

EXHIBIT A Prior Obligations

Austin Utility System Bonds

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
\$203,166,245 Comb Util Sys Rev Ref Bds SER'93, SR_1993:					
CIBS	11/15/2004	5.600%	2,780,000.00		
	11/15/2005	5.700%	6,000,000.00		
	05/15/2006	5.800%	700,000.00		
	11/15/2006	5.800%	7,415,000.00		
TERM13	11/15/2013	6.000%	13,605,000.00		
TERM18	05/15/2018	5.250%	20,925,000.00	08/18/2004	100.000
			51,425,000.00		
\$263,410,480 Comb Util Sys Rev Ref Bds SER'93-A, SR_1993A:					
CIBS00	11/15/2005	5.375%	5,000.00	08/18/2004	101.000
	05/15/2006	5.500%	445,000.00	08/18/2004	101.000
	11/15/2006	5.500%	2,275,000.00	08/18/2004	101.000
	05/15/2007	5.600%	2,390,000.00	08/18/2004	101.000
	11/15/2007	5.600%	2,050,000.00	08/18/2004	101.000
TERM13	11/15/2013	5.750%	5,535,000.00	08/18/2004	101.000
TERM16	05/15/2016	5.625%	4,720,000.00	08/18/2004	101.000
			17,420,000.00		
\$142,558,632 Comb Util Sys Rev Ref Bds SER'94, SR_1994:					
CIBS	05/15/2009	6.000%	5,000.00	11/15/2004	102.000
	05/15/2010	6.000%	5,000.00	11/15/2004	102.000
	05/15/2011	6.100%	5,000.00	11/15/2004	102.000
	05/15/2012	6.100%	440,000.00	11/15/2004	102.000
	05/15/2013	6.200%	2,900,000.00	11/15/2004	102.000
	05/15/2014	6.200%	5,945,000.00	11/15/2004	102.000
	05/15/2016	6.250%	28,315,000.00	11/15/2004	102.000
TERM16	05/15/2016	6.250%	28,315,000.00	11/15/2004	102.000
TERM24	05/15/2024	5.750%	33,815,000.00	11/15/2004	102.000
			71,430,000.00		
\$3,500,000 Sub Lien Revenue Bonds, Series 1994, SUB_94:					
SERIALS	11/15/2004	4.300%	165,000.00	08/18/2004	100.000
	11/15/2005	4.400%	170,000.00	08/18/2004	100.000
	11/15/2006	4.500%	180,000.00	08/18/2004	100.000
	11/15/2007	4.600%	190,000.00	08/18/2004	100.000
	11/15/2008	4.700%	200,000.00	08/18/2004	100.000
	11/15/2009	4.800%	210,000.00	08/18/2004	100.000
	11/15/2010	4.850%	220,000.00	08/18/2004	100.000
	11/15/2011	4.900%	235,000.00	08/18/2004	100.000
	11/15/2012	4.950%	245,000.00	08/18/2004	100.000
	11/15/2013	5.000%	260,000.00	08/18/2004	100.000
	11/15/2014	5.000%	270,000.00	08/18/2004	100.000
			2,345,000.00		
			142,620,000.00		

EXHIBIT B
Credit Agreement

(Local Currency-Single Jurisdiction)

ISDA®

International Swaps and Derivatives Association, Inc.

MASTER AGREEMENT

dated as of June __, 2004

between

JPMORGAN CHASE BANK

**CITY OF AUSTIN, TEXAS
(WATER AND WASTEWATER SYSTEM)**

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement (the "Master Agreement"), which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

(a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) **General Conditions.**

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery

will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorizations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified

Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) ***Merger Without Assumption.*** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) ***Termination Events.*** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) ***Illegality.*** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) ***Credit Event Upon Merger.*** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) ***Additional Termination Event.*** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) ***Event of Default and Illegality.*** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) ***Right to Terminate Following Event of Default.*** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) ***Two Affected Parties.*** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) ***Right to Terminate. If:—***

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(c)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(c) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss," and a payment method, either the "First Method" or the "Second Method." If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method," as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(c)(i)(3), if Market Quotation applies, or Section 6(c)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) Counterparts and Confirmations.

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify

therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

10. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:---

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

12. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Consent" includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iii).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"Law" includes any treaty, law, rule or regulation and **"lawful"** and **"unlawful"** will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section

6(c)(i)(1) or (3) or 6(c)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(c), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“Set-off” means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

“Settlement Amount” means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party’s Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

“Specified Entity” has the meaning specified in the Schedule.

“Specified Indebtedness” means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

“Specified Transaction” means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

“Terminated Transactions” means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

“Termination Event” means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“Termination Rate” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount

equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

JPMORGAN CHASE BANK

CITY OF AUSTIN, TEXAS

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

**SCHEDULE
to the
MASTER AGREEMENT**

dated as of June __, 2004

between

**JPMorgan Chase Bank
("Party A")**

and

**City of Austin, Texas
(Water and Wastewater System)
("Party B")**

PART 1

Termination Provisions and Certain Other Matters

- (1) **Transactions.** The parties understand and agree that "Transactions" entered into under this Agreement shall, with respect to Party B, relate solely to the Water and Wastewater System and, unless otherwise specified in the related Confirmation, be payable solely from Net Revenues.
- (2) **"Specified Entity"** means, in relation to Party A, for the purpose of:
 - Section 5(a)(v),** any Affiliate of Party A;
 - Section 5(a)(vi),** none;
 - Section 5(a)(vii),** none; and
 - Section 5(b)(ii),** none;and, in relation to Party B, for the purpose of:
 - Section 5(a)(v),** none;
 - Section 5(a)(vi),** none;
 - Section 5(a)(vii),** none; and
 - Section 5(b)(ii),** none.

- (3) **“Specified Transaction”** will have the meaning specified in Section 12, except that with respect to Party B, such term shall include only those transactions described therein pursuant to which Party B’s obligations are payable in whole or in part from Net Revenues.
- (4) The **“Cross-Default”** provisions of Section 5(a)(vi) will apply to Party A and Party B, and for purposes of such provisions, the following shall apply:
- (a) **“Specified Indebtedness”** will have the meaning specified in Section 12, except that (i) with respect to Party A, such term shall not include obligations in respect of deposits received in the ordinary course of such party’s banking business, and (ii) with respect to Party B, such term shall include only those obligations payable in whole or in part from Net Revenues.
- (b) **“Threshold Amount”** means, with respect to Party A, an amount equal to two percent of the shareholders’ equity of Party A; and with respect to Party B, U.S. \$10,000,000.
- (5) The **“Credit Event Upon Merger”** provisions of Section 5(b)(ii) will not apply to Party A and will not apply to Party B.
- (6) The **“Automatic Early Termination”** provision of Section 6(a) will not apply to Party A or Party B.
- (7) **Payments on Early Termination.** For the purpose of Section 6(e):
- (i) Market Quotation will apply; and
- (ii) The Second Method will apply.
- (8) **Additional Event of Default.** Section 5(a) of the Agreement is hereby amended to include the following additional Events of Default with respect to Party B, which shall be added as subparagraphs (ix) and (x) of such Section 5(a):
- “(ix) ***Authority; Repudiation.*** Party B shall cease to have authority to make payments under this Agreement or any Transaction subject to this Agreement, or any legislative body having jurisdiction over Party B shall adopt any legislation which would have the effect of repudiating this Agreement or any Transaction subject to this Agreement.
- (x) ***Default under the Letter of Credit Reimbursement Agreement.*** The occurrence and continuance of any event that constitutes an Event of Default with respect to Party B under Section 7.01 (subject to any applicable right to cure such Events of Default as set forth therein) of the Letter of Credit Reimbursement Agreement, dated as of April 1, 2000, between Party A, Party B and the banks signatory thereto, relating to Party B’s Combined Utility Systems Commercial Paper Notes, Series A.”

[With respect to Party B, these Additional Events of Default will be subject to the Insurer Provisions to be added to Part 6 of this Schedule and will therefore not become an Events of Default without the additional occurrence of an insurer event (such insurer event to include a rating downgrade of the insurer).]

