

ORDINANCE NO. 040729-20

AN ORDINANCE approving and authorizing the substitution of a surety bond for cash and securities in the reserve fund maintained for certain outstanding revenue bonds of the City; providing for the funds released from such reserve fund to be used for the discharge and defeasance of certain outstanding revenue bonds of the City; providing for the redemption of certain outstanding revenue bonds being defeased; resolving other matters incident and related thereto; suspending the rule requiring ordinances be read on three separate days; and declaring an emergency.

WHEREAS, upon receiving the consent of a majority of the owners of the outstanding revenue bonds payable from the net revenues of the City's combined Electric Light and Power System and Water and Wastewater Systems (the "Combined Utility System Revenue Bonds"), the ordinances authorizing the issuance of such obligations were amended by Ordinances Numbered 020718-13 and 020718-14 (collectively, the Combined Utility System Revenue Bonds Ordinances") to authorize the substitution of bond insurance policies or surety bonds issued by highly-rated ("AAA") bond insurance companies ("Financial Commitment") for cash and investment securities held in the debt service reserve fund the ("Reserve Fund") maintained for such revenue bonds; and

WHEREAS, in obtaining the bondholders consent to allow for the substitution of bond insurance policies or surety bonds for cash and investment securities held in the debt service reserve fund, the City represented and made a part of such amendment that any cash and securities released from the Reserve Fund, net of costs incurred with respect to the initial substitution of the Financial Commitment, was to be deposited to the credit of one or more special accounts maintained on the books and records of the City and expended only to pay, discharge and defease "Combined Utility System Revenue Bonds" in a manner that reduces the principal amount and Maturity Amount of outstanding Combined Utility System Revenue Bonds, and

WHEREAS, following such amendment, an initial substitution of a Surety Bond was made to the Reserve Fund in the amount of \$30,000,000 and the total amount required to be accumulated and maintained in the Reserve Fund was established to be \$106,790,325.15 (the Required Reserve); and

WHEREAS, the amount currently deposited to the credit of the Reserve Fund is \$165,770,020.73 of which amount \$30,000,000 represents a Financial Commitment from Financial Security Assurance Inc. and the balance of such amount represents cash and securities held in the Reserve Fund; and

WHEREAS, the City has determined a Financial Commitment should be substituted for the balance of cash and investments held in the Reserve Fund so the entire Required Reserve will be funded with one or more Financial Commitments; and the amount of funds so released shall be expended and used to defease and discharge certain outstanding bonds in the aggregate principal amount of \$130,775,000 (hereinafter referred to as the "Defeased Obligations") in accordance with the provisions of V.T.C.A., Government Code, Chapter 1207, as amended, such Defeased Obligations being more particularly described as follows:



(1) City of Austin, Texas, Combined Utility Systems Revenue Refunding Bonds, Series 1992A, dated May 15, 1992, and being a portion of such bonds scheduled to mature on November 15 in each of the years 2006 and 2007, and aggregating in principal amount \$22,305,000;

(2) City of Austin, Texas, Combined Utility Systems Revenue Refunding Bonds, Series 1993, dated January 15, 1993, and being a portion of such bonds scheduled to mature on November 15 in each of the years 2005 and 2006 and May 15 in each of the years 2005, 2006 and 2018, and aggregating in principal amount \$44,205,000; and

(3) City of Austin, Texas, Combined Utility Systems Revenue Refunding Bonds, Series 1993A, dated June 1, 1993, and being a portion of such bonds scheduled to mature on May 15 in each of the years 2005, 2006, 2007 and 2016 and November 15 in each of the years 2004, 2005, 2006, 2007 and 2013, and aggregating in principal amount \$64,265,000;

now, therefore,

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

SECTION 1: The Chief Financial Officer is hereby authorized and directed to cause to be deposited with Deutsche Bank Trust Company Americas, New York, New York the amount of \$138,249,178.90 to provide for the full payment and discharge of the Defeased Obligations.

SECTION 2: The City Manager, Chief Financial Officer, or City Treasurer, any one or more of such officials, are hereby authorized and directed to make the necessary arrangements for the purchase of the federal securities to be acquired and deposited to the credit of the "Escrow Fund" pursuant to the terms of a Special Escrow Agreement, in substantially the form and substance of attached hereto as **Exhibit A**, which is incorporated herein by reference as a part of this Ordinance for all purposes, and the City Manager is hereby authorized to execute such Special Escrow Agreement for and on behalf of the City and as the act and deed of the City Council. The Special Escrow Agreement, as approved by the City Attorney and executed by the City Manager, shall be deemed the Agreement approved by the City Council and constitute the Agreement herein approved.

SECTION 3: (a) The bonds of that series known as "City of Austin, Texas, Combined Utility Systems Revenue Refunding Bonds, Series 1993", dated January 15, 1993, and being a portion of the current interest bonds of said series scheduled to mature May 15, 2018 and aggregating in principal amount \$28,825,000, shall be redeemed and the same are hereby called for redemption on September 15, 2004, at the price of par plus accrued interest to the date of redemption. The City Clerk is hereby authorized and directed to file a copy of this Ordinance, together with a suggested form of notice of redemption to be sent to bondholders, with JPMorgan Chase Bank (successor paying agent/registrars to Ameritrust Texas, National Association, in accordance with the redemption provisions applicable to such bonds; such suggested form of notice of redemption being attached hereto as **Exhibit B** and incorporated herein by reference as a part of this Ordinance for all purposes. Additionally, in accordance with the terms of the ordinance authorizing the issuance of such bonds, the paying agent/registrars is hereby authorized and directed to make a lot selection of the bonds of each maturity to be redeemed and make arrangements to notify bondholders of such lot selection as soon as possible.



