begins, and includes a date on which Bonds in the Term Mode are the subject of a change from one Term Rate Period to another Term Rate Period.

"Mode Change Notice" means the notice from the City to the other Notice Parties of the City's intention to change the Mode with respect to the Bonds.

"Monthly Mode" means the Mode during which the Bonds bear interest at the Monthly Rate.

“Monthly Rate” means the per annum interest rate on Bonds in the Monthly Mode determined pursuant to Section 2.05.

“Monthly Rate Period” means the period during which a Bond in the Monthly Mode shall bear a Monthly Rate, which shall be the period commencing on each Interest Payment Date and ending the day before each Interest Payment Date, except the first Monthly Rate Period which shall be from the immediately preceding Mode Change Date or date of initial issuance of such Bond, as applicable, to, but not including, the following Interest Payment Date.

“Moody’s” means Moody’s Investors Service, 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.

“New Mode” means a change in the Mode from the Mode then prevailing with respect to the Bonds to another Mode.

“Notice Parties” mean the City, each Rating Agency, the Paying Agent/Registrar, and, to the extent there exists a Person in any of the following capacities with respect to the Bonds: the Tender Agent, the Remarketing Agent, the Credit Provider, and the Liquidity Provider.

“Officers’ Certificate” means a certificate signed for the City, by any official of the City and delivered to the Notice Parties.

“Optional Tender Notice” means a notice delivered by Electronic Means or in writing to the [Tender/Remarketing] Agent that states (1) the principal amount of such Bond to be purchased pursuant to Section 2.09 hereof, (2) the Purchase Date on which such Bond is to be purchased, and (3) applicable payment instructions with respect to the Bonds being tendered for purchase.

“Purchase Date” means (i) for a Bond in the Monthly Mode or the Weekly Mode, any Business Day selected by the Holder of said Bond pursuant to the provisions of Section 2.09 hereof, and (ii) any Mandatory Tender Date.

“Purchase Fund” means the fund by that name created in Article Four.

“Purchase Price” means an amount equal to (1) the principal amount of any Bonds purchased on any Purchase Date, plus (2) in the case of any purchase of Bonds in the Monthly Mode or the Weekly Mode and Bonds purchased on a Mandatory Tender Date that is not an Interest Payment Date, accrued interest, if any.

“Rate Determination Date” means any date on which the interest rate on Bonds shall be determined, which after the Initial Term Rate Period means, (1) in the case of the Monthly Mode, shall be the Business Day immediately preceding the first day of the applicable Monthly Period; provided that the initial Monthly Rate shall be established as provided in Section 2.01;

(2) in the case of the initial conversion to the Weekly Mode, shall be no later than the Business Day prior to the Mode Change Date, and thereafter, shall be the Business Day next preceding the applicable Designated Day (the initial Designated Day for the Weekly Rate Period being each Thursday); (3) in the case of a Term Mode, shall be a Business Day no earlier than seven (7) Business Days and no later than the Business Day next preceding the first day of an Interest Period, as determined by the Remarketing Agent; (4) in the case of the Flexible Rate Mode shall be the Business Day immediately prior to the commencement of each Flexible Rate Period; and (5) in the case of the Fixed Mode, shall be a date determined by the Remarketing Agent which shall be at least one Business Day prior to the Mode Change Date.

“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 Fitch, 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 one or more Series of 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.

“Regular Record Date” means, with respect to Bonds in a Short-Term Mode, means the last Business Day before an Interest Payment Date. With respect to Bonds in a Fixed Mode, “Regular Record Date” means the last day (whether or not a Business Day) of the month next preceding each Interest Payment Date. With respect to Bonds in a Term Mode, the “Regular Record Date” means the Business Day before each Interest Payment Date.

“Remarketing Agent” means any investment banking firm appointed to such Position as provided in Section 3.01.

“Remarketing Agreement” means a remarketing agreement between the City and the applicable Remarketing Agent, as it may be amended or supplemented from time to time in accordance with its terms.

“Remarketing Proceeds Account” means the account by that name created in Article Four.

“Securities Depository” means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax – (516) 227-4039 or (516) 227-4190 or such other securities depository as the City may designate with respect to the Bonds by City Order.

“Serial Bonds” mean the Bonds maturing on the Serial Stated Maturities, as determined pursuant to Section 2.08(B) hereof.

“Serial Stated Maturities” mean the dates on which the Serial Bonds mature, as determined pursuant to Section 2.08(B) hereof.

“Serial Payments” mean the payments to be made in payment of the principal of the Serial Bonds on the Serial Stated Maturities.

“Short-Term Mode” means the Weekly Mode, the Monthly Mode, the Flexible Rate, Mode, or a Term Mode with a duration of one year or less.

“Short Term Interest Period” means a Weekly Rate Period, a Monthly Rate Period, a Flexible Rate Period or a Term Rate Period with a duration of one year or less.

“Standard & Poor’s” means Standard & Poor’s, a division of the McGraw-Hill Companies, 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.

“Stated Maturity” means the Stated Maturity specified in Section 3 of the Seventh Supplement or if established pursuant to Section 2.08 hereof upon a change to the Fixed Mode, any Serial Stated Maturity, and any date upon which principal of a Bond becomes due, whether by means of redemption, acceleration of maturity or otherwise.

“Substitution Date” means the date upon which an Alternate Credit Facility or Alternate Liquidity Facility is substituted for the Credit Facility or Liquidity Facility then in effect.

“Tender Agent” means a commercial bank, trust company or other entity which may from time to time be appointed by the City to serve as Tender Agent for the Bonds. Until such time as an alternate Tender Agent is appointed, the Tender Agent shall be the Bank of New York, New York, New York.

“Tender Notice Deadline” means,

(1) during the Monthly and Weekly Rate Periods, with respect to a Mandatory Tender Notice,

(a) no less than fifteen days prior to the Mandatory Tender Date on a Substitution Date or Expiration Date (but no notice need be given in respect of an Expiration Date if notice has been given of a mandatory tender that will occur prior to the Expiration Date and the Bonds will not subsequently be remarketed under the Liquidity Facility that is expiring);

(b) no less than **[five/one]** day[s] prior to the Mandatory Tender Date (i) following receipt by the Paying Agent/Registrar/Registrar of notice of an event of default under the Credit Agreement, Credit Facility or Liquidity Facility, as applicable, (ii) after any default in the payment of any interest upon any Bond when such interest becomes due and payable or after any default in the payment

of any Purchase Price when due or any principal of (or premium, if any, on) any Bond at its Maturity, and (iii) following a declaration of acceleration of the Bonds (if such be permitted by subsequent amendment to the Seventh Supplement); and

(c) no less than **[five/one]** day[s] prior to a Mandatory Tender Date caused by an Event of Bankruptcy, unless the Mandatory Tender Date occurs on or less than ten days after the Event of Bankruptcy, in which case the Tender Notice Deadline shall be as soon as practicable, but in no event later than the Business Day after the Mandatory Tender Date; and

(2) during the Monthly and Weekly Rate Periods, with respect to an Optional Tender Notice **[3]**:00 p.m., New York City time on any Business Day that is at least seven (7) days prior to the specified Purchase Date.