(9) **Amendments to Section 5.** Section 5 of the Agreement is hereby amended as follows:

(a) **Bankruptcy.** Section 5(a)(vii)(6) of the Agreement is amended to read in its entirety as follows:

“(6) seeks or becomes subject to the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets (regardless of how brief such appointment may be, or whether any obligations are promptly assumed by another entity or whether any other event described in this clause (6) has occurred and is continuing) or, in the case of Party B, (A) there shall be appointed or designated in respect to of Party B, pursuant to any applicable law, an entity such as an organization, board, commission, authority, agency or body (a “Financial Oversight Board”) to monitor, review, oversee, recommend or declare a financial emergency or similar position of financial distress in respect of Party B and (B) such Financial Oversight Board lawfully assumes control of Party B or Party B’s financial affairs and approves or otherwise takes any official action with respect to it which is analogous to any of the actions or events listed in clauses (1) through (5) and (7) of this paragraph;”

(b) **Merger Without Assumption.** Section 5(a)(viii) of the Agreement is hereby amended to read in its entirety as follows:

“(viii) ***Merger Without Assumption.*** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, with respect to Party B, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, such party or any Credit Support Provider of such Party) and, at the time of such consolidation, amalgamation, merger, transfer or succession:

(1) the resulting, surviving, transferee or successor entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting,

surviving, transferee or successor entity of its obligations under this Agreement.”

- (10) **Additional Termination Events.** For purposes of Section 5(b)(iii) of the Agreement each of the following shall be Additional Termination Events:

(i) ***Credit Event.*** The occurrence at any time of a Credit Event with respect to a party shall be an Additional Termination Event with respect to such party, in which case such party shall be deemed to be the Affected Party and all Transactions will be Affected Transactions. As used herein, the term “Credit Event” shall mean (i) with respect to Party B, that its Credit Rating shall cease to be at least “BBB+” from S&P or “Baa1” from Fitch; and (ii) with respect to Party A, that its Credit Rating shall cease to be at least “BBB+” from S&P or “BBB+” from Moody’s; provided, however, that such event will not constitute an Additional Termination Event with respect to Party A, if, within 30 days following the occurrence of such event, Party A transfers all of its rights and obligations hereunder to another entity which is a bank, financial institution, insurance company, broker dealer or other similar capital market participant reasonably acceptable to Party B.

[With respect to Party B, this Additional Termination Event will be subject to the Insurer Provisions to be added to Part 6 of this Schedule and will therefore not become an Additional Termination Event without the additional occurrence of an insurer event (such insurer event to include a rating downgrade of the insurer).]

(ii) ***Modification of the Covered Ordinance.*** Party B shall amend, repeal or otherwise modify the Covered Ordinance without the prior written consent of Party A, and in the reasonable judgment of Party A, as a result of such amendment, repeal or other modification, the ability of Party B to comply with and perform its obligations under this Agreement or in respect of any Transaction hereunder shall be materially adversely affected.

- (11) **Delivery of Collateral.** Each party shall be required to deliver collateral to the other party in the manner and in the amounts specified in the ISDA Credit Support Annex and supplementary “Paragraph 13 - Elections and Variables” attached hereto as Exhibit III and by this reference incorporated herein (the “Credit Support Annex”).

PART 2

Agreement to Deliver Documents

For the purpose of Section 4 of this Agreement, each party agrees to deliver the following documents, as applicable:

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Section 3(d) Representation</u>
1. Party A	Annual report of JPMorgan Chase & Co. for the most recently completed fiscal year for which such report is available	Upon request	Yes
2. Party A	Opinion of counsel satisfactory to Party B substantially in the form attached hereto as Exhibit II	Upon execution and delivery of this Agreement	No
3. Party B	Annual Report of Party B containing consolidated financial statements certified by independent certified public accountants and prepared in accordance with accounting principles that are generally accepted for governmental entities in the United States	As soon as available, and in any event within 210 days after the end of each fiscal year of Party B	Yes
4. Party B	Opinion of counsel satisfactory to Party A substantially in the form of Exhibit I hereto, and any restatement, update or supplement to such opinion in connection with any Transaction	Upon execution and delivery of this Agreement and, upon request of Party A, prior to the execution and delivery of any Confirmation hereunder	No

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
5. Party B	Certified copies of all resolutions adopted or other actions taken by Party B to authorize the execution, delivery and performance of this Agreement, along with such other documents, certificates, or other information with respect to such authorization as Party A may reasonably request, and in connection with any Transaction, any supplements to such authorization or additional authorization relating to such Transaction	Upon execution and delivery of this Agreement and, upon request of Party A, prior to the execution and delivery of any Confirmation	Yes
6. Party B	A certified copy of the Ordinance	Upon execution and delivery of this Agreement	Yes
7. Party A and Party B	Certificate of authority and specimen signatures of individuals executing this Agreement, Confirmations and each Credit Support Document (as applicable)	Upon execution and delivery of this Agreement and thereafter upon request of the other party	Yes
8. Party B	Evidence of Party B's current Credit Rating	Upon request	Yes
9. Party A and Party B	The Credit Support Annex referred to in Part 1(11) of this Schedule.	Upon execution and delivery of this Agreement	Yes

PART 3

Miscellaneous

- (1) **Address for Notices.** For the purpose of Section 10(a) of this Agreement:

Address for notice or communications to Party A:

Any notice relating to a particular Transaction shall be delivered to the address or facsimile or telex number specified in the Confirmation of such Transaction. Any notice delivered for purposes of Sections 5 and 6 of this Agreement shall be delivered to the following address:

JPMorgan Chase Bank
Attention: Legal Department - Derivative Practice Group
270 Park Avenue, 41st Floor
New York, New York 10017-2070
Facsimile No.: (212) 270-3625

With respect to the delivery to Party A of all financial statements and certificates pursuant to Part 3 of this Schedule:

JPMorgan Chase Bank
Attention: Municipal Derivatives Credit Group
270 Park Avenue, 22nd Floor
New York, New York 10017-2070
Telephone: (212) 270-2361
Facsimile: (212) 270-2642

Address for notice or communications to Party B:

City of Austin, Texas
Attention: City Treasurer
P.O. Box 2106
Austin, Texas 78768
Facsimile No.: (512) 370-3838

- (2) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction.
- (3) **Credit Support Documents.** "Credit Support Document" for all purposes of this Agreement means (i) with respect to Party A, the Credit Support Annex, and (ii) with respect to Party B, the Covered Ordinance and the Credit Support Annex.
- (4) **Credit Support Provider.** Not applicable with respect to either party.

- (5) **Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Texas (without reference to choice of law doctrine).
- (6) **Netting of Payments.** Section 2(c)(ii) of this Agreement will apply.

PART 4

Other Provisions

- (1) **Set-off.** (i) Any amount (the "Early Termination Amount") payable to one party (the "Payee") by the other party (the "Payer") under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(ii) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any Other Payment Amount (as hereinafter defined). As used herein, "Other Payment Amount" shall mean any payment obligation of any description whatsoever (whether arising at such time or in the future or upon the occurrence of a contingency, but in the case of any future or contingent obligation, only if and to the extent such payment obligation may by its terms then be accelerated) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation or whether the relevant party is legally or beneficially the holder of the obligation) arising under any other agreement between the Payee and the Payer or any instrument or undertaking issued or executed or guaranteed by the Payee to, or in favor of, the Payer or any bond, note, or other debt instrument issued or guaranteed by the Payee and owned or held beneficially by the Payer as a result of the purchase thereof by or on behalf of the Payer, whether directly from the issuer or in the secondary market (and the Other Payment Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this section. For purposes of this subparagraph (i), the term "Other Payment Amount," as it relates to Party B as Payer or Payee, shall be limited to obligations payable (in whole or in part) solely from or which, when paid to Party B, will be included in, Net Revenues.

For purposes of the foregoing, either the Early Termination Amount or the Other Payment Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

Nothing in this section shall be effective to create a charge or other security interest. This section shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

(ii) Notwithstanding anything to the contrary set forth in this Agreement, a party (the "Delivering Party") may, in its discretion, satisfy, in whole or in part, any payment

obligation arising under Section 6 in respect of any Early Termination Date which is designated or occurs as a result of an Event of Default in respect of which the other party is the Defaulting Party or which is designated as a result of a Termination Event in respect of which the other party is the sole Affected Party by delivering to such other party (the "Receiving Party"), or for the account of the Receiving Party, bond(s), note(s), or other debt instrument(s) issued or guaranteed by the Receiving Party and owned or held legally or beneficially by or on behalf of the Delivering Party in a face amount equal to the entirety or relevant part, as the case may be, of the amount of such payment obligation. Any bond, note, or other debt instrument denominated in a currency other than the Termination Currency shall, for this purpose, be valued in an amount of Termination Currency determined by the Delivering Party based upon a currency exchange rate determined in a commercially reasonable manner. Any delivery by a Delivering Party shall be made in the manner customary for the relevant bond, note, or debt instrument (including, without limitation, through a depository institution or clearance system) or, if the Delivering Party deems such delivery to be impractical, in a commercially reasonable manner determined by the Delivering Party. For purposes of this subparagraph (ii), in circumstances in which Party B is the Receiving Party, any bond, note or other debt instrument delivered by Party A, as the Delivering Party, shall include only bonds, notes or other debt instruments payable, in whole or in part, solely from the Net Revenues.