The term bonds maturing in the year 2018 in the principal amount of \$28,285,000 to be redeemed on September 15, 2004 shall be credited against the principal amount of such term bonds required to be redeemed on the dates and in principal amounts as follows:

Date	Mandatory Redemption Requirement	Principal Amount Credited Against Mandatory Redemption Requirement
May 15, 2014	\$11,590,000	\$ 1,990,000
November 15, 2014	\$ 400,000	250,000
May 15, 2015	\$12,360,000	7,655,000
November 15, 2015	\$ 295,000	185,000
May 15, 2016	\$13,170,000	8,155,000
November 15, 2016	\$ 170,000	110,000
May 15, 2017	\$14,050,000	8,700,000
November 15, 2017	\$ 30,000	20,000
May 15, 2018	\$ 2,875,000	1,760,000

(b) The bonds of that series known as "City of Austin, Texas, Combined Utility Systems Revenue Refunding Bonds, Series 1993A", dated June 15, 1993, and being a portion of the current interest bonds of said series scheduled to mature May 15 in each of the years 2005, 2006, 2007 and 2016 and November 15 in each of the years 2004, 2005, 2006, 2007 and 2013, and aggregating in principal amount \$64,265,000, shall be redeemed and the same are hereby called for redemption on September 15, 2004, at the price of 101% of par plus accrued interest to the date of redemption. The City Clerk is hereby authorized and directed to file a copy of this Ordinance, together with a suggested form of notice of redemption to be sent to bondholders, with JPMorgan Chase Bank (successor paying agent/registrars to Ameritrust Texas, National Association, in accordance with the redemption provisions applicable to such bonds; such suggested form of notice of redemption being attached hereto as **Exhibit C** and incorporated herein by reference as a part of this Ordinance for all purposes. Additionally, in accordance with the terms of the ordinance authorizing the issuance of such bonds, the paying agent/registrars is hereby authorized and directed to make a lot selection of the bonds of each maturity to be redeemed and make arrangements to notify bondholders of such lot selection as soon as possible.

The term bonds maturing in the year 2013 in the principal amount of \$16,010,000 to be redeemed on September 15, 2004 shall be credited against the principal amount of such term bonds required to be redeemed on the dates in principal amounts as follows:



Date	Mandatory Redemption Requirement	Principal Amount Credited Against Mandatory Redemption Requirement
May 15, 2011	\$4,885,000	\$3,630,000
November 15, 2011	\$4,970,000	\$3,690,000
May 15, 2012	\$5,115,000	\$3,800,000
November 15, 2012	\$3,185,000	\$2,365,000
May 15, 2013	\$3,275,000	\$2,435,000
November 15, 2013	\$ 115,000	\$ 90,000

The term bonds maturing in the year 2016 in the principal amount of \$13,320,000 to be redeemed on September 15, 2004 shall be credited against the principal amount of such term bonds required to be redeemed on the dates and in principal amounts as follows:

Date	Mandatory Redemption Requirement	Principal Amount Credited Against Mandatory Redemption Requirement
May 15, 2014	\$ 115,000	\$ 90,000
November 15, 2014	\$ 120,000	\$ 90,000
May 15, 2015	\$ 120,000	\$ 90,000
November 15, 2015	\$ 8,870,000	\$6,585,000
May 15, 2016	\$ 8,815,000	\$6,465,000

**SECTION 4:** The City Treasurer is hereby authorized and directed to make all arrangements necessary to notify the holders of such obligations of the City's decision to redeem such obligations on the dates and in the manner herein provided and in accordance with the Ordinance authorizing the issuance of the obligations and this Ordinance.

**SECTION 5:** In accordance with the provisions of the Combined Utility System Revenue Bonds Ordinances", the total amount required to be accumulated and maintained in the Reserve Fund is \$106,790,325.15 (the Required Reserve), which amount is equal to or greater than the average annual requirement (calculated on a calendar year basis) for the payment of principal of and interest (or other similar payments) on all outstanding Combined Utility System Revenue Bonds as of the date of the initial Financial Obligation deposited to the credit of the Reserve Fund..

In addition to the cash being withdrawn for the defeasance herein contemplated, there is currently on deposit in the Reserve Fund a surety bond issued by Financial Security Assurance Inc. in the amount of \$30,000,000. Simultaneously with the withdrawal of cash from the Reserve Fund to accomplish the defeasance of the Defeased Obligations, there shall be deposited to the credit of the Reserve Fund an additional surety bond in the amount of \$76,790,325.15 from Financial Security Assurance Inc. a New York domiciled insurance company (hereinafter referred to as "FSA") which is rated in the highest rating category by Moody's Investors Service, Standard & Poor's Rating Services and Fitch Ratings, Inc.