“Term Mode” means the Mode during which the Bonds bear interest at the Term Rate.

“Term Rate” means the per annum interest rate for Bonds in the Term Mode determined pursuant to Section 2.06 hereof.

“Term Rate Period” means, with respect to a Bond in the Term Mode, the period from (and including) the immediately preceding Mode Change Date, as applicable, to (but excluding) the last day of the first period that the Bonds shall be in the Term Mode as established by the City for the Bonds pursuant to Section 2.08(A) hereof and, thereafter, the period from (and including) the beginning date of each successive Interest Rate Period selected for the Bonds by the City pursuant to Section 2.06(A) while it is in the Term Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period.

“Variable Rate Period” means a Monthly Rate Period or a Weekly Rate Period.

“Weekly Mode” means the Mode during which the Bonds bear interest at the Weekly Rate.

“Weekly Rate” means the per annum interest rate on Bonds in the Weekly Mode determined pursuant to Section 5.05 hereof.

“Weekly Rate Period” means the period during which a Bond in the Weekly Mode shall bear a Weekly Rate, which shall be the period commencing on the applicable Designated Day of each week to, but not including, the applicable Designated Day of the following week, except the first Weekly Rate Period which shall be from the immediately preceding Mode Change Date or date of initial issuance of such Bond, as applicable, to, but not including, the applicable Designated Day of the following week and the last Weekly Rate Period which shall be from, but not including, the applicable Designated Day of the week prior to the proposed Mode Change Date to the day next succeeding the proposed Mode Change Date. The Designated Day for the Bonds during the Weekly Rate Period shall be Thursday of each week, commencing with the first Thursday that is at least ____ days after the applicable Mode Change Date, or such other day as may be established by the Remarketing Agent with the consent of the City and the Liquidity Provider in connection with the establishment of that rate period.

ARTICLE 2

INTEREST RATES AND CHANGES IN RATES

Section 2.01 **Initial Rate.** From the Bond Date identified in Section 3 of the Seventh Supplement to but not including September 15, 2004, the Bonds shall bear interest at the per annum rate established on the Business Day prior to the Bond Date in accordance with the Bond Purchase Agreement. Thereafter, until a change in Mode, the interest rate on the Bonds shall be established as provided in Section 2.05.

Section 2.02 **Liquidity Provider Bonds.**

A. Liquidity Provider Bonds shall bear interest at the Liquidity Provider Bonds Rate for the period commencing from the date that the Liquidity Provider shall have purchased such Bond or advanced funds for such purpose and, subject to Subsection 2.02B below and the last sentence of this Subsection 2.02B(1), continuing until the Liquidity Provider (or a purchaser from the Liquidity Provider pursuant to Subsection 2.02B) shall no longer be the owner of such Bond. The Liquidity Provider Bonds Rate shall be payable on the first Business Day of each calendar month and at any time shall be equal to *[We will copy or reference here the provisions from the Standby]*; but the Liquidity Provider Bonds Rate paid on all Bonds held by the Liquidity Provider hereunder for any interest period shall not exceed the Maximum Interest Rate. With respect to any Liquidity Provider Bonds which the Liquidity Provider (or any purchaser from the Liquidity Provider pursuant to Subsection 2.02B) elects not to sell to the Remarketing Agent (or to Persons identified by the Remarketing Agent), the Liquidity Provider Bonds Rate for such Bonds commencing on the day the Liquidity Provider or any purchaser from the Liquidity Provider pursuant to Subsection 2.02B so elects not to sell such Bonds shall be equal to the interest rate applicable to Bonds other than Liquidity Provider Bonds.

(1) **Payment of Liquidity Provider Bonds.** *[We will copy or reference here the provisions of the Standby Bond Purchase Agreement relating to payment of Liquidity Advances and Term Loans.]*

B. **Right To Sell Bonds.** The Liquidity Provider may sell, to the extent permitted by law, at any time, Liquidity Provider Bonds (upon notice to the purchasers thereof that no rating will be applicable to such Liquidity Provider Bonds if no rating will be applicable to such Liquidity Provider Bonds); provided that Liquidity Provider Bonds may only be sold pursuant to this Subsection 2.02B subject to the limitation that they may not again be sold, assigned or otherwise disposed of by the Liquidity Provider, beneficially or on the Security Register without the Liquidity Provider obtaining an authorization from the subsequent purchaser that the Remarketing Agent is authorized to sell such Bonds on behalf of such purchaser. All Liquidity Provider Bonds shall be noted indicating the requirement of such authorization. The Liquidity Provider agrees that such sales will be made only to affiliates of the Liquidity Provider or to institutional investors or other entities or individuals which customarily purchase commercial paper or municipal securities in large denominations. After any such sale, the Bonds so sold shall

continue to bear interest at the Liquidity Provider Bonds Rate until such Bonds are resold by the Remarketing Agent or until an election not to sell such Bonds has been made in writing by the Liquidity Provider (or such other purchaser).

Section 2.03 **Conversions.** Upon City Order, all Bonds (in an amount which is an Authorized Denomination for the New Mode) that are not in the Fixed Mode may be converted from the Current Mode to another Mode or, if the Current Mode is the Term Mode, to another Interest Period in the Term Mode; provided, however, that any such conversion shall be made in accordance with the applicable provisions of this Article Two. Subsequent to such change in Mode (other than a change to a Fixed Mode), such Bonds may again be changed to a different Mode at the times and in the manner hereinafter provided. A Fixed Mode shall be in effect until the Stated Maturity, and may not be changed to any other Mode. All the Bonds must be in the same Mode at all times.

Section 2.04 **Calculation and Payment of Interest; Change in Mode; Maximum Interest Rate.** When a Short-Term Mode is in effect, interest on Bonds shall be calculated on the basis of a 365/366 day year for the actual number of days elapsed. When a Long-Term Mode is in effect, interest on Bonds shall be calculated on the basis of a 360 day year comprised of twelve 30-day months. Payment of interest on each Bond in a Short-Term Mode or a Long-Term Mode shall be made on each Interest Payment Date for such Bond for unpaid interest accrued during the Interest Accrual Period to the Holder of record of such Bond on the applicable Regular Record Date. While any Bonds are Liquidity Provider Bonds, such Bonds shall bear interest and be payable at the times and in the amounts required under Section 2.02.

No Bonds shall bear interest at an interest rate higher than the Maximum Interest Rate.

In the absence of manifest error, the determination of interest rates (including any determination of rates in connection with a New Mode) and interest periods by the Remarketing Agent and the record of interest rates maintained by the Paying Agent/Registrar shall be conclusive and binding upon the Remarketing Agent, the Paying Agent/Registrar, the Credit Provider, the Liquidity Provider, the Tender Agent, the City, and the Holders.

Section 2.05 **Determination of Interest Rates During the Monthly Mode and the Weekly Mode.** The interest rate for the Bonds in the Monthly Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of the Bonds in the Monthly Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period.

