

Ordinance No. 040617-44

AN ORDINANCE AUTHORIZING A FORWARD INTEREST RATE SWAP TRANSACTION RELATING TO THE PROPOSED REFUNDING OF CERTAIN CITY OF AUSTIN, TEXAS, AIRPORT SYSTEM PRIOR LIEN REVENUE BONDS IN ACCORDANCE WITH SPECIFIED PARAMETERS; MAKING OTHER PROVISIONS REGARDING SUCH INTEREST RATE SWAP TRANSACTION AND MATTERS INCIDENT THERETO; AND DECLARING AN EMERGENCY

WHEREAS, the City of Austin, Texas (the "City"), is authorized by Chapter 22, Texas Transportation Code, as amended, Chapter 1503, Texas Government Code, as amended, and Chapter 1371, Texas Government Code, as amended ("Chapter 1371"), to issue revenue bonds of the City for the purpose of establishing, improving, enlarging, extending and repairing the airport system of the City; and

WHEREAS, pursuant to such authority the City has previously issued, and there are currently outstanding, its Airport System Prior Lien Revenue Bonds, Series 1995A, and Airport System Prior Lien Revenue Refunding Bonds, Series 1995B (collectively, the "Prior Bonds"); and

WHEREAS, prevailing interest rates are significantly lower than the interest rates on the Prior Bonds; and

WHEREAS, the City desires to provide for the refunding or payment of the Prior Bonds under arrangements that take advantage of these lower interest rates; and

WHEREAS, the City is authorized pursuant to Chapter 1207, Texas Government Code, as amended, to issue refunding bonds (the "Refunding Bonds") for such purposes; and

WHEREAS, the Prior Bonds are not subject to optional redemption until November 15, 2005 (the "Prior Bond Redemption Date"); and

WHEREAS, in order to issue the Refunding Bonds on a tax-exempt basis, the Refunding Bonds must be issued and delivered on a date no earlier than 90 days prior to the Prior Bond Redemption Date; and

WHEREAS, Public Financial Management, Inc., the financial advisor to the City (the "Financial Advisor"), and staff of the City ("Staff") have evaluated various potential structures to be used in connection with the proposed refunding of the Prior Bonds that would preserve much of the present value savings (the "PV Savings") that could be realized if the Refunding Bonds were issued in the current interest rate environment; and

WHEREAS, after extensive analysis, the Financial Advisor and Staff concluded that issuing the Refunding Bonds as tax-exempt variable rate obligations and entering into forward interest rate swap with respect to the Refunding Bonds whereunder the City would pay a fixed interest rate would be the most beneficial strategy currently available to the City in connection with a refunding of the Prior Bonds; and

WHEREAS, pursuant to Chapter 1371, the City is authorized to enter into "credit agreements" (as defined in Chapter 1371), including interest rate swap agreements, in connection with the authorization, issuance, sale, resale, security, exchange, payment, purchase, remarketing or redemption of an "obligation" (as defined in Chapter 1371); and

WHEREAS, the Prior Bonds constitute "obligations" under Chapter 1371, and the Refunding Bonds will constitute "obligations" under Chapter 1371 when issued; and

WHEREAS, to preserve the PV Savings to be generated in connection with the refinancing and restructuring of the debt service on the Prior Bonds and to hedge against adverse market fluctuations prior to the time the Refunding Bonds are anticipated to be issued, the City has determined that it is necessary and desirable at this time to implement the recommendation of the Financial Advisor and Staff and authorize an interest rate swap transaction (the "Swap Transaction") with respect to the Refunding Bonds, pursuant to which the City would agree to pay the swap provider a fixed interest rate (the "Fixed Rate"), and the swap provider would agree to pay the City a variable interest rate (the "Floating Rate"), in each case on an initial notional principal amount that does not exceed the anticipated principal amount of the Refunding Bonds, which notional amount will be reduced according to an amortization schedule that is also anticipated to be the amortization schedule of the Refunding Bonds; and

WHEREAS, the City reasonably anticipates issuing the Refunding Bonds as tax-exempt variable rate obligations the interest rate on which will be subject to adjustment from time to time and that the Floating Rate will reasonably approximate the variable interest rate payable by the City on the Refunding Bonds; and

WHEREAS, the expected close correlation between the Floating Rate and the variable interest rate payable by the City on the Refunding Bonds, when combined with the Fixed Rate payable by the City, will result in the City having a virtual "synthetic" fixed rate obligation with respect to the Refunding Bonds that is anticipated to minimize the City's obligation to pay interest on the Refunding Bonds; and

WHEREAS, in anticipation of the issuance of the Refunding Bonds, the City has determined to enter into the Swap Transaction with Morgan Stanley Capital Services, Inc. (the "Counterparty"); and

WHEREAS, the City Council has been presented with a form of Master Agreement, Schedule and Credit Support Annex (collectively, the "Swap Agreement") to be entered into between the City and the Counterparty in connection with the Swap Transaction and desires to approve the same; and

WHEREAS, the City desires to authorize the Chief Financial Officer of the City (the "Authorized Representative") to act on behalf of the City in entering into and delivering the documentation relating to the Swap Transaction;

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

Section 1. Designation of Refunding Bonds. The proposed Refunding Bonds are expected to be designated as "City of Austin, Texas, Airport System Variable Rate Revenue Refunding Bonds, Series 2005".