In accordance with FSA's terms for the issuance of a "Municipal Bond Debt Service Reserve Insurance Policy" (the "Reserve Policy"), an Insurance Agreement by and between the City and FSA has been submitted to the City for approval and execution, and such Insurance Agreement, substantially in the form and content of Exhibit D attached hereto, is hereby approved and authorized to be executed by the City Manager and such Insurance Agreement, as executed and delivered by the City Manager, shall be deemed the Insurance Agreement herein approved by the City Council and authorized for execution.

To the extent the City should make a draw under the Reserve Policy, the City acknowledges and agrees the repayment of "Policy Costs", as defined in the Insurance Agreement, shall constitute a payment of an amount required to be deposited in the Reserve Fund to establish and maintained the Required Reserve, and insofar as the priority of uses of the revenues of (i) Electric Light and Power System and (ii) the Waterworks and Sewer System, such Policy Costs shall be entitled to the same priority of payment identified in the Combined Utility System Revenue Bonds Ordinances for payments required to be deposited in the Reserve Fund to establish and maintain the Required Reserve.

**SECTION 6:** It is hereby found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

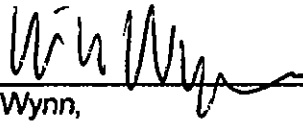
**SECTION 7:** The public importance of this measure and the fact that there is an urgent public need for the City to provide for the substitution of a bond insurance policy for cash in the Reserve Fund as soon as possible and without delay for the immediate preservation of the public peace, health and safety of the citizens of the City constitute and create an emergency requiring the suspension of the rule providing for ordinances to be read on three separate days; and such rule relating to the passage of ordinances and the Charter provision relating to the effective date of ordinances are hereby suspended and this Ordinance is hereby passed as an emergency measure and shall be effective immediately upon its passage and adoption as provided by the Charter of the City.

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PASSED AND ADOPTED, this July 29, 2004.

CITY OF AUSTIN, TEXAS

  
\_\_\_\_\_  
Will Wynn,  
Mayor

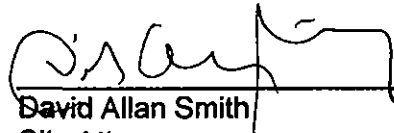
ATTEST:

  
\_\_\_\_\_  
Shirley A. Brown  
City Clerk

(City Seal)



APPROVED:

  
\_\_\_\_\_  
David Allan Smith  
City Attorney



**EXHIBIT A**  
**SPECIAL ESCROW AGREEMENT**



## SPECIAL ESCROW AGREEMENT

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

THIS SPECIAL ESCROW AGREEMENT (the "Agreement"), dated and made effective as of July 29, 2004, made by and between the City of Austin, Texas, a duly incorporated municipal corporation principally located in Travis County, Texas (the "City") acting by and through the City Manager and City Clerk, and Deutsche Bank Trust Company Americas, New York, New York (the "Bank"), a banking corporation organized and existing under the laws of the State of New York and authorized to do business in the State of Texas, or its successors or assigns hereunder,

### WITNESSETH:

WHEREAS, the City has determined to provide for the final payment and discharge of the following described outstanding obligations totaling in original principal amount \$130,775,000 (hereinafter collectively referred to as the "Defeased Obligations") more particularly described and identified as follows:

(1) City of Austin, Texas, Combined Utility Systems Revenue Refunding Bonds, Series 1992A, dated May 15, 1992, and being a portion of such bonds scheduled to mature on November 15 in each of the years 2006 and 2007, and aggregating in principal amount \$22,305,000;

(2) City of Austin, Texas, Combined Utility Systems Revenue Refunding Bonds, Series 1993, dated January 15, 1993, and being a portion of such bonds scheduled to mature on November 15 in each of the years 2005 and 2006 and May 15 in each of the years 2005, 2006 and 2018, and aggregating in principal amount \$44,205,000; and

(3) City of Austin, Texas, Combined Utility Systems Revenue Refunding Bonds, Series 1993A, dated June 1, 1993, and being a portion of such bonds scheduled to mature on May 15 in each of the years 2005, 2006, 2007 and 2016 and November 15 in each of the years 2004, 2005, 2006, 2007 and 2013, and aggregating in principal amount \$64,265,000;

AND WHEREAS, in accordance with the provisions of V.T.C.A., Government Code, Chapter 1207, as amended (the "Act"), the City is authorized to deposit funds directly with any place of payment for such obligations, or other authorized depository, in an amount sufficient to provide for the full payment thereof and enter into an escrow or similar agreement with such place of payment for the safekeeping, investment, reinvestment, administration and disposition of such deposit, upon such terms and conditions as the parties may agree, provided such deposit may be invested only in direct obligations the principal of and interest on are unconditionally guaranteed by the United States of America (hereinafter called the "Federal Securities"), that mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment of such obligations; and



WHEREAS, such deposit, if made on or before the payment date for such obligations, shall constitute the making of firm banking and financial arrangements for their discharge and final payment and such obligations shall cease to be outstanding obligations of the City for all purposes except for being paid from the deposit of funds placed in escrow; and

WHEREAS, the Defeased Obligations are scheduled to mature and interest thereon is payable on the dates and in the manner set forth in Exhibit A attached hereto and incorporated herein by reference as a part of this Agreement for all purposes; and

WHEREAS, the Federal Securities shall be held and deposited to the credit of the "Escrow Fund" to be established and maintained by the Bank in accordance with this Agreement; and