The Remarketing Agent shall establish each Monthly Rate and Weekly Rate by Noon, New York City time, on the applicable Rate Determination Date. Each rate shall be in effect during the applicable Interest Period. The Remarketing Agent shall make the new rate available [after 5:00 p.m.], New York City time, on the Rate Determination Date by telephone or Electronic Means to the City, the Paying Agent/Registrar and to any Holder requesting such rate.

The Remarketing Agent may also furnish any such Monthly Rate or Weekly Rate to any other Person in the discretion of the Remarketing Agent.

Section 2.06 **Determination of Term Rates; Flexible Rates and Fixed Rates.**

A. **Term Rates.** Each Term Rate shall be determined by the Remarketing Agent not later than Noon, New York City time, on the Rate Determination Date for the applicable Term Rate Period. Each such Term Rate shall be the minimum rate which, in the sole judgment of the Remarketing Agent, would result in a sale of such Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period selected by the City in writing delivered to the Remarketing Agent before such Rate Determination Date. If a new Interest Period is not selected by the City prior to a Rate Determination Date (for a reason other than a court prohibiting such selection), the new Interest Period shall be the same length as the current Interest Period (or such lesser period as shall be necessary to comply with the last sentence of this paragraph). The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means **[after 5:00 p.m.]**, New York City time, on the Rate Determination Date to the City, the Paying Agent/Registrar and any Holder requesting such Term Rate. The Remarketing Agent may also furnish any such Term Rate to any other Person in the discretion of the Remarketing Agent. No Interest Period in the Term Mode may extend beyond the applicable Stated Maturity.

B. **Flexible Rates.** Each Flexible Rate shall be determined by the Remarketing Agent not later than noon, New York City time, on the Rate Determination Date for the applicable Flexible Rate Period. The length of each Flexible Rate Period shall be determined by the City pursuant to a City Order. Each Flexible Rate shall be the minimum rate which, in the sole judgment of the Remarketing Agent, would result in a sale of such Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period. If the length of a new Flexible Rate Period is not selected by the City prior to the applicable Rate Determination Date (for a reason other than a court prohibiting such selection), the new Flexible Rate Period shall be the same length as the then current Flexible Rate Period (or such lesser period as shall be necessary to comply with the last sentence of this paragraph). The Remarketing Agent shall make the Flexible Rate available by telephone or Electronic Means **[after 5:00 p.m.]**, New York City time, on the Rate Determination Date to the City, the Paying Agent/Registrar and any Holder requesting such Flexible Rate. The Remarketing Agent may also furnish any such Flexible Rate to any other Person in the discretion of the Remarketing Agent. No Interest Period in the Flexible Mode may extend beyond the applicable Stated Maturity.

C. **Fixed Rates.** The Remarketing Agent shall determine the Fixed Rate for Bonds being converted to the Fixed Mode in the manner and at the times as follows: not later than Noon, New York City time, on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Rates, if the Bonds will have Serial Stated Maturities in accordance with Section 2.08(B)(5) hereof). Except as set forth in Section 2.08(B)(5) hereof, the Fixed Rate shall be the minimum interest rate

which, in the sole judgment of the Remarketing Agent, will result in a sale of such Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rates available by telephone or by Electronic Means [after 5:00 p.m.], New York City time, on the Rate Determination Date to the City, the Paying Agent/Registrar and any Holder requesting such Fixed Rate. The Remarketing Agent may also furnish any such Fixed Rate to any other Person in the discretion of the Remarketing Agent. Subject to Section 2.08(B)(5), the Fixed Rate so established shall remain in effect until the Stated Maturity of such Bonds.

Section 2.07 **Alternate Rates.** The following provisions shall apply in the event (1) the Remarketing Agent is required to, but fails or is unable to, determine the interest rate or Interest Period for the Bonds, (2) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to the Bonds (or the selection by the City of the Interest Periods for such Bonds in the Term Mode) shall be held to be unenforceable by a court of law of competent jurisdiction or (3) if the Remarketing Agent suspends its remarketing efforts as to the Bonds in accordance with the applicable Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent (or the City if applicable) again makes such determinations or selection and, if applicable, the Remarketing Agent is conducting remarketing efforts in accordance with the applicable Remarketing Agreement. In the case of clause (2) above, the Remarketing Agent (or the City, if applicable) shall again make such determination (or selection) at such time as there is delivered to the Remarketing Agent an Opinion of Counsel to the effect that there are no longer any legal prohibitions against such determinations (or selections). The following shall be the methods by which the interest rates and, in the case of the Term Mode, the Interest Periods, shall be determined for such Bonds as to which either of the events described in clauses (1), (2) or (3) shall be applicable. Such methods shall be applicable from and after the date either of the events described in clauses (1), (2) or (3) first become applicable to the affected Series of Bonds until such time as the events described in clauses (1), (2) or (3) are no longer applicable to such Bonds. These provisions shall not apply if the City fails to select an Interest Period for the Bonds in the Term Mode for a reason other than as described in clause (2) above.

(a) If the Bonds are in the Monthly Mode or the Weekly Mode, then such Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

(b) If the Bonds are in the Term Mode the Term Rate shall be (A) converted to a Weekly Rate Period with a Weekly Rate equal to 100% of the commercial paper rate (thirty (30) days) for the most recent date shown in the table captioned "Short-Term Tax-Exempt Yields" in the edition of *The Bond Buyer* (or if *The Bond Buyer* or such table is no longer published, any other published similar rate as is determined by the City in its sole discretion to be appropriate) published on the day on which such rate is determined or, if such rate is not published on that day, the most recent publication of such rate, with Weekly Rate Periods, until the Remarketing Agent determines a new Weekly Rate for such Bonds, but only if the City delivers to the Paying Agent/Registrar an Opinion of Bond Counsel to the effect that such action will not adversely affect

the excludability of interest on the Bonds from the gross incomes of the owners thereof for federal income tax purposes, or (B) if such Opinion of Bond Counsel is not delivered, converted to a Term Rate for a Term Rate Period ending on the day prior to the first day of the month that is twelve (12) months after the month in which the Remarketing Agent failed to determine such Term Rate, which Term Rate shall be equal to 100% of the one-year rate for the most recent date shown in the table captioned "Short-Term Tax-Exempt Yields" in the edition of *The Bond Buyer* (or if *The Bond Buyer* or such table is not longer published, any other published similar rate as is determined the by City in its sole discretion to be appropriate) published on the day on which such rate is determined or, if such rate is not published on that day, the most recent publication of such rate, until the Paying Agent/Registrar is notified of a new Term Rate and Term Rate Period for such Bonds.

(c) If the Bonds are in the Flexible Mode, the Flexible Rate Period shall be a Weekly Period and the Flexible Rate for such Bond shall be equal to 100% of the commercial paper rate (thirty (3) days) for the most recent date shown in the table captioned "Short-Term Tax-Exempt Yields" in the edition of *The Bond Buyer* (or if *The Bond Buyer* or such table is not longer published, any other published similar rate as is determined by the City in its sole discretion to be appropriate) published on the day on which such rate is determined or, if such rate is not published on that day, the most recent publication of such rate, until the City determines a new Flexible Rate Period and the Remarketing Agent determines a new Flexible Rate for such Bond.