Section 2. Approval of Swap Agreement. The form, terms and provisions of each of the documents constituting the Swap Agreement; in substantially the forms set forth in Exhibit A hereto, are hereby approved in all respects, and the Authorized Representative is hereby directed and authorized, in the name and on behalf of the City, to execute, deliver and, if requested, affix the seal of the City to each document constituting the Swap Agreement, each in substantially the form herein approved by the City, with such changes therein as such officers shall approve, including, without limitation, such changes as may be deemed necessary to conform to the Commitment (as hereinafter defined), such approval to be conclusively evidenced by such officers' execution thereof.

Section 3. Confirmation Relating to Swap Transaction. Pursuant to Chapter 1371, the Authorized Representative is hereby authorized and directed to (A) negotiate a confirmation (the "Confirmation") of the Swap Transaction with the Counterparty; provided, that (i) the notional amount of the Swap Transaction may not exceed \$310,000,000, which is the anticipated principal amount of the Refunding Bonds, provided that the notional amount shall be subject to adjustment in the manner provided in the Schedule or the Confirmation, (ii) the notional amount of the Swap Transaction shall reduce on the dates and in the amounts set forth in a schedule attached to the Confirmation and approved by the Authorized Representative such that the notional amount of the Swap Transaction will not at any time exceed the anticipated or actual outstanding principal amount of the Refunding Bonds, provided that if the notional amount is adjusted as provided in clause (i) above, such schedule shall be subject to adjustment in the manner provided in the Schedule or the Confirmation to conform to the principal amortization schedule for the Refunding Bonds, (iii) the Swap Transaction shall commence on a date no earlier than August 17, 2005, which is the anticipated delivery date of the Refunding Bonds (the "Delivery Date"), and shall terminate no later than November 15, 2025, which is the anticipated final maturity date of the Refunding Bonds, (iv) the Fixed Rate may not exceed 4.48% per annum and the Floating Rate shall be a variable interest rate determined pursuant to an index selected by the Authorized Representative that the Authorized Representative reasonably anticipates will correlate closely with the variable interest rate to be paid by the City on the Refunding Bonds, and (v) if the Refunding Bonds are not issued by Delivery Date, the Swap Transaction shall terminate automatically and the City shall apply any amounts received from the Counterparty in connection with such termination, if any, to the payment, defeasance or redemption of Prior Bonds, and (B) execute and deliver in the name and on behalf of the City, and, if requested, affix the seal of the City to, the Confirmation. The authority granted to the Authorized Representative to negotiate, execute and deliver the Confirmation in accordance with the parameters set forth above shall expire on September 15, 2004, unless otherwise extended by the City Council by separate action. Any finding or determination made by the Authorized Representative relating to the execution of the Confirmation shall have the same force and effect as a finding or determination made by the City Council.

Section 4. Insurance. In connection with the negotiation, execution and delivery of the Confirmation, the Authorized Representative may obtain from a bond insurance provider (the "Bond Insurer") a commitment (the "Commitment") to provide a municipal bond insurance

policy guaranteeing the payment of the principal of and interest on the Refunding Bonds and the ongoing payment obligations of the City under the Swap Agreement and Confirmation if the Authorized Representative determines that the execution and delivery of the Commitment will result in the Swap Transaction being consummated on the most favorable terms to the City and the Bond Insurer and the Commitment meet the following conditions:

(i) at the time of the execution and delivery of the Commitment, bonds insured by a municipal bond insurance policy issued by the Bond Insurer would be rated by a nationally recognized rating agency for municipal securities in the highest category for either long-term or short-term debt instruments; and

(ii) the bond insurance premium shall not exceed 1% of the total debt service of the Refunding Bonds.

The Authorized Representative is hereby authorized to execute and deliver a Commitment within the parameters set forth above, pay the premium, if any, payable in connection with the Commitment and execute and deliver such other agreements, documents, and instruments in connection with the Commitment as are deemed appropriate.

Section 5. Credit Agreement. The City hereby finds that the documentation evidencing the Swap Transaction is a "Credit Agreement" (as defined in Chapter 1371) executed in connection with the proposed refunding and payment of the Prior Bonds and issuance of the Refunding Bonds.

Section 6. Authorization of Additional Acts. The Authorized Representative is hereby authorized and directed from time to time and at any time, in the name and on behalf of the City, to do and perform all acts and things and to execute, deliver, and if requested by the Counterparty, attest or affix the seal of the City to, all certificates, instruments and other papers as they may determine to be necessary or desirable in connection with the consummation of the Swap Transaction, such determination to be conclusively evidenced by the performance of such acts and things and the execution and delivery of any such certificate, instrument or other paper, and any such actions heretofore performed by the Authorized Representative is hereby ratified, approved and confirmed in all respects.

Section 7. Control and Delivery of Documents. (a) The Authorized Representative, or his designee, is hereby authorized to have control of the Swap Agreement, the Confirmation and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the Counterparty.

Section 8. Open Meeting. It is hereby officially found and determined that the meeting at which this ordinance was adopted and approved was open to the public as required by law and public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, as amended.

Section 9. Effective Date. This Ordinance shall be in full force and effect on and as of the date hereof.

Section 10. Emergency Declaration. The City Council finds that the public importance of this measure and the fact that there is an urgent public need for the City to obtain the economic benefit from the Swap Transaction 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 an emergency. Because of this emergency, this Ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

PASSED AND APPROVED:

June 17, 2004

APPROVED: 
City Attorney


Mayor

ATTEST:  for 
City Clerk