WHEREAS, on or before the 31<sup>st</sup> day of August, 2004, the City will cause funds to be deposited to the credit of the Escrow Fund in an amount sufficient to purchase Federal Securities listed and identified in Exhibit B attached hereto and incorporated by reference as a part of this Agreement for all purposes; and

WHEREAS, the Federal Securities, together with the beginning cash balance in the Escrow Fund, shall mature and the interest thereon shall be payable at such times to insure the existence of monies sufficient to pay in full the aggregate amount of the Defeased Obligations in accordance with the terms of the ordinances pertaining to issuance of the Defeased Obligations and as set forth in Exhibit A attached hereto; and

WHEREAS, the City has completed all arrangements for the purchase of the Federal Securities listed in Exhibit B and the deposit and credit of the same to the Escrow Fund as provided herein; and

WHEREAS, the Bank is a banking corporation organized and existing under the laws of the State of New York, possessing trust powers and is fully qualified and empowered to enter into this Agreement and the Bank is not a depository of the City; and

WHEREAS, pursuant to an ordinance, adopted on July 29, 2004, the City Council of the City approved and authorized the execution of this Agreement; and

WHEREAS, the City and the Bank, as the case may be, shall take all action necessary to pay the full aggregate amount of the Defeased Obligations in accordance with the provisions thereof, including, without limitation, all actions required by the ordinances pertaining to the Defeased Obligations, the Act and this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and to secure the payment of the Defeased Obligations as provided in Exhibit A attached hereto, the City and the Bank hereby mutually undertake, promise and agree as follows:

**SECTION 1:** Reference to or citation herein of any provision of the ordinances pertaining to the issuance of the Defeased Obligations shall be deemed an incorporation of such provision as a part hereof in the same manner and with the same effect as if it were fully set forth herein.

**SECTION 2:** There is hereby created by the City with the Bank a special segregated and irrevocable trust fund designated "SPECIAL 2004 CITY OF AUSTIN, TEXAS REVENUE



BONDS CASH DEFEASANCE ESCROW FUND" (hereinafter called the "Escrow Fund") for the payment of the Defeased Obligations, and the City agrees and covenants to cause to be deposited with the Bank the following:

\$138,249,178.00 for the purchase of the Federal Securities identified in Exhibit B to be held for the account of the Escrow Fund;

\$ 0.90 for deposit in the Escrow Fund as a beginning cash balance.

The Bank hereby accepts the Escrow Fund and further agrees to receive said moneys, apply the same as set forth herein, and to hold the cash and Federal Securities deposited and credited to the Escrow Fund for application and disbursement for the purposes and in the manner provided for in this Agreement.

**SECTION 3:** The City hereby represents that the cash and Federal Securities specified in Section 2 hereof, together with the interest to be earned thereon, deposited to the credit of the Escrow Fund will be sufficient to pay in full and in a timely manner the Defeased Obligations as shown in Exhibit A, and such Defeased Obligations shall be paid at the times and in the amounts set forth and identified in Exhibit A attached hereto.

**SECTION 4:** The Bank agrees that all cash and Federal Securities, together with any income or interest earned thereon, held in the Escrow Fund shall be and is hereby irrevocably pledged to the payment of the principal of and interest on the Defeased Obligations in the amounts and timely manner shown in Exhibit A, and such funds initially deposited and to be received from maturing principal and interest on the Federal Securities in the Escrow Fund shall be applied solely in accordance with the provisions of this Agreement.

**SECTION 5:** If, for any reason, the funds on hand in the Escrow Fund shall be insufficient to make the payments set forth in Exhibit A attached hereto, as the same becomes due and payable, the City shall make timely deposits to the Escrow Fund, from lawfully available funds, of additional funds in the amounts required to make such payments. Notice of any such insufficiency shall be immediately given by the Bank to the City by the fastest means possible, but the Bank shall in no manner be responsible for the City's failure to make such deposits.

**SECTION 6:** The Bank shall hold said Federal Securities and moneys in the Escrow Fund at all times as a special and separate trust fund, wholly segregated from other moneys and securities on deposit with the Bank; shall never commingle said Federal Securities and moneys with other moneys or securities of the Bank; and shall hold and dispose of the assets therein only as set forth herein. Nothing herein contained shall be construed as requiring the Bank to keep the identical moneys, or any part thereof, in said Escrow Fund, if it is impractical, but moneys of an equal amount, except to the extent such are represented by the Federal Securities, shall always be maintained on deposit in the Escrow Fund by the Bank, as escrow agent; and a special account evidencing such facts shall at all times be maintained on the books of the Bank.

**SECTION 7:** The Bank shall collect and receive the principal of and interest on the Federal Securities as they respectively mature and become due and credit the same to the Escrow Fund. On or before each principal and/or interest payment date for the Defeased Obligations shown in Exhibit A attached hereto, the Bank, without further direction from anyone, including the City, shall cause to be withdrawn from the Escrow Fund the amounts required to pay the accrued interest due and payable on said payment date on the Defeased Obligations



and the principal of the Defeased Obligations due and payable on said payment date and the amount withdrawn from the Escrow Fund shall be immediately transmitted and deposited with the paying agent for the Defeased Obligations to be paid with such amount. The paying agent for the Defeased Obligations is the JPMorgan Chase Bank, Dallas, Texas, and, unless advised otherwise in writing, amounts transmitted to such paying agent shall be by wire transfer in accordance with Exhibit C attached hereto and incorporated herein by reference as a part hereof for all purposes.