[This Set-Off provision will be subject to the Insurer Provisions to be added to Part 6 of this Schedule.]

- (2) **Exchange of Confirmations.** For each Transaction entered into hereunder, Party A shall promptly send to Party B a Confirmation, via telex or facsimile transmission. Party B agrees to respond to such Confirmation within 10 Local Business Days, either confirming agreement thereto or requesting a correction of any error(s) contained therein. Failure by Party B to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation of the terms contained in such Confirmation, absent manifest error. The parties agree that any such exchange of telexes or facsimile transmissions shall constitute a Confirmation for all purposes hereunder. Notwithstanding the foregoing, no Confirmation shall create any obligation on the part of Party B unless the Agreement (including the Confirmation) shall have been approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts of the State of Texas.
- (3) **Waiver of Jury Trial.** Each party waives, to the fullest extent permitted by the Texas Constitution and applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement or any Credit Support Document. Each party (i) certifies that no representative, agent or attorney of the other party or any Credit Support Provider has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Agreement and provide for any Credit Support Document, as applicable, by, among other things, the mutual waivers and certifications in this Section.

- (4) **Telephonic Recording.** Each party (i) consents to the recording of the telephone conversations of trading, marketing and operations personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction and (ii) agrees to obtain any necessary consent of, and give notice of such recording to, such personnel of it and its Affiliates.
- (5) **Obligations.** Section 2(a)(iii) of this Agreement is hereby amended to read in its entirety as follows:
- “(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.”
- (6) **Representations.**
- (a) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:
- “Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a) and 3(c), at all times until the termination of this Agreement) that:”.
- (b) Section 3(a)(ii) of this Agreement is hereby amended to read in its entirety as follows:
- “(ii) ***Powers.*** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action and made all necessary determinations and findings to authorize such execution, delivery and performance;”.
- (c) Section 3(b) of this Agreement is hereby amended to read in its entirety as follows:
- “(b) ***Absence of Certain Events.*** No Event of Default or Potential Event of Default or, to its knowledge, Incipient Illegality (in the case of Party B) or Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its

obligations under this Agreement or any Credit Support Document to which it is a party.”

- (d) Section 3 of this Agreement is hereby amended by adding the following subsection “(e)” thereto, which subsection shall only apply to Party B:

“(e) ***Non-Speculation.*** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been) entered into for purposes of managing its borrowings or investments and not for purposes of speculation.

- (c) **Further Representations.** Party B represents to Party A (which representations will be deemed to be repeated by Party B on each date on which a Transaction is entered into) that:

(i) ***Generally Accepted Accounting Principles.*** The financial information delivered by it pursuant to Part 2 of this Schedule, including the related schedules and notes thereto, has been prepared in accordance with accounting principles established that are generally accepted for governmental entities in the United States applied consistently throughout the periods involved (except as disclosed therein).

(ii) ***No Material Contingent Obligation(s).*** Party B does not have any material contingent obligation, contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment, which is not reflected in the financial statements delivered to Party A pursuant to this Schedule or in the notes thereto which relate to Party B’s Water and Wastewater System.

(iii) ***No Material Adverse Change.*** Since October 1, 2003, there has not been any material adverse change in the financial condition of the operations of Party B’s Water and Wastewater System.

(7) **Agreements.**

- (a) The introductory clause of Section 4 of this Agreement is hereby amended to read in its entirety as follows:

“Each party agrees with the other (or, in the case of Section 4(f) and (g), Party B agrees with the other party) that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:”.

- (b) Section 4 of this Agreement is hereby amended by adding the following subsections “(d)” and “(e)” thereto:

“(d) ***Compliance with the Covered Ordinance.*** Party B will observe, perform and fulfill each provision in the Covered Ordinance applicable to it in effect on the Covered Ordinance Incorporation Date, as any of those provisions may be amended, supplemented or modified for purposes of this Agreement with the prior written consent of Party A (the “Incorporated Provisions”), with the effect that Party A will have the benefit of each of the Incorporated Provisions (including, without limitation, covenants, right to consent to certain actions subject to consent under the Covered Ordinance and delivery of financial statements and other notices and information). In the event the Covered Ordinance ceases to be in effect prior to the termination of this Agreement, the Incorporated Provisions (other than those provisions requiring payments in respect of bonds, notes, warrants or other similar instruments issued under the Ordinance) will remain in full force and effect for purposes of this Agreement as though set forth herein until such date on which all of the obligations of Party B under this Agreement and any obligations of Party B or any Credit Support Provider of Party B under a Credit Support Document have been fully satisfied. The Incorporated Provisions are hereby incorporated by reference and made a part of this Agreement to the same extent as if such provisions were set forth herein. Any amendment, supplement, modification or waiver of any of the Incorporated Provisions without the prior written consent of Party A shall have no force and effect with respect to this Agreement. Any amendment, supplement or modification for which such consent is obtained shall be part of the Incorporated Provisions for purposes of this Agreement.

(e) ***Notice of Incipient Illegality.*** If an Incipient Illegality occurs, Party B will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Incipient Illegality and will also give such other information about that Incipient Illegality as the other party may reasonably require.”

- (8) **Security and Source of Payment of Party B’s Obligations.** This Agreement constitutes a “Credit Agreement” under the terms of the Covered Ordinance and as such shall be entitled to such rights and benefits under the Covered Ordinance as are described therein. The obligation of Party B hereunder and under each Transaction to make Scheduled Hedge Payments (as defined in the Sixth Supplement) shall be payable from and secured by a lien on and pledge of Net Revenues of the Water and Wastewater System in the manner and to the extent provided in Section 5(a) of the Sixth Supplement. The obligation of Party B hereunder and under each such Transaction to pay any Settlement Amount due upon early termination of any Transaction, shall be payable from and secured by a lien on and pledge of Net Revenues of the Water and Wastewater System in the manner and to the extent provided in Section 5(b) of the Sixth Supplement.
- (9) **Jurisdiction.** Section 11(b) of this Agreement is hereby deleted in its entirety.
- (10) **Waiver of Sovereign Immunity.** To the fullest extent permitted by law, Party B shall waive, and does hereby waive, any and all rights to claim immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of mandamus to perform its obligations under this Agreement, or (iv)

enforcement by writ of mandamus of any judgment to which it might otherwise be made subject in any suit, actions or proceedings in the courts of any jurisdiction.

- (11) **Eligible Contract Participant.** Each party represents to the other party (which representation will be deemed to be repeated by each party on each date on which a Transaction is entered into) that it is an “eligible contract participant” within the meaning of Section 1(a)(12) of the Commodity Exchange Act (7 U.S.C. 1a), as amended.

- (12) **Relationship Between Parties.** The following representation shall be inserted as a new Section 3(h) of this Agreement:

“(h) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

(ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(iii) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.”

- (13) **ISDA Counterparty Definitions.** Reference is hereby made to the 1992 ISDA U.S. Municipal Counterparty Definitions (the “1992 Muni Definitions”) and the 2000 ISDA Definitions (the “2000 Definitions”) (collectively, the “ISDA Definitions”) each as published by the International Swaps and Derivatives Association, Inc., which are hereby incorporated by reference herein. Any terms used and not otherwise defined herein which are contained in the ISDA Definitions shall have the meaning set forth therein.
- (14) **Scope of Agreement.** Notwithstanding anything contained in this Agreement to the contrary, any transaction which may otherwise constitute a “Specified Transaction” for purposes of this Agreement which has been or will be entered into between the parties shall constitute a “Transaction” which is subject to, governed by, and construed in

accordance with the terms of this Agreement, unless any Confirmation with respect to a Transaction entered into after the execution of this Agreement expressly provides otherwise.