Section 2.08 **Changes in Mode.** Subject to the provisions of this Section, the City, may effect a change in Mode with respect to the Bonds by following the procedures set forth in this Section.

A. **Changes to Modes Other Than Fixed Mode.** The Bonds (other than Bonds in the Fixed Mode) may be changed from one Mode to another Mode (other than the Fixed Mode) as follows:

(1) **Mode Change Notice; Notice to Holders.** No later than a Business Day which is at least 30 days (or such shorter time as may be agreed to by the City, any Tender Agent and the Remarketing Agent) preceding the proposed Mode Change Date, the City shall give written notice to the Notice Parties, of its intention to effect a change in the Mode from the Current Mode to the New Mode specified in such written notice, and, if the change is to a Term Mode, the length of the initial Interest Period as set by the City. In the case of a change to a Term Mode or from one Term Mode to another Term Mode, such notice to the Notice Parties shall also include a statement as to whether there will be a Liquidity Facility and/or Credit Facility in effect with respect to the Bonds following such change and the identity of any provider of such Liquidity Facility and/or Credit Facility. Notice of the proposed change in Mode shall be given by the Tender Agent to the Holders of the Bonds not less than the 15th day next preceding the

Mode Change Date. Such notice shall state: (a) the Mode to which the conversion will be made and the Mode Change Date; (b) except in the case of a change from the Monthly Mode to the Weekly Mode or from the Weekly Mode to the Monthly Mode, that the Bonds will be subject to mandatory tender for purchase on the Mode Change Date and the Purchase Price of the Bonds; and (c) if the Book-Entry System is no longer in effect, information with respect to required delivery of Bond certificates and payment of Purchase Price.

(2) Determination of Interest Rates. The New Mode shall commence on the Mode Change Date and the interest rate(s) (together with, in the case of a change to the Term Mode, with the Interest Period(s)) shall be determined by the Remarketing Agent (or the City) in the manner provided in Sections 2.05, 2.06, 2.07 and 2.08, as applicable.

(3) Conditions Precedent. Conditions precedent are applicable to certain changes in mode to other than the Fixed Mode, as follows:

a. The Mode Change Date shall be:

(i) in the case of a change from the Monthly or Weekly Mode, any Business Day; and

(ii) in the case of a change from the Flexible Rate Mode or the Term Mode to another Mode, or from a Term Rate Period to a Term Rate Period of a different duration, the Mode Change Date shall be limited to any Interest Payment Date on which the Bonds are subject to optional redemption or to the last Interest Payment Date of the current Term Rate Period or Flexible Rate Period, as the case may be. Such Bonds shall be purchased on such Mode Change Date at a Purchase Price equal to 100% of the principal amount thereof, provided that if such Bonds are to be purchased on an Interest Payment Date other than the last Interest Payment Date and would otherwise be subject to optional redemption on such Mode Change Date at a Redemption Price of more than 100% of the principal amount thereof, such Bonds shall be purchased at a Purchase Price equal to such Redemption Price.

b. In the case of a change from any Mode change other than a change between the Monthly Mode and the Weekly Mode, the City must receive on the Mode Change Date an Opinion of Counsel to the effect that the Mode Change will not adversely affect the excludability of interest on the Bonds subject to the change from the gross incomes of the owners thereof for federal income tax purposes;

c. If there is to be an Alternate Liquidity Facility or Alternate Credit Facility delivered in connection with such change, the Remarketing Agent must receive on or prior to the Mode Change Date the items

required by Section 2.17(D) hereof; and

d. On or prior to the Mode Change Date, a Rating Confirmation Notice, unless the Mode Change Date is a Mandatory Tender Date, in which event only a notice from the Rating Agencies of the rating(s) to be assigned the Bonds on such Mode Change Date is required.

B. Change to Fixed Mode. At the option of the City, the Bonds may be changed to the Fixed Mode as provided in this Section 2.08B. On any Business Day which is at least 30 days (or such shorter time as may be agreed to by the City, the Tender Agent and the Remarketing Agent, but in any event not less than the 20th day next preceding the Mode Change Date) before the proposed Mode Change Date, the City shall give written notice to the Notice Parties stating that the Mode will be changed to the Fixed Mode and setting forth the proposed Mode Change Date. Such notice shall also state whether or not there shall be Credit Facility with respect to the Bonds following such change and, if so, the identity of the Credit Provider. In addition, such notice shall state whether some or all of the Bonds to be converted shall be converted to Serial Bonds and, if so, the applicable Serial Stated Maturities and Serial Payments, all as determined pursuant to subsection (5) of this subsection (B). Any such change in Mode shall be subject to the following:

(1) Mode Change Date. The Mode Change Date shall be subject to the following conditions, as applicable:

a. in the case of a change from the Monthly Mode or Weekly Mode, any Business Day; and

b. in the case of a change from the Term Mode or the Flexible Rate Mode, the Mode Change Date shall be limited to any Interest Payment Date on which the Bonds are subject to optional redemption or to the next Mandatory Tender Date for the Term Rate Bonds, as the case may be. Such Bonds shall be purchased on such Mode Change Date at a Purchase Price equal to 100% of the principal amount thereof, provided that if such Bonds would otherwise be subject to optional redemption on such Mode Change Date at a Redemption Price of more than 100% of the principal amount thereof, such Bonds shall be purchased at a Purchase Price equal to such Redemption Price.

(2) Notice to Holders. Not less than the 15th day next preceding the Mode Change Date, the Paying Agent/Registrar shall mail, in the name of the City, a notice of such proposed change to the Holders of the affected Bonds stating that the Mode will be changed to the Fixed Mode, the proposed Mode Change Date and that such Holder is required to tender such Holder's Bonds for purchase on such proposed Mode Change Date.

(3) General Provisions Applying to Change to Fixed Mode. The change to the Fixed Mode shall not occur unless the following items shall have

been delivered to the City and the Remarketing Agent on or prior to the Mode Change Date:

a. an Opinion of Counsel dated the Mode Change Date and addressed to the City and the Remarketing Agent specifying that such mode changes will not adversely affect the excludability of interest on the Bonds subject to the change from the gross incomes of the owners thereof for federal income tax purposes and either specifying that such mode change does not constitute a reissuance for state law purposes requiring the approval of the Attorney General of the State of Texas, or stating that the required approval has been obtained;

b. if there is to be Credit Facility delivered in connection with such change, the items required by Section 2.17D in connection with the delivery of an Alternate Credit Facility, and

c. notice from the Rating Agencies of the rating(s) to be assigned the Bonds on such Mode Change Date.

(4) Determination of Interest Rate. The Fixed Rate (or rates in the case of Serial Bonds) for the Bonds to be converted to the Fixed Mode shall be established by the Remarketing Agent on the Rate Determination Date applicable thereto pursuant to the provisions of Section 2.06B. Such Rate shall remain in effect until the Stated Maturity(ies) of the Bonds.