**SECTION 8:** The escrow created hereby shall be irrevocable and an express lien shall exist on all moneys and Federal Securities in the Escrow Fund as security for the payment of the Defeased Obligations until such funds are paid out, used and applied in accordance with this Agreement.

Unless disbursed in payment of the Defeased Obligations, all funds and the Federal Securities received by the Bank for the account of the City hereunder shall be and remain the property of the Escrow Fund and the City and the owners of the Defeased Obligations shall be entitled to a preferred claim and shall have a first lien upon such funds and Federal Securities enjoyed by a trust beneficiary. The funds and Federal Securities received by the Bank under this Agreement shall not be considered as a banking deposit by the City and the Bank and the City shall have no right or title with respect thereto, except as otherwise provided herein. Such funds and Federal Securities shall not be subject to checks or drafts drawn by the City.

**SECTION 9:** The Bank shall have no lien whatsoever upon any of the moneys or Federal Securities in the Escrow Fund for payment of services rendered hereunder, services rendered as Paying Agent for the Defeased Obligations, or for any costs or expenses incurred hereunder and reimbursable from the City.

**SECTION 10:** The Bank shall be authorized to accept initially and temporarily cash and/or substituted Federal Securities pending the delivery of the Federal Securities identified in the Exhibit B attached hereto, or shall be authorized to redeem the Federal Securities and reinvest the proceeds thereof, together with other moneys held in the Escrow Fund in noncallable direct obligations of the United States of America provided such early redemption and reinvestment of proceeds does not change the repayment schedule for the Defeased Obligations appearing in Exhibit A and the Bank receives the following:

(1) an opinion by an independent certified public accountant to the effect that (i) the initial and/or temporary substitution of cash and/or securities for one or more of the Federal Securities identified in Exhibit B pending the receipt and delivery thereof to the Escrow Agent or (ii) the redemption of one or more of the Federal Securities and the reinvestment of such funds in one or more substituted securities (which shall be noncallable direct obligations of the United States of America), together with the interest thereon and other available moneys then held in the Escrow Fund, will, in either case, be sufficient to pay the Defeased Obligations in accordance with Exhibit A, and

(2) with respect to an early redemption of Federal Securities and the reinvestment of the proceeds thereof, an unqualified opinion of nationally recognized municipal bond counsel to the effect that (a) such investment will not cause interest payments with respect to the Defeased Obligations to be included in the gross income of bondholders for federal income tax purposes, under the Code and related regulations as in effect on the date of such investment, or



otherwise make such interest payments subject to Federal income taxation and (b) such reinvestment complies with the Constitution and laws of the State of Texas and with all relevant documents relating to the issuance of the Defeased Obligations.

**SECTION 11:** Except as provided in Section 10 hereof, moneys in the Escrow Fund will be invested only in the Federal Securities listed in Exhibit B, and neither the City nor the Bank shall reinvest any moneys deposited in the Escrow Fund except as specifically provided by this Agreement.

**SECTION 12:** If at any time there exists or it is determined an excess of interest on or maturing principal of the Federal Securities in excess of the aggregate amounts needed for the payment of the Defeased Obligations, the Bank may transfer such excess amount to or on the order of the City.

**SECTION 13:** The Bank shall continuously secure the monies in the Escrow Fund not invested in Federal Securities by a pledge of direct obligations of the United States of America, in the par or face amount at least equal to the principal amount of said uninvested monies to the extent such money is not insured by the Federal Deposit Insurance Corporation.

**SECTION 14:** The Bank shall not be liable or responsible for any loss resulting from any investment made in the Federal Securities.

**SECTION 15:** The funds and Federal Securities received by the Bank under this Agreement shall not be considered as a banking deposit by the City and the Bank and the City shall have no right or title with respect thereto, except as otherwise provided herein. Such funds and Federal Securities shall not be subject to checks or drafts drawn by the City.

**SECTION 16:** The City agrees to pay the Bank for the performance of services hereunder and as reimbursement for anticipated expenses to be incurred hereunder the amount of \$1,200.00 and, except for reimbursement of costs and expenses incurred by the Bank pursuant to Sections 3 and 19 hereof, the Bank hereby agrees said amount is full and complete payment for the administration of this Agreement.

The City also agrees to deposit with the Bank on the effective date of this Agreement, the sum of \$800.00, which represents the total charges due the paying agent for the Defeased Obligations and the City acknowledges and agrees that such amount is and represents the total amount of compensation due JPMorgan Chase Bank, Dallas, Texas for services rendered as paying agent for the Defeased Obligations. Furthermore, the Bank agrees to transmit to such paying agent for the Defeased Obligations the amount included in such deposit for paying agent services to be rendered for the Defeased Obligations in accordance with the City's instructions.

**SECTION 17:** The Bank shall not be responsible for any recital herein, except with respect to its organization and its powers and authority. As to the existence or nonexistence of any fact relating to the City or as to the sufficiency or validity of any instrument, paper or proceedings relating to the City, the Bank shall be entitled to rely upon a certificate signed on behalf of the City by its Mayor or City Manager of the City as sufficient evidence of the facts therein contained. The Bank may accept a certificate of the City Clerk under the City's seal, to the effect that a resolution or other instrument in the form therein set forth has been adopted by the City Council of the City, as conclusive evidence that such resolution or other instrument has been duly adopted and is in full force and effect.