- (15) **Inconsistency**. In the event of any inconsistency between any of the following documents, the relevant document first listed below shall govern: (i) a Confirmation; (ii) the Schedule and Paragraph 13 - "Elections and Variables" to the Credit Support Annex (as applicable); (iii) the ISDA Definitions; and (iv) the printed forms of ISDA Master Agreement. In the event of any inconsistency between the provision contained in the 2000 Definitions and the 1992 Muni Definitions, the 1992 Muni Definitions shall prevail.
- (16) **Definitions**. Section 12 of this Agreement is hereby amended to add or amend the following definitions. Definitions so added shall be inserted in such Section 14 in their appropriate alphabetical order:

"Affiliate" will have the meaning specified in Section 12 of this Agreement.

"Bonds" means, collectively, the City of Austin, Texas, Water and Wastewater System Revenue Bonds, Series 2004 intended to be issued by Party B in accordance with the Ordinance, and any other Parity Water/Wastewater Obligations issued or entered into from time to time by Party B in accordance with the Ordinance.

"Covered Ordinance" means the Ordinance and the Sixth Supplement, as each such documents may be amended in accordance with its terms and the terms hereof.

"Covered Ordinance Incorporation Date" means the date of this Agreement.

"Credit Rating" means (i) with respect to Party A, any public rating of Party A's long term, unsecured and unsubordinated indebtedness or deposits, and (ii) with respect to Party B, any public, underlying (i.e., unenhanced) rating of Party B's outstanding Bonds.

"Incipient Illegality" means (a) the enactment by any legislative body with competent jurisdiction over Party B of legislation which, if adopted as law, would render unlawful (i) the performance by Party B of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by Party B with any other material provision of this Agreement relating to such Transaction or (ii) the performance by Party B or a Credit Support Provider of Party B of any contingent or other obligation which Party B (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction, (b) any assertion in any legal proceeding, forum or action by Party B, in respect of Party B to the effect that performance under this Agreement or similar agreements is unlawful or (c) the occurrence with respect to Party B of any event that constitutes an Illegality."

"Incorporation Date" means the date of this Agreement.

"Net Revenues" has the meaning set forth in the Ordinance.

“Ordinance” means the Ordinance No. 000608-56A, adopted by the City Council of the City of Austin, Texas on June 8, 2000, together with each Supplement or Supplemental Ordinance (as defined therein) thereafter adopted, and in particular the Sixth Supplement.

“Parity Water/Wastewater Obligations” has the meaning set forth in the Ordinance.

“Sixth Supplement” means Ordinance No. 040617-45, adopted by the City Council of the City of Austin, Texas on June 17, 2004, approving and authorizing the execution and delivery of the Agreement.

“Water and Wastewater System” means the water and wastewater system of Party B, as specifically described in the Ordinance.

PART 4

Insurer Provisions

[To come once an Insurer is selected.]

Please confirm your agreement to the terms of the foregoing Schedule by signing below.

JPMORGAN CHASE BANK

By: _____

Name:

Title:

CITY OF AUSTIN, TEXAS

By: _____

Name:

Title:

EXHIBIT I

FORM OF OPINION OF COUNSEL TO PARTY B

June __, 2004

JPMorgan Chase Bank
270 Park Avenue
New York, New York 10017-2070

Ladies and Gentlemen:

We have acted as counsel to the City of Austin, Texas (the "City"), a home rule city organized under the Constitution of the State of Texas, in connection with its execution and delivery of the ISDA Master Agreement, dated as of June __, 2004, including the Schedule (the "Schedule") and the Credit Support Annex (the "Credit Support Annex") thereto, and the Confirmation, dated June __, 2004 (collectively, the "ISDA Agreement"), between the City and JPMorgan Chase Bank ("JPMorgan"), pursuant to an ordinance (the "Ordinance") of the City Council of the City passed on June 17, 2004, authorizing the ISDA Agreement. Except as otherwise defined herein, capitalized terms used herein have the meanings given to them in the ISDA Agreement. The ISDA Agreement and the Ordinance collectively are referred to herein as the "Swap Agreements". This opinion letter is delivered at the request of the City pursuant to Part 2 of the Schedule.

In rendering the opinions expressed herein, we have examined the Swap Agreements. In addition, we have examined such certificates of the City, such copies certified or otherwise identified to our satisfaction of documents and records of the City (including the Ordinance), such certificates, instruments, and other written communications of other public officials, and such other records, certificates, instruments, agreements and documents, in each case as we have deemed relevant and appropriate as the basis for the opinions expressed herein. As to matters of fact relevant to the opinions expressed herein, and as to factual matters arising in connection with the foregoing examinations, we have relied, to the extent we have deemed appropriate, upon the findings, representations, and warranties contained in the Swap Agreements, certificates of corporate officers of the City, and certificates and other communications of public officials, without further investigation by us as to the facts set forth therein.

In making such examination and in such reliance, we have assumed (i) the genuineness and authenticity of all signatures in all such records, certificates, instruments, agreements, and documents, (ii) the legal capacity of each natural person identified in each of those records, certificates, instruments, agreements, and documents, (iii) the authenticity and completeness of all documents, certificates, agreements, instruments, and records submitted to us as originals and the conformity to authentic original documents, certificates, agreements, instruments, and records of all copies

submitted to us as copies, and (iv) the conformity to the final executed original version of the ISDA Agreement reviewed by us in draft form or otherwise unsigned by the parties thereto.

Based upon the foregoing, and in reliance thereon, and having due regard for such legal considerations as we have deemed relevant, and subject in all respects to the assumptions, qualifications, limitations, comments, and exceptions set forth herein, we are of the opinion that, under the law of the State of Texas:

1. The City has the requisite legal power and authority to execute and deliver the ISDA Agreement, to enact the Ordinance, and to perform its obligations under the ISDA Agreement and the Ordinance and has duly authorized such execution, delivery, and performance.

2. Enactment of the Ordinance and execution and delivery of the ISDA Agreement by the City do not, and the City may comply with the Swap Agreements in a manner which will not, violate any statutory law or regulation applicable to it or any provision of its charter or any other indenture, ordinance or agreement known to us to which the City is a party or by which it is bound.

3. No authorizations of, or exemptions, actions or approvals by, or notices to, or filings with, any governmental authority is required to be obtained or made by the City under any statutory law or regulation applicable to it as a condition to enactment of the Ordinance or execution and delivery by the City of the ISDA Agreement, or to the performance by the City of its obligations thereunder, except such as have been obtained, given or made.

4. The Swap Agreements are legal, valid, and binding limited recourse obligations of the City payable from Net Revenues described therein and, enforceable against the City in accordance with their respective terms.

5. To our knowledge, there is no action or proceeding against the City, pending or overtly threatened in writing, before any court, government agency, or arbitrator which, by the terms of any pleadings or demand letter provided to us by the City, seeks to prohibit the enforceability of the Swap Agreements against the City.

6. The obligation of the City under the Swap Agreement to make Scheduled Hedge Payments is payable from and secured by a lien on and pledge of Net Revenues in the manner and to the extent provided in Section 5(a) of the Sixth Supplement (as defined in the Swap Agreement). The obligation of the City under the Swap Agreement to pay any Settlement Amount is payable from and secured by a lien on and pledge of Net Revenues in the manner and to the extent provided in Section 5(b) of the Sixth Supplement (as defined in the Swap Agreement). The City is duly authorized to pledge such Net Revenues, and has pledged the same, to the payment of amounts due under the Swap Agreements, and the lien of such pledges are valid and binding, and no further action on the part of the City or any other party is required to perfect the same or the interest of JPMorgan therein.

7. The City is not immune from liability for any breach of the ISDA Agreement on grounds of sovereign immunity. If the issues are properly presented to the

court of highest applicable jurisdiction, the court should hold that the City is not immune from suit to enforce or recover damages for breach of the ISDA Agreement on grounds of sovereign immunity.

The opinions expressed herein are further subject to the following assumptions, qualifications, limitations, comments, and exceptions:

A. The opinions rendered in paragraph 4 are further subject to the following:

(i) We have assumed that JPMorgan has requisite corporate power and authority to execute and deliver the ISDA Agreement and to perform its obligations thereunder and has duly authorized such execution, delivery, and performance, and that the ISDA Agreement constitutes the legal, valid, and binding obligation of JPMorgan, enforceable against JPMorgan in accordance with its terms.