(5) Serialization and Sinking Fund; Price. Upon conversion of the Bonds to the Fixed Mode, the converted Bonds shall be remarketed at par, shall mature on the same Stated Maturities and be subject to the same mandatory sinking fund redemption, if any, and optional redemption provisions as set forth in the Seventh Supplement for any prior Mode; provided, however, that if the City shall deliver to the Remarketing Agent and the Paying Agent/Registrar an Opinion of Counsel specifying that such actions will not adversely affect the excludability of interest on the Bonds subject to the change from the gross incomes of the owners thereof for federal income tax purposes, the City may elect to (a) have some of the Bonds be Serial Bonds and some subject to sinking fund redemption even if such Bonds were not Serial Bonds or subject to mandatory sinking fund redemption prior to such change, (b) change the optional redemption dates and/or premiums set forth in the Seventh Supplement, and/or (c) sell some or all of the Bonds at a premium or a discount to par.

C. Failure to Satisfy Conditions Precedent to a Mode Change. In the event the conditions described above in subsections A or B, as applicable, of this Section have not been satisfied by the applicable Mode Change Date, then the New Mode shall not take effect (although any mandatory tender shall be made on such date if notice has been sent to the Holders stating that such Bonds would be subject to mandatory tender on such date). If the failed change in Mode was from the Monthly Mode, the Bonds shall remain in the Monthly Mode, and if the failed change in Mode was from the Weekly Mode, the

Bonds shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 2.05 on and as of the failed Mode Change Date. If the failed change in Mode was from the Term Mode, then the Bonds shall stay in the Term Mode with an Interest Period of one year, commencing on the first day following the last day of the current Interest Period for the Bonds and extend to, but exclude, the first Business Day on or after 365 days later and the interest rate for such new Interest Period shall remain the same as during the preceding Interest Period. If the failed change in Mode was from the Flexible Mode, then the Bonds shall stay in the Flexible Mode with a Flexible Rate Period of the same length as the one just ended, commencing on the first day following the last day of the current Interest Period.

D. Rescission of Election. Notwithstanding anything herein to the contrary, the City may rescind any election by it to change a Mode as described above prior to the Mode Change Date by giving written notice thereof to the Notice Parties prior to such Mode Change Date. If the Tender Agent receives notice of such rescission prior to the time it has given notice of the Mode Change Date to the Holders of the affected Bonds, then such notice of change in Mode shall be of no force and effect. If the Tender Agent receives notice from the City of rescission of a Mode change after the Tender Agent has given notice thereof to the Holders of the affected Bonds, then if the proposed Mode Change Date would have been a Mandatory Tender Date, such date shall continue to be a Mandatory Tender Date. If the proposed change in Mode was from the Monthly Mode, the Bonds shall remain in the Monthly Mode, and if the proposed change in Mode was from the Weekly Mode, the Bonds shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 2.05 on and as of the proposed Mode Change Date. If the proposed change in Mode was from the Term Mode, then the Bonds shall stay in the Term Mode for an Interest Period ending on the following Interest Payment Date for the Bonds in the Term Mode and the interest rate shall be established by the Remarketing Agent on the proposed Mode Change Date in accordance with Section 2.06A hereof. If the proposed change in Mode was from the Flexible Mode, then the Bonds shall stay in the Flexible Mode for an interest period of the same length as the one just ended, commencing on the first day following the last day of the current Interest Period. If the Remarketing Agent is unable to determine the interest rate on the proposed Mode Change Date, the provisions of Section 2.07 shall apply.

E. Required Mode Changes. Upon the occurrence of any one of the following events, the Credit Provider may require by written notice that the City to direct a Mode Change to a Term Rate, Flexible Rate or Fixed Rate, as directed by the Credit Provider, of any Bond that is then in a Weekly Mode or Monthly Mode:

- (1) a Liquidity Facility Failure occurs;
- (2) the Liquidity Facility expires or terminates and the City does not provide an alternate Liquidity Facility in accordance with this Appendix A; or
- (3) if the Bonds are held as Liquidity Provider Bonds for forty-five or more consecutive days;

provided, however, that this Section shall not require the City to implement an additional Mode Change if, within thirty days after the occurrence of any of the events set forth above, there will otherwise be a Mode Change in accordance with the terms hereof that provides for the Bonds to be converted to a Flexible Mode, Term Mode or a Fixed Mode.

Section 2.09 **Optional Tenders of Bonds in the Monthly Mode or the Weekly Mode.**

A. Subject to Section 2.18, the Holders of Bonds (other than Excluded Persons) in a Monthly Mode or a Weekly Mode may elect to have their Bonds (or portions of those Bonds in amounts equal to an Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery to the Tender Agent of an Optional Tender Notice by the Tender Notice Deadline; provided, however, that the Purchase Date for any optional tender of Bonds in a Weekly Mode must be the first Business Day on or after the commencement of a Weekly Rate Period. The Tender Agent shall promptly notify the Remarketing Agent by **[Electronic Means confirmed by mailed written notice]** of each such tender notice.

Section 2.10 **Mandatory Tender.**

A. The Bonds shall be subject to mandatory tender on each Mandatory Tender Date at the Purchase Price. The Tender Agent shall give notice of such mandatory tender by mail to the Holders of the Bonds subject to mandatory tender by the applicable Tender Notice Deadline. No later than the Business Day immediately after the Tender Agent becomes aware of a Mandatory Tender Date, it shall notify **[by Electronic Means confirmed by mailed written notice]** the Liquidity Provider, the Credit Provider, the City and the Remarketing Agent of the Mandatory Tender Date and the clause of the definition thereof pursuant to which the Mandatory Tender Date exists. The City shall give each Rating Agency written notice of each mandatory tender as soon as practicable after the related Mandatory Tender Date has been established. Any notice shall state the Mandatory Tender Date, the Purchase Price, the numbers of the Bonds to be purchased if less than all of the Bonds owned by such Holder are to be purchased, and that interest on Bonds subject to mandatory tender shall cease to accrue for the account of such Holders from and after the Mandatory Tender Date. The failure to mail such notice with respect to any Bond shall not affect the validity of the mandatory tender of any other Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder.

B. Any Bond subject to mandatory tender and not tendered pursuant to the applicable procedures specified in this Appendix A shall, nevertheless, be deemed tendered on the applicable Mandatory Tender Date.

C. With the consent of the Liquidity Provider, which shall not be unreasonably withheld, the City may direct that all or part of the Bonds be subject to mandatory tender on a Mandatory Tender Date that is a Business Day selected by the City pursuant to a City Order; provided, however, that such Mandatory Tender Date may not occur during the Fixed Mode unless the Bonds subject to mandatory tender are, as of

such date, eligible for optional redemption. Subsections A and B of this Section 2.10 shall apply to any mandatory tender effected pursuant to this subsection C; provided, however, that if Bonds subject to such mandatory tender are in the Fixed Mode, the Purchase Price shall consist of the same price that would have been paid upon redemption of the same if the redemption date were to occur on the Mandatory Tender Date.