The duties and obligations of the Bank shall be determined solely by the express provisions of this Agreement and the Bank shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Bank.

In the absence of bad faith on the part of the Bank, the Bank may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Bank, conforming to the requirements of this Agreement; but notwithstanding any provision of this Agreement to the contrary, in the case of any such certificate or opinion or any evidence which by any provision hereof is specifically required to be furnished to the Bank, the Bank shall be under a duty to examine the same to determine whether it conforms to the requirements of this Agreement.

The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Bank unless it shall be proved that the Bank was negligent in ascertaining or acting upon the pertinent facts.

The Bank shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in aggregate principal amount of all said Defeased Obligations at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Bank not in conflict with the intent and purpose of this Agreement. For the purposes of determining whether the holders of the required principal amount of said Defeased Obligations have concurred in any such direction, Defeased Obligations owned by any obligor upon the Defeased Obligations, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with such obligor, shall be disregarded, except that for the purposes of determining whether the Bank shall be protected in relying on any such direction only Defeased Obligations which the Bank knows are so owned shall be so disregarded.

The term "Responsible Officers" of the Bank, as used in this Agreement, shall mean and include the Chairman of the Board of Directors, the President, any Vice President and any Second Vice President, the Secretary and any Assistant Secretary, the Treasurer and any Assistant Treasurer, and every other officer and assistant officer of the Bank customarily performing functions similar to those performed by the persons who at the time shall be officers, respectively, or to whom any corporate trust matter is referred, because of his knowledge of and familiarity with a particular subject; and the term "Responsible Officer" of the Bank, as used in this Agreement, shall mean and include any of said officers or persons.

SECTION 18: Time shall be of the essence in the performance of obligations from time to time imposed upon the Bank by this Agreement.

SECTION 19: In the event conflicting demands or notices are made upon the Bank growing out of or relating to this Agreement or the Bank in good faith is in doubt as to what action should be taken hereunder, the Bank shall have the right at its election to:

(a) Withhold and stop all further proceedings in, and performance of, this Agreement with respect to the issue in question and of all instructions received hereunder in regard to such issue; and



(b) File a suit in interpleader and obtain an order from a court of appropriate jurisdiction requiring all persons involved to interplead and litigate in such court their several claims and rights among themselves.

In the event the Bank becomes involved in litigation in connection with this Section, the City to the extent permitted by law agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses and attorney fees suffered or incurred by the Bank as a result thereof. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of New York, New York.

The Bank may advise with legal counsel in the event of any dispute or question regarding the construction of any of the provisions hereof or its duties hereunder, and in the absence of negligence or bad faith on the part of the Bank, no liability shall be incurred by the Bank for any action taken pursuant to this Section and the Bank shall be fully protected in acting in accordance with the opinion and instructions of legal counsel that is knowledgeable and has expertise in the field of law addressed in any such legal opinion or with respect to the instructions given.

**SECTION 20:** Promptly after September 30 of each year, commencing with the year 2004, so long as the Escrow Fund is maintained under this Agreement, the Bank shall forward to the City, to the attention of the Treasurer, or other designated official of the City, a statement in detail of the Federal Securities and monies held, and the current income and maturities thereof, and the withdrawals of money from the Escrow Fund for the preceding 12 month period ending September 30th of each year.

**SECTION 21:** Any notice, authorization, request or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid addressed as follows:

CITY OF AUSTIN:

P. O. Box 1088  
Austin, Texas 78767

124 W. Eighth Street  
Austin, Texas 78701

Attention: Treasurer

DEUTSCHE BANK TRUST COMPANY AMERICAS

60 Wall Street  
27<sup>th</sup> Floor, MS NYC60-2715  
New York, New York 1005

Attention: Corporate Trust and Agency Services

The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the date and fact of delivery.

Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten (10) days prior notice thereof.



**SECTION 22:** Whenever under the terms of this Agreement the performance date of any provision hereof, including the payment dates for the Defeased Obligations shown in Exhibit A, shall be a Sunday or a legal holiday or a day when the Bank is authorized by law to close, then the performance thereof need not be made on such date but may be performed or paid, as the case may be, on the next succeeding business day of the Bank with the same force and effect as if made on the date of performance or payment and with respect to a payment, no interest shall accrue for the period after such date.

**SECTION 23:** The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement, in any and every said Defeased Obligation as executed, authenticated and delivered and in all proceedings pertaining thereto as said Defeased Obligations shall have been modified as provided in this Agreement. The City covenants that it is duly authorized under the Constitution and laws of the State of Texas to execute and deliver this Agreement, that all actions on its part for the payment of said Defeased Obligations as provided herein and the execution and delivery of this Agreement have been duly and effectively taken.

**SECTION 24:** If any one or more of the covenants or agreements provided in this Agreement on the part of the parties to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement. In the event any covenant or agreement contained in this Agreement is declared to be severable from the other provisions of this Agreement, written notice of such event shall immediately be given to Moody's Investors Service, Inc., 99 Church Street, New York, New York 10007, Attention: Public Finance Rating Desk - Refunded Bonds.