(ii) The enforceability of the Swap Agreements is subject to, and may be limited or affected by, (i) bankruptcy, insolvency, reorganization, liquidation, fraudulent conveyance, fraudulent transfer, preference, conservatorship, rearrangement, moratorium, receivership, and other similar laws (including court decisions) in effect and affecting the rights and remedies of creditors generally or providing for relief of debtors, (ii) the refusal of a particular court (a) to grant certain equitable remedies, including, without limiting the generality thereof, specific performance, or (b) to grant a particular remedy sought under the Swap Agreements as opposed to another remedy provided for therein or another remedy available at law or in equity, (iii) general principles of equity (regardless of whether such remedies are sought in a proceeding in equity or at law), (iv) judicial discretion, (v) standards of good faith, fair dealing, materiality, impracticability or impossibility of performance, unconscionability, diligence, reasonableness and care established by applicable law, including, without limitation, those provided in the Uniform Commercial Code, applicable principles of common law, and judicial decisions, and (vi) Article XI, Section 9 of the Constitution of Texas, which provides that property of the City held only for public purposes is exempt from forced sale.

(iii) The provisions of the Swap Agreements that obligate any party to pay another party stipulated sums or amounts or sums or amounts determined by another party, in whatsoever capacity, upon the occurrence of one or more specified events may be unenforceable unless, at the time the Transaction is entered into, (a) such sums or amounts are reasonably proportionate to the probable loss anticipated to be caused by such event or events giving rise to the obligation to pay such sums or amounts, (b) the amount of actual loss resulting from such event or events cannot be easily determined, and (c) such provisions are not intended to punish non-performance or to compel performance.

(iv) We express no opinion as to the availability of equitable remedies, and further, we express no opinion as to the enforceability of any provision of the Swap Agreements that (a) relates to rights of set-off (or the waiver thereof), and we note that

rights of set-off may be limited to matured mutual obligations, (b) relates to indemnification or exculpation to the extent any such provisions violate public policy or applicable laws or would purport to require any person to provide indemnification or reimbursement or waive indemnification or reimbursement for losses or expenses caused by fraud, illegality, breach, violation of law, negligence, or willful misconduct of an indemnified or exculpated party, (c) waives, restricts, or denies, or has the effect of waiving, restricting, or denying, any right or defense that cannot be waived, so restricted, or denied as a matter of law, (d) purports to require that all amendments, waivers, and terminations be in writing, (e) purports to make irrevocable the appointment of an agent or attorney in fact, (f) purports to establish, or restrict or otherwise affect, jurisdiction, venue, submission to, or acceptance of, a court's jurisdiction, objections to the laying of venue or submission or acceptance of jurisdiction, limitation periods, or other procedural rights in any proceeding, (g) purports to permit the recording of communications between the parties or others which is in violation of applicable law, or to waive any rights or remedies related thereto, (h) purports to establish or satisfy evidentiary standards or characterizations, treatments, or effect of payments or rights, (i) negates the effect of any course of dealing or any exercise, or failure or delay to exercise, any right, power, privilege, or remedy, (j) authorizes conclusive determinations by any person or entity to make such determinations in its sole discretion, (k) restricts access to legal or equitable remedies, (l) states that (1) prohibition, illegality, invalidity, or unenforceability of any provision of the Swap Agreements in any jurisdiction shall not (A) invalidate the remaining provisions of the Swap Agreements or (B) affect that provision in any other jurisdiction, or (2) the right of JPMorgan to exercise any right or remedy on the basis of any misrepresentation or breach of warranty is not affected by any action by JPMorgan, (m) permits an action against any person or entity to be brought in the courts of the State of Texas or the federal courts of the United States of America sitting in the State of Texas, as applicable, (1) if such person has not been served with process in that action in accordance with applicable rules of procedure, or (2) if such court in which the action is brought does not have jurisdiction over the subject matter of the action, or (n) restricts a party's right to transfer its right to receive payments under the Swap Agreements or purports to void the Swap Agreements on any transfer not made in compliance with its terms; *provided, however*, in our opinion, the unenforceability of the remedial and other provisions referred to in the preceding clauses does not render void or invalid the remaining provisions of the Swap Agreements and does not, subject to the other qualifications, exceptions, limitations, and assumptions set forth herein, make the remedies generally afforded by the Swap Agreements inadequate for the realization of the substantive principal legal benefits purported to be provided by the Swap Agreements (except for the economic consequences resulting from any delay or procedure imposed by applicable law).

B. In rendering the foregoing opinions, we do not express any opinion as to any laws, statutes, regulations, directives, interpretations, opinions, orders, rulings, authorities, or the like regulating, governing, or applicable to JPMorgan (or any successor or assign) (collectively, the "*Rules*"), or its execution, delivery, or performance of the ISDA Agreement or the consummation of the transactions contemplated thereby, or JPMorgan's (or any successor's or assign's) compliance with any of the Rules in

connection with the Swap Agreements or the transactions provided for therein. Further, we have assumed that the Swap Agreements will be enforced in compliance with the enforceable provisions thereof and all requirements of applicable law.

C. In connection with the opinion expressed in paragraph 7 above, we call to your attention that the property of the City owned and held only for public purposes is exempt from forced sale by Article 11, Section 9 of the Constitution of Texas. In *Missouri Pacific Railroad Company v. Brownsville Navigation District*, 453 S.W.2d 812 (Tex. 1970), the Supreme Court of Texas held that a political subdivision's statutory authority to "sue and be sued" is "quite plain and gives general consent" to sue the political subdivision in Texas courts, thus waiving sovereign immunity from suit. As a home-rule city, the City has statutory authority to "plead and be impleaded." That authority was first enacted (with the same words) in the early part of the Twentieth Century. At that time, "impleaded" and "sued" had substantially synonymous meanings. Several decisions of the Texas Courts of Appeal have construed a home-rule city's statutory authority to "plead and be impleaded" to be a legislative waiver of sovereign immunity from suit. *Goerlitz v. City of Midland*, 101 S.W.3d (Tex. Civ. App.—El Paso 2003, pct. filed); *Knowles v. City of Granbury*, 953 S.W.2d 19 (Tex. Civ. App.—Fort Worth 1997, pet. den'd); *Avmanco, Inc. v. City of Grand Prairie*, 835 S.W.2d 160 (Tex. Civ. App.—Forth Worth 1992, writ dism'd as moot). Two recent decisions have reached a contrary result. In *City of Dallas v. Reata Construction Corp.*, 83 S.W.3d 392 (Tex. Civ. App.—Dallas 2002, pct. filed), the Dallas Court of Appeals held that statutory authority to "plead and be impleaded" and charter authority to "sue and be sued" is not sufficiently clear to waive sovereign immunity from suit. In *City of Mexia v. Tooke*, 115 S.W.3d 618 (Tex. Civ. App.—Waco 2003, pet. filed), the Waco Court of Appeals held that, although (as established by *Missouri Pacific*) a general law city's statutory authority to "sue and be sued" is an express waiver of sovereign immunity from suit, the legislature's use of different words to confer a home rule city's statutory authority to "plead and be impleaded" in the same statute (enacting the Local Government Code in 1987) keeps those words from being a requisitely clear waiver of sovereign immunity from suit. The Local Government Code was enacted as part of a codification project that is not intended to enact substantive changes in law. Petitions for review of the Courts of Appeals decisions in *Reata Construction*, *Goerlitz*, and *Tooke* are pending in the Texas Supreme Court, and briefing of the *Reata* and *Goerlitz* petitions has been concluded. In view of the *Missouri Pacific* decision of the Texas Supreme Court, the substantive similarity between "impleaded" and "sued" when the statutory authority of home-rule cities was first enacted, and the intended neutral impact of codifications of the law, we believe that the *Reata Construction* and *Tooke* cases were wrongly decided and that, if properly briefed, the Texas Supreme Court would hold that the Texas legislature has waived the immunity of home-rule cities from suit. There can be no assurance that the Texas Supreme Court will not reach a contrary result.

D. The opinions expressed herein are expressly limited to the internal substantive laws (including statutory laws and regulations) of the State of Texas and applicable federal statutory laws and regulations of the United States of America. In respect to such laws, in addition to other limitations set forth herein, such reference is

limited to laws which are normally and customarily applicable to the City in relation to the transactions provided for in the Swap Agreements. References herein to "laws" of a jurisdiction are to the laws of that jurisdiction, other than the statutes and ordinances, the administrative decisions, and the rules and regulations of counties, towns, municipalities, and special political subdivisions other than the City (whether created or enabled through legislative action at the federal, state, or regional level), and judicial decisions to the extent that they deal with any of the foregoing.