Section 2.11 Remarketing of Bonds; Notices.

A. Remarketing of Bonds. Subject to Section 2.16, the Remarketing Agent shall use its best efforts to offer for sale to Persons other than Excluded Persons and at not less than par:

(1) all Bonds or portions thereof as to which notice of tender pursuant to Section 2.07 has been given; and

(2) all Bonds required to be purchased on a Mandatory Tender Date described in clauses (1), (2), (3), and (4) of the definition thereof; and

(3) any Liquidity Provider Bonds (i) purchased on a Purchase Date described in clause (1) or (2) above, (ii) with respect to which the Liquidity Provider has provided notice to the City and the Remarketing Agent that it is ready to reinstate the Available Amount, (iii) with respect to which an Alternate Liquidity Facility and Alternate Credit Facility is in effect (if such Bond were secured by a Credit Facility prior to becoming Liquidity Provider Bonds which Credit Facility is no longer in effect), or (iv) which are being marketed as Fixed Rate Bonds.

B. Notice of Remarketing; Registration Instructions; New Bonds. On each Purchase Date on which the Remarketing Agent is to remarket Bonds:

(1) the Remarketing Agent shall notify by Electronic Means the City and the Tender Agent by 12:00 noon if it has been unable to remarket any tendered Bonds, and shall include in such notice the principal amount of Bonds it has been unable to remarket;

(2) the Remarketing Agent shall notify the Tender Agent by Electronic Means not later than 1:00 p.m., New York City time, of the names of the purchasers of the remarketed Bonds and such information as may be necessary to register the Bonds and the registration instructions (i.e., the names, addresses and taxpayer identification numbers of the purchasers and the desired Authorized Denominations) with respect thereto; and

(3) if the Bonds are no longer in the Book-Entry System, the Paying Agent/Registrar shall authenticate new Bonds for the respective purchasers thereof which shall be available for pick-up by the Remarketing Agent not later than 2:30 p.m., New York City time.

C. Draw on Liquidity Facility. On each Purchase Date, if the Remarketing Agent shall have given notice to the Tender Agent pursuant to clause (B)(1) above that it has been unable to remarket any of the Bonds, the Tender Agent shall draw on the Liquidity Facility, or make demand for the purchase of tendered Bonds thereunder, (or if no Liquidity Facility is in effect, request funds from the City) by 12:30 p.m., New York City time, in an amount equal to the Purchase Price of all such Bonds which have not been successfully remarketed. In connection with a draw on the Liquidity Facility in connection with a substitution of an Alternate Credit Facility or Alternate Liquidity Facility, the draw on the Liquidity Facility shall be on the Liquidity Facility in effect at the time the Mandatory Tender Notice is issued and not on the Alternate Liquidity Facility.

D. Not Gross Revenues. Neither the proceeds of any remarketing of the Bonds nor any funds drawn or claimed under a Liquidity Facility or Credit Facility shall constitute Gross Revenues.

Section 2.12 Source of Funds for Purchase of Bonds. By the close of business on the date on which a Bond is to be purchased pursuant to a remarketing, and except as set forth in Section 2.18, the Tender Agent shall purchase tendered Bonds from the tendering Holders at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated and neither the Tender Agent nor the Remarketing Agent shall be obligated to provide funds from any other source:

A. immediately available funds on deposit in the Remarketing Proceeds Account

B. immediately available funds on deposit in the Liquidity Facility Purchase Account; and

C. other money paid by the City, which must be Available Money if a Liquidity Facility is in effect.

The City covenants that it will cause to be deposited to the Purchase Fund, but solely from and to the extent of money lawfully available therefor, sufficient Available Money to pay the Purchase Price of Bonds duly tendered (or deemed tendered) for purchase on a Purchase Date.

Section 2.13 Delivery of Remarketed Bonds. On each date on which a Bond is to be purchased pursuant to a remarketing, such Bond shall be delivered as follows:

A. Bonds sold by the Remarketing Agent and purchased with money described in Section 2.12A shall be delivered by the Remarketing Agent to the purchasers of such Bonds by 3:00 p.m., New York City time; and

B. Bonds purchased by the Tender Agent with monies described in Section 2.12B shall be registered as soon as practicable in the name of the Liquidity Provider or its designee (which may be the Securities Depository) on or before 3:00 p.m., New York

City time. Such Bonds may not be subsequently delivered to any purchaser pursuant to a remarketing unless the Trustee has received written confirmation that the Liquidity Provider has reinstated the Available Amount with respect to such Bonds.

C. Bonds purchased described in Section 2.12C shall be registered, immediately in the name of the City or its designee on or before 3:00 p.m., New York City time. Bonds so owned by the City shall continue to be outstanding under the terms of the Seventh Supplement and be subject to all of the terms and conditions of the Seventh Supplement and shall be subject to remarketing by the Remarketing Agent.

Section 2.14 **Book-Entry Tenders.**

A. Notwithstanding any other provision of this Article 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 Representation 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 a Direct Participant of DTC acting, directly or indirectly, on behalf of a beneficial owner of Bonds by giving notice of its election to tender Bonds or portions thereof at the times and in the manner described above. Procedures under which a beneficial owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Director 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 by a Direct Participant on the applicable Purchase Date of a book-entry credit to the account of the Tender Agent of a beneficial interest in such Bonds.

B. Notwithstanding anything expressed or implied herein to the contrary, so long as the Book-Entry System for the Bonds is maintained:

(1) there shall be no requirement of physical delivery to or by the Tender Agent or the Remarketing Agent of:

- a. any Bonds subject to mandatory or optional purchase as a condition to the payment of the Purchase Price therefor;
- b. any Bonds that have become Liquidity Provider Bonds; or
- c. any remarketing proceeds of such Bonds or Liquidity Provider Bonds; and

(2) except as provided in (3), below, none of the Tender Agent, the

Remarketing Agent, or the Paying Agent/Registrar shall have any responsibility for paying the Purchase Price of any tendered Bond or for remitting remarketing proceeds to any person; and

(3) the Tender Agent's sole responsibilities in connection with the purchase and remarketing of a tendered Bond shall be to:

a. draw upon the Liquidity Facility in the event the Remarketing Agent notifies the Tender Agent as provided herein that such Bond has not been remarketed on or before the Purchase Date therefor, which draw shall be in an amount equal to the difference between such Purchase Price and any remarketing proceeds received by Remarketing Agent in connection with a partial remarketing of such Bond, and to remit the amount so drawn to or upon the order of the Securities Depository for the benefit of the tendering beneficial owners; and

b. remit any proceeds derived from the remarketing of a Liquidity Provider Bond to the Liquidity Provider.

Section 2.15 **No Book-Entry System**. If at any time the Bonds shall no longer be in the Book-Entry System, the following procedures shall be followed on each Purchase Date:

A. Bonds shall be delivered (with all necessary endorsements) at or before 12:00 noon on the Purchase Date at the office of the Tender Agent; provided, however, that payment of the Purchase Price shall be made pursuant to this Section only if the Bond so delivered to the Tender Agent conforms in all respects to the description thereof in the notice described in this Section. Payment of the Purchase Price with respect to purchases under this Section shall be made to the Holders of tendered Bonds by wire transfer in immediately available funds by the Paying Agent/Registrar by 3:00 p.m., New York City time, on the Purchase Date.