**SECTION 25:** This Agreement shall terminate when the Defeased Obligations have been paid in full in accordance with the provisions of this Agreement. If any Defeased Obligation is not paid when due because of failure to satisfy a condition for payment such as surrender and presentation to the paying agent, the nonpayment thereof shall not prevent the termination of this Agreement. Funds for the payment of such Defeased Obligations shall be held by the Bank for such purpose in accordance with Section 7 hereof. Any moneys or Federal Securities held in the Escrow Fund at termination and not needed for the payment of the Defeased Obligations shall be paid or transferred to the City.

**SECTION 26:** (a) Should the Bank not be able to legally serve or perform the duties and obligations under this Agreement, or should the Bank be declared to be insolvent or closed for any reason by federal or state regulatory authorities or a court of competent jurisdiction, the City, upon being notified or discovering the Bank's inability or disqualification to serve hereunder, shall forthwith appoint a successor to replace the Bank, and upon being notified of such appointment, the Bank shall (i) transfer all funds and securities held hereunder, together with all books, records and accounts relating to the Escrow Fund and the Defeased Obligations, to such successor and (ii) assign all rights, duties and obligations under this Agreement to such successor. If the City should fail to appoint such a successor within ninety (90) days from the date the City discovers, or is notified of, the event or circumstance causing the Bank's inability or disqualification to serve hereunder, the Bank, or a bondholder of the Defeased Obligations, may apply to a court of competent jurisdiction to appoint a successor or assigns of the Bank and such court, upon determining the Bank is unable to continue to serve, shall appoint a successor to serve under this Agreement and the amount of compensation, if any, to be paid to such successor for the remainder of the term of this Agreement for services to be rendered both for



administering the Escrow Fund and for paying agent duties and responsibilities for the Defeased Obligations.

(b) Furthermore, the Bank may resign and be discharged from performing its duties and responsibilities under this Agreement upon notifying the City in writing of its intention to resign and requesting the City to appoint a successor. No such resignation shall take effect until a successor has been appointed by the City and such successor has accepted such appointment and agreed to perform all duties and obligations hereunder for a total compensation equal to the unearned proportional amount paid the Bank under Section 16 hereof for the administration of this Agreement and the unearned proportional amount of the paying agents fees for the Defeased Obligations due the Bank.

Any successor to the Bank shall be a bank, trust company or other financial institution that is duly qualified under applicable law to serve as escrow agent hereunder and authorized and empowered to perform the duties and obligations contemplated by this Agreement and organized and doing business under the laws of the United States or the State of Texas, having its principal office and place of business in the State of Texas, having a combined capital and surplus of at least \$5,000,000 and be subject to the supervision or examination by Federal or State authority.

Any successor or assigns to the Bank shall execute, acknowledge and deliver to the City and the Bank, or its successor or assigns, an instrument accepting such appointment hereunder, and the Bank shall execute and deliver an instrument transferring to such successor, subject to the terms of this Agreement, all the rights, powers and trusts created and established and to be performed under this Agreement. Upon the request of any such successor Bank, the City shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Bank all such rights, powers and duties. The term "Bank" as used herein shall be the Bank and its legal assigns and successor hereunder.

**SECTION 27:** The Bank shall not be responsible or liable to any person in any manner whatever for the sufficiency, correctness, genuineness, effectiveness, or validity of this Agreement with respect to the City, or for the identity or authority of any person making or executing this Agreement on behalf of the City. The Bank is authorized by the City to rely upon the representations of the City with respect to this Agreement and the deposits made pursuant hereto and as to the City's right and power to execute and deliver this Agreement, and the Bank shall not be liable in any manner as a result of such reliance. The duty of the Bank hereunder shall only be to the City and the holders of the Defeased Obligations. Neither the City nor the Bank shall assign or attempt to assign or transfer any interest hereunder or any portion of any such interest. Any such assignment or attempted assignment shall be in direct conflict with this Agreement and be without effect.

**SECTION 28:** This Agreement shall be binding upon the City and the Bank and their respective successors and legal representatives and shall inure solely to the benefit of the holders of the Defeased Obligations, the City, the Bank and their respective successors and legal representatives. Furthermore, no alteration, amendment or modification of any provision of this Agreement (1) shall alter the firm financial arrangements made for the payment of the Defeased Obligations or (2) shall be effective unless (i) prior written consent of such alteration, amendment or modification shall have been obtained from the holders of all Defeased Obligations outstanding at the time of such alteration, amendment or modification and (ii) such alteration, amendment or modification is in writing and signed by the parties hereto; provided, however, the City and the Bank may, without the consent of either the holders of the Defeased



Obligations, amend or modify the terms and provisions of this Agreement to cure any ambiguity, formal defect or omission in this Agreement. If the parties hereto agree to any amendment or modification to this Agreement, prior written notice of such amendment or proposed modification, together with the legal documents amending or modifying this Agreement, shall be furnished to Moody's Investors Service, Inc. 99 Church Street, New York, New York 10007, Attention: Public Finance Rating Desk - Refunded Bonds, prior to such amendment or modification being executed.

SECTION 29: This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument. This Agreement shall be governed by the laws of the State of Texas.

*[remainder of page left blank intentionally]*



IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested as of the date first above written.

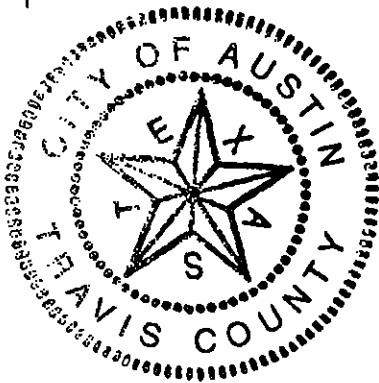
CITY OF AUSTIN, TEXAS

John H. Fitchell  
City Manager

ATTEST:

Shirley A. Brown  
City Clerk

(City Seal)



DEUTSCHE BANK TRUST COMPANY  
AMERICAS, New York, New York,  
as Escrow Agent

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

ATTEST:

\_\_\_\_\_  
Authorized Signer

(Bank Seal)



**EXHIBIT A**  
**(DEBT SERVICE REQUIREMENTS FOR DEFEASED OBLIGATIONS)**



**EXHIBIT B**  
**(LIST OF FEDERAL SECURITIES FOR ESCROW FUND)**



**EXHIBIT C**  
**WIRING INSTRUCTIONS FOR JPMORGAN CHASE BANK**



EXHIBIT B

NOTICE OF REDEMPTION

CITY OF AUSTIN, TEXAS,  
COMBINED UTILITY SYSTEMS REVENUE  
REFUNDING BONDS  
SERIES 1993

DATED JANUARY 15, 1993

NOTICE IS HEREBY GIVEN that a portion of the bonds of the above series maturing on May 15, 2018 and aggregating in principal amount \$28,825,000 have been called for redemption in part and by lot on September 15, 2004 at the redemption price (plus accrued interest to the date of redemption) and in the principal amounts as follows:

<u>Maturity</u>	<u>Principal Amount Outstanding</u>	<u>Principal Amount Redeemed</u>	<u>Redemption Price</u>	<u>CUSIP Number</u>
5-15-2018	\$54,940,000	\$28,825,000	100.00%	052473

ALL SUCH BONDS shall become due and payable on September 15, 2004, and interest thereon shall cease to accrue from and after said redemption date and payment of the redemption price of said bonds shall be paid to the registered owners of the bonds only upon presentation and surrender of such bonds to JPMorgan Chase Bank (successor paying agent/registrar to Ameritrust Texas, National Association) at its designated offices at the following address:

**First Class/**

**Registered/Certified**

JPMorgan Chase Bank  
Institutional Trust Services  
P. O. Box 2320  
Dallas, Texas 75221-2320

**Express Delivery/Courier**

JPMorgan Chase Bank  
Institutional Trust Services  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

**By Hand Only**

JPMorgan Chase Bank  
Room 234-North Building  
Institutional Trust Securities Window  
55 Water Street  
New York, New York 10041

THIS NOTICE is issued and given pursuant to the terms and conditions prescribed for the redemption of said bonds and pursuant to an ordinance by the City Council of the City of Austin, Texas.

JP MORGAN CHASE BANK

Address: 2001 Bryan Street, 8<sup>th</sup> Floor  
Dallas, Texas 75201



EXHIBIT C  
NOTICE OF REDEMPTION  
CITY OF AUSTIN, TEXAS,  
COMBINED UTILITY SYSTEMS REVENUE  
REFUNDING BONDS  
SERIES 1993A  
DATED JUNE 15, 1993

NOTICE IS HEREBY GIVEN that bonds of the above series maturing as shown below and aggregating in principal amount \$64,265,000 have been called for redemption in part and by lot on September 15, 2004 at the redemption price (plus accrued interest to the date of redemption) and in the principal amounts as follows:

<u>Maturity</u>	<u>Principal Amount Outstanding</u>	<u>Principal Amount Redeemed</u>	<u>Redemption Price</u>	<u>CUSIP Number</u>
11-15-2004	\$ 8,735,000	\$ 1,680,000	101.00%	052473
5-15-2005	8,965,000	2,315,000	101.00%	052473
11-15-2005	10,495,000	2,700,000	101.00%	052473
5-15-2006	10,780,000	8,725,000	101.00%	052473
11-15-2006	9,035,000	6,710,000	101.00%	052473
5-15-2007	9,285,000	6,895,000	101.00%	052473
11-15-2007	7,960,000	5,910,000	101.00%	052473
11-15-2013	21,545,000	16,010,000	101.00%	052473
5-15-2016	18,040,000	13,320,000	101.00%	052473

ALL SUCH BONDS shall become due and payable on September 15, 2004, and interest thereon shall cease to accrue from and after said redemption date and payment of the redemption price of said bonds shall be paid to the registered owners of the bonds only upon presentation and surrender of such bonds to JPMorgan Chase Bank (successor paying agent/registrar to Ameritrust Texas, National Association) at its designated offices at the following address:

**First Class/**

**Registered/Certified**

JPMorgan Chase Bank  
Institutional Trust Services  
P. O. Box 2320  
Dallas, Texas 75221-2320

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JP MORGAN CHASE BANK

Address: 2001 Bryan Street, 8<sup>th</sup> Floor  
Dallas, Texas 75201



EXHIBIT D  
INSURANCE AGREEMENT