The opinions expressed herein are for the sole benefit of and may only be relied upon by JPMorgan and, without our prior written consent, may not be relied upon in any manner by any other person or entity. This opinion may not be furnished to any other person or entity without our prior written consent, except that this opinion may be provided (i) to the independent auditors and attorneys of JPMorgan, (ii) to any state or federal authority having regulatory jurisdiction over JPMorgan, (iii) pursuant to an order or legal process of any court or governmental agency, and (iv) to any permitted successor to JPMorgan under the terms of the Swap Agreements. The opinions expressed herein are as of the date of this opinion letter, and we make no undertaking to supplement such opinions if, after the date of this letter, facts or circumstances come to our attention or changes in the law occur which could affect such opinions.

Very truly yours,

EXHIBIT II

[FORM OF OPINION OF KING & SPALDING, COUNSEL TO JPMORGAN CHASE BANK]

June __, 2004

City of Austin, Texas
Attention: City Treasurer
P.O. Box 2106
Austin, Texas 78768

To the Addressee:

We have acted as counsel to JPMorgan Chase Bank, a New York banking corporation ("JPMorgan"), in connection with the execution and delivery by JPMorgan of the ISDA Master Agreement, dated as of June __, 2004, including the Schedule and Credit Support Annex thereto (the "Master Agreement"), between the City of Austin, Texas (the "City") and JPMorgan. The Master Agreement is to be supplemented by confirmations of Transactions to be entered into by the Authority and JPMorgan from time to time (each a "Confirmation"), including a Confirmation relating to the initial Transaction under the Master Agreement, dated June __, 2004. The Master Agreement, together with the Schedule and all such Confirmations shall constitute one agreement and be referred to herein as the "Agreement"). Capitalized terms used but not otherwise defined herein have the meanings assigned thereto in the Agreement.

In rendering this opinion, we have examined an executed original or copy of the Agreement and such records, documents, instruments, certificates of public officials and of JPMorgan, and such questions of law as we have deemed necessary for the purpose of rendering the opinions set forth herein. In such examination, we have assumed the genuineness of all signatures and the authenticity of all items submitted to us as originals and the conformity to originals of all items submitted to us as certified copies and the authenticity of the originals of such copies. As to certain matters of fact relevant to the opinions hereinafter expressed, we have relied upon certifications, statements, representations, and warranties of JPMorgan, the City and their respective representatives, including statements, representations and warranties contained in the Agreement, and we have assumed and have not independently verified that all such certifications, statements, representations and warranties are true, accurate and complete. We have assumed that the City has the legal capacity, power and authority to execute, deliver and perform its obligations under the Agreement and that the Agreement

constitutes the legal, valid and binding agreement of the City and is enforceable against the City in accordance with the terms thereof.

The Agreement provides that it is to be governed by and construed in accordance with the laws of the State of Texas. Notwithstanding such provision, for purposes of the opinions expressed herein we have assumed that the Agreement will be governed by and construed in accordance with the laws of the State of New York, and the opinions expressed herein are limited to the laws of the State of New York and the Federal laws of the United States of America.

Based upon the foregoing and having regard to such legal considerations as we have deemed relevant, we are of the opinion, subject to the qualifications expressed herein, that:

(1) JPMorgan is duly licensed by the Superintendent of Banks of the State of New York to operate as a banking corporation in the State of New York.

(2) The execution, delivery and performance by JPMorgan of the Agreement do not contravene any law, rule or regulation of the State of New York or the laws of the United States.

(3) No approval, consent or authorization of any governmental or public agency or authority or any other institution not already obtained is required for the execution by JPMorgan of, or performance of JPMorgan's obligations under, the Agreement.

(4) The Agreement has been duly executed and delivered by JPMorgan and constitutes the legal, valid and binding obligation of JPMorgan enforceable against JPMorgan in accordance with its terms.

The opinions expressed herein are subject to the following qualifications:

(A) The enforceability of the Agreement and the rights and remedies thereunder are subject to and may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship or other similar laws from time to time in effect relating to or affecting generally the enforcement of creditors' rights, and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding at law or in equity).

(B) The opinion expressed in paragraph 4 above is subject to the qualification that we express no opinion regarding the enforceability of Section 6(e) of the Agreement insofar as it purports to obligate a party, on termination of the Agreement, to pay an amount in excess of that measured by the lowest quotation from a Reference Market-maker. In addition, in connection with any such early termination on the grounds of default, a court might limit the non-defaulting party's recovery to its actual damages in

the circumstances, imposing its own settlement procedures in lieu of the provisions of Section 6(e) of the Agreement.

(C) We express no opinion herein as to whether a court or other authority or body located outside the State of New York would enforce the governing law provision of, or honor, the Agreement.

(D) We have rendered the opinions expressed herein based on facts and circumstances existing, and applicable laws, rules, regulations, court decisions and regulatory authority determinations in effect, on the date hereof. We disclaim any obligation to update or supplement this opinion letter for events occurring or coming to our attention after the date hereof.

We are furnishing this letter to the addressee solely for its benefit, and no other person is entitled to rely hereon. Without the prior written consent of the undersigned, this letter may not be used, circulated, quoted, or otherwise referred to for any other purpose not disclosed or delivered to, or relied upon by, anyone other than the addressee.

Very truly yours,

EXHIBIT III

CREDIT SUPPORT ANNEX

[Separately Provided]



**K&S Draft
06.17.04**

DRAFT

DRAFT Confirmation

Percentage of LIBOR Swap Transaction

City of Austin, Texas
Attention: City Treasurer
P.O. Box 2106
Austin, Texas 78768
Facsimile: (512) 370-3838

Re: Swap Transaction
JPMorgan Ref. No. _____

Ladies and Gentlemen:

The purpose of this Confirmation is to confirm the terms and conditions of the Swap Transaction entered into between us on the Trade Date specified below (the "Swap Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions, incorporating the June 2000 version of the Annex (the "2000 Definitions") and the 1992 ISDA U.S. Municipal Counterparty Definitions (the "1992 Muni Definitions"), each as amended and supplemented through the date of this Confirmation (as published by the International Swaps and Derivatives Association, Inc.) are incorporated into this Confirmation. In the event of any inconsistency between the 2000 Definitions and the 1992 Muni Definitions, the 1992 Muni Definitions will govern and in the event of any inconsistency between the 1992 Muni Definitions and this Confirmations, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement, together with the Schedule and Credit Support Annex thereto, dated as of June __, 2004, as amended and supplemented from time to time (the "Agreement") between JPMorgan Chase Bank ("JPMorgan") and the City of Austin (the "Counterparty"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the particular Swap Transaction to which this Confirmation relates is a Swap Transaction as follows:

Notional Amount: See Outstanding Principal Schedule below.

Trade Date: TBD

Effective Date: TBD

Termination Date: _____, 2024, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Amounts:

Floating Rate Payer: JPMorgan

Floating Rate Payer Payment Dates: Every _____ and _____ commencing with _____ to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate Option: USD-LIBOR-BBA

Floating Amounts: The Floating Rate used to calculate the Floating Amount payable by the Floating Rate Payer on each Payment Date will be equal to the rate determined in accordance with the specified Floating Rate Option and Designated Maturity, plus any applicable Spread, for that party for the relevant Calculation Period, multiplied by XX%. For the avoidance of doubt, the Floating Amount payable by the Floating Rate Payer shall be calculated as follows:

$$\text{Floating Amount} = \text{Notional Amount} \times ((\text{Floating Rate plus the Spread}) \times \text{XX\%}) \times \text{Day Count Fraction}$$

Designated Maturity: 6 months

Spread: None

Floating Rate Day Count Fraction: Actual/360

Reset Dates: The first day of each Floating Rate Payer Calculation Period, subject to adjustment in accordance with the Modified Following Business Day Convention.

Compounding: Inapplicable

Fixed Amounts:

Fixed Rate Payer: Counterparty

Fixed Rate Payer Payment Dates: Every _____ and _____ commencing with _____ to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Fixed Rate: TBD %

Fixed Rate Day Count Fraction: 30/360

Calculation Agent: JPMorgan unless otherwise specified in the Agreement.