B. If a Bond to be purchased is not delivered by the Holder to the Tender Agent by 12:00 noon on the date in which such Bond is to be purchased, 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 Holders of the Bonds upon presentation of the Bonds. Such undelivered Bonds shall cease to accrue interest as to the former Holders on such purchase date and moneys representing the Purchase Price shall be available against delivery of those Bonds at the Designated Office of the Tender Agent; provided, however, that any funds which shall be so held by the Tender Agent and which remain unclaimed by the former Holder of a Bond not presented for purchase for a period of three 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 Holder 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 Paying Agent/Registrar shall

authenticate a replacement Bond for any undelivered Bond which may then be remarketed by the Remarketing Agent.

C. The Tender Agent shall hold all Bonds properly tendered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Holders of the Bonds which shall have so tendered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Holders.

Section 2.16 No Remarketing After Credit Provider or Liquidity Provider Failure.

A. Anything herein to the contrary notwithstanding, if there shall have occurred and be continuing either a Credit Facility Failure or a Liquidity Facility Failure, the Remarketing Agent shall not remarket any Bonds; provided, however, that with the consent of the City and the Credit Provider, the Remarketing Agent may remarket Bonds in connection with a Mode Change following a Liquidity Facility Failure.

B. All other provisions of this Appendix A, including without limitation those relating to the setting of interest rates and Interest Periods and mandatory and optional purchases, shall remain in full force and effect during the continuance of such an event. As provided in Section 2.08.E, a Liquidity Facility Failure may result in a Mode Change.

Section 2.17 Credit Facility and Liquidity Facility.

A. Section 38 of the Seventh Supplement governs claims under the initial Credit Facility.

B. On each date on which a Bond is to be purchased, the Tender Agent shall, as provided in Section 2.11C, by demand given by Electronic Means before 12:30 p.m., New York City time, shall draw on the Liquidity Facility, or make demand for the purchase of tendered Bonds thereunder, in accordance with the terms thereof so as to receive thereunder by 2:30 p.m., New York City time, on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of Bonds on such date, to enable the Tender Agent to pay the Purchase Price in connection therewith. The proceeds of such draw shall be paid to the Tender Agent, who shall deposit said proceeds in the Liquidity Facility Purchase Account pursuant to Section 8.07B hereof.

C. Subject to Subsections D and E below, if at any time there shall have been delivered to the Paying Agent/Registrar or the Tender Agent (1) an Alternate Credit Facility or an Alternate Liquidity Facility in substitution for the Credit Facility or Liquidity Facility then in effect, (2) an Opinion of Counsel specifying that such change will not adversely affect the excludability of interest on the Bonds subject to the change from the gross incomes of the owners thereof for federal income tax purposes and specifying that the City is authorized to execute the Alternate Credit Facility or Alternate

Liquidity Facility under Texas law, (3) a written Opinion of Counsel for the provider of the Alternate Credit Facility or Alternate Liquidity Facility, as applicable, to the effect that such Alternate Credit Facility or Alternate Liquidity Facility is a valid, legal and binding obligation of the provider thereof, and (4) unless waived by such entity, written evidence satisfactory to the Credit Provider and the Liquidity Provider of the provision for purchase from the Liquidity Provider of all Liquidity Provider Bonds, at a price equal to the principal amount thereof plus accrued and unpaid interest, and payment of all amounts due to the Credit Provider and the Liquidity Provider under the Credit Agreement(s) on or before the effective date of such Alternate Letter of Credit or Alternate Liquidity Facility, then the Paying Agent/Registrar or Tender Agent, as applicable, shall accept such Alternate Letter of Credit or Alternate Liquidity Facility on the Substitution Date and shall surrender the Credit Facility or Liquidity Facility then in effect to the provider thereof on the Substitution Date, but only if all draws in connection with the mandatory tender occurring on such Substitution Date have been honored in full. The City shall give the Notice Parties written notice of the proposed substitution of an Alternate Credit Facility or Alternate Liquidity Facility no less than thirty (30) days prior to the proposed Substitution Date. The City shall cause to be given notice of such proposed substitution by first-class mail to the Holders of the Bonds no less than fifteen (15) days prior to the proposed Substitution Date.

D. Without the prior written consent of the Credit Provider, the City may not substitute an alternate Liquidity Facility in substitution for the Liquidity Facility then in effect, unless the Liquidity Provider is rated at least "A-1" by Standard & Poor's or "VMIG-1" by Moody's. So long as the Bonds are in the Monthly Mode or Weekly Mode, the City shall maintain in effect a Liquidity Facility meeting the requirements hereof.

E. The City shall give written notice to each Rating Agency promptly upon the expiration, termination, substitution or extension of any Credit Facility or Liquidity Facility.

Section 2.18 **Inadequate Funds for Tenders.** If sufficient funds are not available for the purchase of all tendered Bonds required to be purchased on any Purchase Date, other than due to a default by the Remarketing Agent, the Tender Agent shall not apply any remarketing proceeds from the Remarketing Proceeds Account to purchase tendered Bonds until such deficiency is cured, and then only if the Remarketing Agent has not directed the Tender Agent to return such remarketing proceeds to the Remarketing Agent. Subject to the immediately preceding sentence, if a deficiency does exist, the Tender Agent shall apply the money available to pay, on a pro rata basis, the Purchase Price of portions of the Bonds tendered, and shall take all actions available to it to obtain sufficient funds from the Remarketing Agent, the Liquidity Provider and the City to purchase all such Bonds on or before 12:00 noon, New York City time, on the Business Day next succeeding such Purchase Date. Thereafter, the Tender Agent shall continue to take all such action available to it to obtain such funds from the Remarketing Agent, the Liquidity Provider, and the City to cause the deposit of such funds from remarketing proceeds, proceeds of the Liquidity Facility or other amounts from the City, respectively. Until such purchase of the entire principal amount of tendered Bonds is consummated and the full

Purchase Price paid (which shall include interest on the unpaid principal portion to the date of payment), the Tender Agent shall, at the expense of the City, hold the tendered but unpurchased Bonds for the account of the tendering Holders.

ARTICLE 3

certain agents

Section 3.01 Remarketing Agent

A. The City shall appoint a Remarketing Agent to remarket Bonds pursuant to this Appendix A no later than ninety (90) days prior to the end of the Initial Term Rate Period. The Remarketing Agent shall remarket Bonds as required by this Appendix, and shall keep such books and records as shall be consistent with prudent industry practice and make such books and records available for inspection by the Notice Parties at all reasonable times. The Remarketing Agent shall act as such under a Remarketing Agreement to be entered into among the City and the Remarketing Agent. The City shall provide written notice to each Rating Agency of the appointment of the Remarketing Agent and of any resignation, removal or replacement of a Remarketing Agent.

B. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Appendix by giving at least ten (10) days' written notice to the Notice Parties. The Remarketing Agent may suspend its remarketing efforts as set forth in the Remarketing Agreement. The Remarketing Agent may be removed at any time, at the direction of the City, by an instrument filed with the Remarketing Agent, the Tender Agent and the Paying Agent/Registrar and upon at least ten (10) days' written notice to the Remarketing Agent. Each Remarketing Agent shall be a member of the National Association of Securities Dealers, Inc., shall have a capitalization of at least fifteen million dollars (\$15,000,000), shall be authorized by law to perform all the duties set forth in this Appendix and, during a Monthly Mode or a Weekly Mode, shall be acceptable to the Credit Provider and Liquidity Provider. The City's delivery to the Notice Parties of a certificate setting forth the effective date of the appointment of a successor Remarketing Agent and the name of such successor shall be conclusive evidence that (a) if applicable, the predecessor Remarketing Agent has been removed in accordance with the provisions of this Appendix and (b) such successor has been appointed and is qualified to act as Remarketing Agent under the terms of this Appendix.

C. If the Remarketing Agent consolidates with, merges or converts into, or transfers all or substantially all of its assets (or, in the case of a bank, national banking association or trust company, its corporate assets) to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Remarketing Agent.

Section 3.02 Tender Agent. There shall be a Tender Agent appointed by the City, with, except in the case of the initial Tender Agent, the approval of the Credit Provider and the Liquidity Provider. The Tender Agent shall have the power to act in the purchase of Bonds on any Purchase Date and the payment of the Purchase Price therefor. Such Tender Agent shall at

all times be a commercial bank, a trust company, or a company having an office or agent in the City and County of New York, New York, organized and doing business under the laws of the United States or of any state with a combined capital and surplus or a minimum capitalization of at least \$50,000,000 and authorized under such laws to perform all the duties imposed by this Appendix on the Tender Agent. If such corporation publishes reports of condition at least annually pursuant to law or the requirements of any authority, then for the purposes of this Section the combined capital and surplus or the capitalization of such corporation shall be deemed to be its combined capital and surplus or its capitalization as set forth in its most recent report of condition so published.

The Bank of New York, New York, New York is hereby appointed as initial Tender Agent.

The City shall inform each Rating Agency in writing of any resignation or removal of the Tender Agent and of the appointment of any successor Tender Agent.

Any corporation into which any Tender Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation, or conversion to which any Tender Agent shall be a party, or any corporation succeeding to the corporate trust business of any Tender Agent, shall be the successor of the Tender Agent hereunder, if such successor corporation is otherwise eligible under this Section, without the execution or filing of any further document on the part of the parties hereto or the Tender Agent or such successor corporation.

Any Tender Agent may resign at any time by giving written notice of such resignation to the Paying Agent/Registrar, the City, the Remarketing Agent, the Credit Provider, and the Liquidity Provider. The City may terminate the agency of any Tender Agent by giving at least fifteen (15) days written notice of such termination to such Tender Agent and the Remarketing Agent, the Credit Provider, the Liquidity Provider and the Paying Agent/Registrar. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Tender Agent shall cease to be eligible under this Section, the City shall promptly appoint a successor Tender Agent acceptable to the Credit Provider and the Liquidity Provider, and shall give written notice of such appointment to the Holders of the Bonds and the Paying Agent/Registrar.

No such resignation or removal shall take effect until a successor Tender Agent shall have been appointed and the successor Tender Agent has accepted such appointment. If no successor Tender Agent has accepted appointment within 30 days after the Tender Agent has given notice of its resignation as provided above, the Tender Agent may petition any court of competent jurisdiction for the appointment of a temporary successor Tender Agent, provided that any Tender Agent so appointed shall immediately and without further act be superseded by any Tender Agent appointed by the City as provided above.

The City will cause each Tender Agent to execute and deliver to the City and the Paying Agent/Registrar an instrument in which such Tender Agent shall agree, subject to the provisions of this Section, that such Tender Agent will

A. hold all sums held by it for the payment of the Purchase Price of Bonds in a separate account in trust for the benefit of the Holders of such Bonds until such sums shall be paid to the Holders or otherwise disposed of as herein provided;

B. at any time, upon the written request of the Paying Agent/Registrar, forthwith pay to the Paying Agent/Registrar all sums so held in trust by such Tender Agent; and

C. observe and perform the obligations of the Tender Agent hereunder.

ARTICLE 4

purchase fund

There is hereby established and there shall be maintained with the Tender Agent, as agent for the Paying Agent/Registrar, a separate fund to be known as the "Purchase Fund," which shall be held for the exclusive benefit of the Holders of Bonds who are entitled to be paid the Purchase Price of such Bonds from such Fund and, to the extent of any surplus, the Person who deposited the money into the applicable account of the Purchase Fund. The Tender Agent shall further establish separate accounts within the Purchase Fund to be known as the "Liquidity Facility Purchase Account," the "Remarketing Proceeds Account" and the "City Purchase Account."

A. Remarketing Proceeds Account. Upon receipt from the Remarketing Agent of the proceeds of remarketing a Bond to Persons other than Excluded Persons on the date such Bond is to be purchased, the Tender Agent shall deposit such proceeds in the Remarketing Proceeds Account for application to the Purchase Price of the remarketed Bond. Notwithstanding the foregoing, upon the receipt of the proceeds of remarketing Liquidity Provider Bonds, the Tender Agent shall immediately pay such proceeds to the Liquidity Provider to the extent of any amount owing to the Liquidity Provider. Any amounts deposited in the Remarketing Proceeds Account and not needed with respect to the Purchase Price for any Bonds shall be immediately returned to the order of the Remarketing Agent.

B. Liquidity Facility Purchase Account. Upon receipt from the Liquidity Provider of immediately available funds to pay the Purchase Price of Bonds, the Tender Agent shall deposit such money in the Liquidity Facility Purchase Account for application to the Purchase Price of the Bonds to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in the Liquidity Facility Purchase Account and not needed with respect to the Purchase Price for any Bonds shall be immediately returned to the order of the Liquidity Provider.

C. City Purchase Account. Upon receipt of funds for deposit to the City Purchase Account, the Tender Agent shall deposit such Funds in the City Purchase Account for application to the Purchase Price of the Bonds. Any amounts deposited in the City Purchase Account and not needed with respect to the Purchase Price for any Bonds shall be refunded to the order of the City, but no such funds shall be applied to pay the Purchase Price of any Bonds unless such funds are Available Money.

D. Segregation of Funds; Investment. Amounts held in the Liquidity Facility Purchase Account and the Remarketing Proceeds Account by the Tender Agent shall be held uninvested and separate and apart from all other funds and accounts. Amounts held in the City Purchase Account shall be invested in eligible investments as permitted by law upon City Request.

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This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Appendix A to be duly executed, and the City's seal to be hereunto affixed and attested, all as of the day and year first above written.

CITY OF AUSTIN, TEXAS

Mayor

COUNTERSIGNED:

City Clerk

(SEAL)

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Initial liquidity facility