Outstanding Principal Schedule

Start Date	End Date	Notional Amount
Effective Date		

3. Optional Early Termination (Cash Settled):

Counterparty shall have the right to terminate this Transaction by providing (i) at least two (2) Business Days' prior written notice to JPMorgan of its election to terminate this Transaction (such date of termination the "Optional Termination Date") and (ii) evidence reasonably satisfactory to JPMorgan that Counterparty has or will have on the termination date available funds with which to pay any amount due to JPMorgan in connection with such early termination. On the Optional Termination Date set forth in such notice, an amount, determined by JPMorgan, in good faith, shall be payable by JPMorgan or the Counterparty, as the case may be, in respect of such termination. If such amount is not acceptable to Counterparty, then JPMorgan shall determine such amount pursuant to Section 6 of the Agreement as if (a) the Optional Termination Date is the Early Termination Date for this Transaction, (b) Counterparty is the sole Affected Party (for all purposes other than the election to terminate), (c) this Transaction is the sole Affected Transaction, and (d) Market Quotation and Second Method are selected for purposes of Payments on Early Termination. Notwithstanding anything herein to the contrary, the parties will be obligated to pay any accrued amounts that would otherwise be due on the Optional Termination Date.

4. Account Details.

Payments to JPMorgan:

Account for payments in USD: [account information]

Payments to Counterparty:

Account for payments in USD: [please provide]

5. Office and address for notices in connection with this Swap Transaction:

(a) City of Austin:

(b) JPMorgan: its New York Office c/o Global Derivative Operations,
17th Floor, 4 Metrotech Center, Brooklyn, New York 11245

6. Documents to be delivered:

Each party shall deliver to the other, at the time of its execution of this Confirmation, evidence of the specimen signature and incumbency of each person who is executing the Confirmation on the party's behalf, unless such evidence has previously been supplied in connection with this Agreement and remains true and in effect.

7. Representations.

Each party will be deemed to represent to the other party on the date on which it enters into a Swap Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Swap Transaction):

(a) *Non-Reliance.* It is acting for its own account, and it has made its own independent decision to enter into that Swap Transaction and as to whether that Swap Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Swap Transaction; it being understood that information and explanations related to the terms and conditions of a Swap Transaction shall not be considered investment advice or a recommendation to enter into that Swap Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Swap Transaction.

(b) *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Swap Transaction. It is capable of assuming, and assumes the risks of that Swap Transaction.

(c) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that Swap Transaction.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us.

Yours sincerely,

JPMORGAN CHASE BANK

By: DRAFT DRAFT DRAFT
Name: DRAFT DRAFT DRAFT
Title: DRAFT DRAFT DRAFT

Confirmed as of the date first
above written:

CITY OF AUSTIN

By: DRAFT DRAFT DRAFT
Name: DRAFT DRAFT DRAFT
Title: DRAFT DRAFT DRAFT

JPMorgan Ref No: ____TBD____

ISDA®

International Swaps and Derivatives Association, Inc.

CREDIT SUPPORT ANNEX

to the Schedule to the

ISDA MASTER AGREEMENT

dated as of June __, 2004

between
and

JPMorgan Chase Bank
("JPMorgan")

City of Austin, Texas
("Counterparty")

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:

Paragraph 1. Interpretation

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the Pledgor will be to the other party when acting in that capacity; *provided, however*, that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

Paragraph 3. Credit Support Obligations

(a) ***Delivery Amount.*** Subject to Paragraphs 4 and 5, upon demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "*Delivery Amount*" applicable to the Pledgor for any Valuation Date will equal the amount by which:

- (i) the Credit Support Amount
exceeds
- (ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) ***Return Amount.*** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "*Return Amount*" applicable to the Secured Party for any Valuation Date will equal the amount by which:

- (i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party
exceeds
- (ii) the Credit Support Amount.

"Credit Support Amount" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions

(a) ***Conditions Precedent.*** Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

- (i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and
- (ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) ***Transfer Timing.*** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) ***Calculations.*** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) ***Substitutions.***

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the "Substitute Credit Support"); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the "Substitution Date"); *provided* that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

Paragraph 5. Dispute Resolution

If a party (a "Disputing Party") disputes (I) the Valuation Agent's calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction);

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

Paragraph 6. Holding and Using Posted Collateral

(a) ***Care of Posted Collateral.*** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) ***Eligibility to Hold Posted Collateral; Custodians.***

(i) ***General.*** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) ***Failure to Satisfy Conditions.*** If the Secured Party or its Custodian fails to satisfy conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) ***Liability.*** The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) ***Use of Posted Collateral.*** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

(i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and

(ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) ***Distributions and Interest Amount.***

(i) ***Distributions.*** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).

(ii) ***Interest Amount.*** Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted

Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

Paragraph 7. Events of Default

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

Paragraph 8. Certain Rights and Remedies

(a) ***Secured Party's Rights and Remedies.*** If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) ***Pledgor's Rights and Remedies.*** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in

the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

(i) the Pledgor may exercise all rights and remedies available to a Pledgor under applicable law with respect to Posted Collateral held by the Secured Party;

(ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;

(iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and

(iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

Paragraph 9. Representations

Each party represents to the other party (which representation will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

Paragraph 10. Expenses

(a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.

(b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).

(c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

Paragraph 11. Miscellaneous

(a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obliged to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that the Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.

(c) **Further Protection.** The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).

(d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.

(e) **Demands and Notices.** All demands and notices given by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.

(f) **Specifications of Certain Matters.** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

Paragraph 12. Definitions

As used in this Annex:—

"Cash" means the lawful currency of the United States of America.

“Credit Support Amount” has the meaning specified in Paragraph 3.

“Custodian” has the meaning specified in Paragraphs 6(b)(i) and 13.

“Delivery Amount” has the meaning specified in Paragraph 3(a).

“Disputing Party” has the meaning specified in Paragraph 5.

“Distributions” means, with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

“Eligible Collateral” means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

“Eligible Credit Support” means Eligible Collateral and Other Eligible Support.

“Exposure” means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; *provided* that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of “Market Quotation”).

“Independent Amount” means, with respect to party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“Interest Amount” means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of Cash on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

“Interest Period” means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

“Interest Rate” means the rate specified in Paragraph 13.

“Local Business Day,” unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

“Minimum Transfer Amount” means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“Notification Time” has the meaning specified in Paragraph 13.

"Obligations" means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

"Other Eligible Support" means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

"Other Posted Support" means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

"Pledgor" means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

"Posted Collateral" means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

"Posted Credit Support" means Posted Collateral and Other Posted Support.

"Recalculation Date" means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however*, that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.

"Resolution Time" has the meaning specified in Paragraph 13.

"Return Amount" has the meaning specified in Paragraph 3(b).

"Secured Party" means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

"Specified Condition" means, with respect to a party, any event specified as such for that party in Paragraph 13.

"Substitute Credit Support" has the meaning specified in Paragraph 4(d)(i).

"Substitution Date" has the meaning specified in Paragraph 4(d)(ii).

"Threshold" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"Transfer" means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

(i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;

(ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;

(iii) in the case of securities that can be paid or delivered in book-entry, the giving of written instruments to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and

(iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

“Valuation Agent” has the meaning specified in Paragraph 13.

“Valuation Date” means each date specified in or otherwise determined pursuant to Paragraph 13.

“Valuation Percentage” means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

“Valuation Time” has the meaning specified in Paragraph 13.

“Value” means for any Valuation Date or other date for which Value is calculated, and subject to Paragraph 5 in the case of a dispute, with respect to:

(i) Eligible Collateral or Posted Collateral that is:

(A) Cash, the amount thereof; and

(B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;

(ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and

(iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.

Paragraph 13. Elections and Variables

- (a) ***Security Interest for “Obligations”***. The term “Obligations” as used in this Annex includes no additional obligations with respect to JPMorgan and Counterparty.
- (b) ***Conditions Precedent to Party B as a Pledgor Hereunder***. Notwithstanding anything in this Annex to the contrary, Party B shall not be obligated to Post any Eligible Collateral hereunder with respect to a Specified Transaction unless (A)(i) the Insurer then providing a Swap Insurance Policy or financial guarantee insurance policy insuring Party B’s periodic ongoing payments under such Specified Transaction fails to maintain the ratings as set forth in the Schedule for such Specified Transaction, or (ii) such Insurer is in conservation, liquidation, or receivership under applicable law, and (B) Party B has not obtained a replacement Credit Support Provider acceptable to Party A whose obligations are pursuant to a Credit Support Document acceptable to Party A.
- (c) ***Credit Support Obligations***.
- (i) Delivery Amount, Return Amount and Credit Support Amount.
- (A) “***Delivery Amount***” will have the meaning specified in Paragraph 3(a).
- (B) “***Return Amount***” will have the meaning specified in Paragraph 3(b).
- (C) “***Credit Support Amount***” will have the meaning specified in Paragraph 3.
- (ii) Eligible Collateral. The following items will qualify as “Eligible Collateral”:

	<u>JPMorgan</u>	<u>Counterparty</u>	<u>Valuation Percentage</u>
(A) USD Cash	X	X	100%
(B) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of one year or less from the Valuation Date	X	X	99%
(C) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of more than one year but less than ten years from the Valuation Date	X	X	98%
(D) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of ten years or more from the Valuation Date	X	X	96%

	<u>JPMorgan</u>	<u>Counterparty</u>	<u>Valuation Percentage</u>
(E) Agency Securities having a remaining maturity of one year or less from the Valuation Date	X	X	98%
(F) Agency Securities having a remaining maturity of more than one year but less than ten years from the Valuation Date	X	X	97%
(G) Agency Securities having a remaining maturity of ten years or more from the Valuation Date	X	X	95%

For purposes of the foregoing:

“Agency Securities” means negotiable debt obligations which are fully guaranteed as to both principal and interest by the Federal National Mortgage Association, the Government National Mortgage Association or the Federal Home Loan Mortgage Corporation, but excluding (i) interest only and principal only securities and (ii) Collateralized Mortgage Obligations, Real Estate Mortgage Investment Conduits and similar derivative securities.

(iii) Other Eligible Support. There shall be no “Other Eligible Support” for either party for purposes of this Annex.

(iv) Thresholds.

(A) “*Independent Amount*” shall mean, with respect to Party A and with respect to Party B, none.

(B) “*Threshold*” means the amounts determined on the basis of the lower of the Credit Ratings (as such term is defined in the Schedule) set forth in the following table, *provided, however*, that if an Event of Default has occurred and is continuing with respect to such party, the Threshold shall be U.S.\$0.

<u>Credit Rating (S&P / Moody's)</u>	<u>Threshold (Counterparty)</u>	<u>Threshold (JPMorgan)</u>
AA-/Aa3 and above	\$25,000,000	\$25,000,000
A+/A1 to A-/A3	15,000,000	15,000,000
BBB+/Baa1 or below or no Credit Rating	0	0

- (C) ***“Minimum Transfer Amount”*** means the amounts determined on the basis of the lower of the Credit Ratings set forth in the following table; *provided, however*, that if an Event of Default has occurred and is continuing with respect to a party, the Minimum Transfer Amount for such party shall be U.S.\$0.

Credit Rating (S&P / Moody's)	Minimum Transfer Amount (Counterparty)	Minimum Transfer Amount (JPMorgan)
AA-/Aa3 and above	\$1,000,000	\$1,000,000
A+/A1 to A-/A3	\$1,000,000	\$1,000,000
BBB+/Baa1 or below or no Credit Rating	\$100,000	\$100,000

- (D) ***Rounding.*** The Delivery Amount and the Return Amount will be rounded up and down respectively to the nearest integral multiple of U.S.\$10,000.

(d) ***Valuation and Timing.***

- (i) ***“Valuation Agent”*** means the party making the demand under Paragraph 3, unless there has occurred and is continuing any Event of Default, Potential Event of Default or Additional Termination Event with respect to such party, in which case the other party shall be the Valuation Agent.

- (ii) ***“Valuation Date”*** means any Local Business Day.

- (iii) ***“Valuation Time”*** means the close of business on the Local Business Day preceding the Valuation Date or date of calculation, as applicable;

- (iv) ***“Notification Time”*** means by 1:00 p.m., New York time, on a Local Business Day.

- (e) ***Conditions Precedent.*** With respect to JPMorgan, an Illegality and any Additional Termination Event (if JPMorgan is the Affected Party with respect to such Termination Event) will be a “Specified Condition.” With respect to Counterparty, an Illegality and any Additional Termination Event (if Counterparty is the Affected Party with respect to such Additional Termination Event) will be a “Specified Condition.”

(f) ***Substitution.***

- (i) ***“Substitution Date”*** has the meaning specified in Paragraph 4(d)(ii).

- (ii) ***Consent.*** Inapplicable.

(g) ***Dispute Resolution.***

(i) ***“Resolution Time”*** means 1:00 p.m., New York time, on the Local Business Day following the date on which notice is given that gives rise to a dispute under Paragraph 5.

(ii) ***Value.*** For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support other than Cash will be calculated as follows: With respect to any Eligible Collateral except Cash, the sum of (I) (x) the mean of the high bid and low asked prices quoted on such date by any principal market maker for such Eligible Collateral chosen by the Disputing Party, or (y) if no quotations are available from a principal market maker for such date, the mean of such high bid and low asked prices as of the first day prior to such date on which such quotations were available, plus (II) the accrued interest on such Eligible Collateral (except to the extent Transferred to a party pursuant to any applicable provision of this Agreement or included in the applicable price referred to in (I)) as of such date, multiplied by the applicable Valuation Percentage.

(iii) The provisions of Paragraph 5 will apply.

(h) ***Holding and Using Posted Collateral.***

(i) ***Eligibility to Hold Posted Collateral; Custodians.*** JPMorgan, as Secured Party, will be entitled to hold Posted Collateral itself or through a Custodian pursuant to Paragraph 6(b), *provided* that the following conditions applicable to it are satisfied:

- (1) JPMorgan is not a Defaulting Party.
- (2) The Custodian is a Bank (as defined in the Federal Deposit Insurance Act) whose rating with respect to its long term unsecured, unsubordinated indebtedness is at least BBB+ by S&P or Baa1 by Moody's, and the custodial arrangement is governed by New York law.

Initially, the Custodian for Party A is: None.

(ii) ***Eligibility to Hold Posted Collateral; Custodians.*** Counterparty, as the Secured Party, will be entitled to hold Posted Collateral itself or through a Custodian pursuant to Paragraph 6(b), *provided* that the following conditions applicable to it are satisfied:

- (1) Counterparty is not a Defaulting Party.
- (2) The Custodian is a Bank (as defined in the Federal Deposit Insurance Act) whose rating with respect to its long term unsecured, unsubordinated indebtedness is at least BBB+ by S&P or Baa1 by Moody's, and the custodial arrangement is governed by New York law.

Initially, the Custodian for Party B is: None.

(iii) Use of Posted Collateral. The provisions of Paragraph 6(c) will apply.

(i) ***Distributions and Interest Amount.***

(i) Interest Rate. The Interest Rate for any day means the Federal Funds Overnight Rate. For the purposes hereof, "Federal Funds Overnight Rate" means, for any day, an interest rate per annum equal to the rate published as the Federal Funds Effective Rate that appears on Telerate Page 118 for such day.

(ii) Transfer of Interest Amount. The Transfer of the Interest Amount will be made on the second Local Business Day of each calendar month and on any Local Business Day that Posted Collateral in the form of Cash is Transferred to the Pledgor pursuant to Paragraph 3(b).

(iii) Alternative to Interest Amounts. The provisions of Paragraph 6(d)(ii) will apply.

(j) ***Additional Representations.*** None.

(k) ***Other Eligible Support and Other Posted Support.***

(i) "Value" shall have no meaning with respect to Other Eligible Support and Other Posted Support.

(ii) "Transfer" shall have no meaning with respect to Other Eligible Support and Other Posted Support.

(l) ***Demands and Notices.***

All demands, specifications and notices made by a party to this Annex will be made pursuant to Section 12 of this Agreement, unless otherwise specified here:

With respect to JPMorgan:

JPMorgan Chase Bank
Collateral Middle Office Americas 3/OPS2
500 Stanton Christiana Road
Newark , Delaware 19713 USA
Telephone No.: 302-634-3191
Facsimile: 302-634-3260

With respect to Counterparty:

City of Austin, Texas
Attention: City Treasurer
P.O. Box 2106
Austin, Texas 78768
Facsimile No.: (512) 370-3838

Please confirm your agreement to the terms of the foregoing Paragraph 13 by signing below.

JPMORGAN CHASE BANK

By: _____
Name:
Title:

CITY OF AUSTIN, TEXAS

By: _____
Name:
Title: