



**Debt Issuance
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 122
AGENDA DATE: Thu 06/23/2005
PAGE: 1 of 1**

SUBJECT: Approve an ordinance authorizing the issuance of approximately \$120,500,000 in City of Austin, Texas, Hotel Occupancy Tax Variable Rate Revenue Refunding Bonds, Series 2005; providing for payments of subordinate lien pledge of both the 2% and 4.5% hotel occupancy tax; and authorizing the execution of all related documents.

AMOUNT & SOURCE OF FUNDING: No fiscal impact during Fiscal Year 2004-2005. \$3,088,376 estimated debt service requirement and \$600 estimated annual paying agent/registrar fee will be included in the Fiscal Year 2005-2006 Proposed Budget of the Hotel Tax Revenue Bond Redemption Fund.

FISCAL NOTE: N/A

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

FOR MORE INFORMATION CONTACT: John Stephens, Chief Financial Officer, Financial Admin. Services 974-2076

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

Due to current favorable conditions in the municipal bond market, the City's financial advisor, Public Financial Management, Inc., has advised that a refunding of some Hotel Occupancy Tax Revenue bonds may be accomplished at a present value savings of 14.28%, exceeding the City's target guideline of 12.01% for this particular transaction. As of June 2, 2005, the transaction produced \$15,355,171 in present value savings. In order to provide the City with the flexibility to quickly respond to changing market conditions, the proposed ordinance delegates the authority to the Chief Financial Officer to effect the execution of the sale of the variable rate refunding bond transaction in accordance with the parameters set forth in the ordinance. The authority of the Chief Financial Officer to exercise the authority delegated thereto by the City Council under the ordinance expires on September 22, 2005.

The City plans on entering into a swap transaction with Lehman Brothers, whereby the City will pay Lehman Brothers a fixed rate of approximately 3.657% and in return Lehman Brothers will pay a variable rate to the City approximating the variable rate on the City's variable rate bonds which will be sold sometime between June 23, 2005 and September 22, 2005.

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

Draft June 1, 2005

ORDINANCE NO. 050623-____

CITY OF AUSTIN, TEXAS

**HOTEL OCCUPANCY TAX SUBORDINATE LIEN REVENUE
REFUNDING BONDS, SERIES 2005**

_____, 2005

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ORDINANCE NO. 050623-__

AN ORDINANCE authorizing the issuance of "CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX SUBORDINATE LIEN REVENUE REFUNDING BONDS, SERIES 2005"; prescribing the terms, features and specifications of said Bonds; making provision for the payment of said Bonds; enacting other provisions incident and related to the issuance, payment, sale and delivery of such Bonds including the approval and execution of a Paying Agent/Registrar Agreement, a Bond Purchase Agreement, [a Standby Bond Purchase Agreement, a Tender Agent Agreement, an Interest Rate Exchange Agreement, a Remarketing Agreement,] and a Special Escrow Agreement, the purchase of bond insurance, and the approval and distribution of an Official Statement; providing for the redemption of the bonds being refunded; and providing an effective date.

WHEREAS, the City Council of the City of Austin, Texas (the "City") has heretofore issued, sold, and delivered, and there is currently outstanding, obligations totaling in principal amount \$[107,500,000] (the "Refunded Bonds") more particularly described as follows: City of Austin, Texas, Hotel Occupancy Tax Revenue Refunding Bonds, Series 1999," dated September 1, 1999, and scheduled to mature on November 15 in each of the years [2005]¹ through 2021 and 2029; and

WHEREAS, pursuant to the provisions of V.T.C.A., Government Code, Chapter 1207, as amended, the City Council is authorized to issue refunding bonds and deposit the proceeds of sale directly with the place of payment for the Refunded Bonds, or other authorized depository, and such deposit, when made in accordance with said statute, and ordinance authorizing the issuance of the Refunded Bonds, shall constitute the making of firm banking and financial arrangements for their discharge and final payment; and

WHEREAS, the City Council hereby finds and determines that refunding bonds should be issued at this time to refund the Refunded Bonds, and such refunding will result in the City saving approximately \$_____ in debt service payments on such indebtedness ("gross savings") and further provide present value savings of approximately \$_____ now, therefore,

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

ARTICLE 1. DEFINITIONS

Section 1.01 Definitions. Unless otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section for all purposes of this Ordinance except Article Three hereof, and any ordinance amendatory or supplemental hereto shall have the respective meanings specified:

"Additional Bond" means a bond issued by the City pursuant to Section 5.02 or Section 5.03 that is a Parity Bond.

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

¹ How this is finalized depends on whether all the 1999 Sub Bonds are being defeased.

"Bond Act" means, collectively, Vernon's Texas Code Annotated, Government Code, Chapters 1207 and 1371, and Vernon's Texas Code Annotated, Local Government Code, Chapter 334.

"Bond Fund" means the Fund created and established in Section 3.03(c)(1) of this Ordinance for the payment of the Parity Bonds.

"Bond Year" means the period of time that commences on the day following the interest payment date on the Bonds occurring in November of any year and ending on the interest payment date on the Bonds occurring in November of the following year.

"Bond" means the City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Revenue Refunding Bonds, Series 2005, authorized by this Ordinance.

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

"City" means the City of Austin, Texas, and, where appropriate, the City Council thereof, or any successor thereto.

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

"Convention Center/Waller Creek Venue Project" means the capital improvement project described generally as consisting of the expansion of the City's Convention Center, including the construction of tunnel improvements along Waller Creek in the vicinity of and functionally related to the convention center and related infrastructure and being a venue project within the meaning of Chapter 334 of the Local Government Code approved at an election held in the City May 2, 1998, and designated by Resolution No. 980205-61.

"Credit Agreement" has the meaning set forth in Chapter 1371, Texas Government Code, as the same may be amended from time to time.

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

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

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

"Debt Service Requirements" of any series of bonds for any particular Bond Year, an amount equal to the sum of the principal of and interest and any redemption premium on such bonds then Outstanding which will become due and owing during such Bond Year; subject, however, to adjustment as provided in Section 5.03.

"Designated Payment/Transfer Office" means the office of the Paying Agent/Registrar so designated by it from time to time.

"Fiscal Year" means the City's fiscal year as from time to time designated by the City, which is currently October 1 to September 30.

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

"Government Obligations" mean (i) direct noncallable obligations of the United States of

America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

"Guaranty Agreement" has the meaning set forth in Section 4.06.

"Holder" means when used with respect to any Bond shall mean the person or entity in whose name such Bond is registered in the Security Register. Any reference to a particular percentage or proportion of the owners shall mean the Holders at a particular time of the specified percentage or proportion in aggregate principal amount of all Bonds then Outstanding under this Ordinance.

"Hotel Occupancy Tax" means the tax, levied by the City pursuant to the Tax Act, on the cost of occupancy of any sleeping room furnished by any hotel located within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day, which tax is currently levied at a rate of 7% of the consideration paid by the occupant of the sleeping room to the hotel.

"Interest Payment Date" has the meaning set forth in Appendix A.

"Issue Date" means the date the Bonds are issued and delivered to the initial purchasers thereof.

"Junior Subordinate Lien Bond" means an Additional Bond issued by the City pursuant to Section 5.03 of this Ordinance secured in whole or in part by liens on the Pledged Revenues that are junior and subordinate to the lien on Pledged Revenues securing payment of the Parity Bonds.

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

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

"Matched Interest Rate Exchange Agreement" means a Credit Agreement between the City and another party entered into in connection with the City's issuance of Variable Rate Obligations, which Credit Agreement is in the form of an interest rate exchange agreement, pursuant to which the City pays a fixed percentage rate of a notional amount and the other party pays a variable percentage rate of the same notional amount, of which the notional amount is equal to the principal amount of Variable Rate Obligations of the City, and of which the notional amount is reduced as the principal of the Variable Rate Obligation is paid.

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

"Ordinance" means this Ordinance No. 050623-____ and all exhibits, appendices, amendments and supplements hereto.

"Outstanding" means, when used with reference to any Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien Bonds means, as of a particular date, all Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien Bonds, or both, theretofore and thereupon delivered except: (a) any such Prior Lien Bond, Parity Bond or Junior Subordinate Lien Bond paid, discharged or canceled by or on behalf of the City at or before said date; (b) any such Prior Lien Bond, Parity Bond and Junior Subordinate Lien Bond defeased pursuant to the defeasance provisions of the ordinance authorizing its issuance, or otherwise defeased as permitted by applicable law; and (c) any such Prior Lien Bond, Parity Bond or Junior Subordinate Lien Bonds in lieu of or in substitution for which another obligation shall have been delivered pursuant to the ordinances authorizing the issuance of such Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien Bonds.

"Parity Bonds" mean the Bonds and Additional Bonds.

"Parity Obligations" mean at any time all (i) Parity Bonds, (ii) all Reimbursement Obligations, (iii) all obligations of the City under the Guaranty Agreement, (iv) obligations of the City to make scheduled payments under the Swap Agreement, and (v) any future obligation of the City under Credit Agreements or other agreements to the extent, in either case, such obligations are secured by a lien on Pledged Revenues on an equal and ratable basis with the lien securing the Parity Bonds.

"Paying Agent/Registrar" means with respect to the Bonds, _____, and its successors in that capacity.

"Pledged Hotel Occupancy Tax Revenues" mean that portion of the revenues derived by the City from the Hotel Occupancy Tax which is equal to at least 4.5% of the consideration paid by occupants of sleeping rooms furnished by hotels located within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day.

"Pledged Revenues" mean collectively, (i) the Pledged Hotel Occupancy Tax Revenues, (ii) the Special Hotel Occupancy Tax deposited to the credit of the Venue Project Fund (iii) interest and other income realized from the investment of amounts on deposit in the funds and accounts to be maintained pursuant to Article Four of this Ordinance to the extent such interest and other income are required to be transferred or credited to the Tax Fund, and (iv) any additional revenue, receipts or income hereafter pledged to the Bonds in accordance with Section 6.02 of this Ordinance.

"Prior Lien Bonds" mean means (a) with respect to the Pledged Hotel Occupancy Tax Revenues, the outstanding (i) "City of Austin, Texas Hotel Occupancy Tax Revenue Taxable Refunding Bonds, Series 1999," dated June 15, 1999, and originally issued in the aggregate principal amount of \$8,445,000, [and] (ii) *"City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Revenue Refunding Bonds, Series 1999," dated September 1, 1999, originally issued in the principal amount of \$110,000,000, but not including the Refunded Bonds, and (iii)*² "City of Austin, Texas, Hotel Occupancy Tax Revenue Refunding Bonds, Series 2004," dated February 1, 2004, originally issued in the aggregate principal amount of \$52,715,000, and (b) with respect to the Special Hotel Occupancy Tax deposited to the credit of the Venue Project Fund, the Special Venue Project Bonds.

"Rating Agency" means any nationally recognized rating agency that maintains a rating

² If all of the 1999 Sub Bonds are being defeased, they will not be referred to as "Prior Lien Bonds".

on the Bonds at the request of the City. Initially, the Rating Agencies are Fitch, Moody's and Standard & Poor's.

"Rating Category" means one of the general rating categories of any Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

"Rating Confirmation Notice" means, with respect to an action that affects the Bonds, a writing from each Rating Agency confirming that the rating(s) issued by such Rating Agency on such Series of Bonds will not be lowered or withdrawn (other than a withdrawal of a short-term rating upon a change to a Long-Term Mode, as defined in Appendix A) as a result of the action proposed to be taken.

"Refunded Bonds" has the meaning set forth in the recitals of this Ordinance.

"Reimbursement Obligation" mean any obligation entered into by the City in connection with any Parity Bond pursuant to which the City obligates itself to reimburse a bank, insurer, surety or other entity for amounts paid or advanced by such party pursuant to a letter of credit, line of credit, standby bond purchase agreement, credit facility, liquidity, facility, insurance policy, surety bond or other similar credit agreement, guaranty or liquidity agreement to secure any portion of principal of, interest on or purchase price of any Parity Bond or reserves in connection therewith or otherwise relating to any Parity Bond. The City's obligations under the Guaranty Agreement, its obligations under the Initial Liquidity Facility, its obligations to reimburse the Credit Provider for amounts paid under the initial Credit Facility, and its obligation to reimburse the Issuer of the Swap Policy for amounts paid under the Swap Policy constitute Reimbursement Obligations.

"Reserve Fund" mean the Fund created and established in Section 3.03(c)(2) of this Ordinance to provide a reserve amount for the payment of Parity Bonds.

"Reserve Fund Requirement" means the least of (i) 10% of the Outstanding principal amount of the Parity Bonds or (ii) the maximum annual Debt Service Requirements scheduled to occur in the then current and each future Fiscal Year for all Parity Bonds at any time Outstanding, or (iii) the maximum amount in a reasonably required reserve fund that can be invested without restriction as to yield pursuant to Subsection (d) of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder. Upon issuance of the Bonds, the Reserve Fund Requirement shall be \$_____.

"Reserve Fund Surety Bond" mean any surety bond, insurance policy, letter of credit or other guaranty issued to the City for the benefit of the Holders of the Parity Bonds to satisfy any part of the Reserve Fund Requirement as provided in Section 3.06 of this Ordinance.

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

"Security Register" mean the books of registration maintained by the Paying Agent/Registrar for recording the names and addresses of and the principal amounts registered to each Holder.

"Special Hotel Occupancy Tax" mean the 2% hotel occupancy tax approved at the election held May 2, 1998 to finance the Convention Center/Waller Creek Venue Project

and levied by the City pursuant to Ordinance No. 980709-G, adopted by the City Council of the City on July 9, 1998, on the cost of occupancy of any sleeping room furnished by any hotel located within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day.

"Special Venue Project Bonds" mean City of Austin, Texas, Convention Center/Waller Creek Venue Project Bonds, Series 1999A, dated June 15, 1999, and originally issued in the aggregate principal amount of \$25,000,000.

"Swap Agreement" means the ISDA Master Agreement (Local Currency – Single Jurisdiction) together with the Schedule, Credit Support Annex and Confirmation thereto, substantially in the form of Exhibit B hereto, between the City and the Swap Counterparty.

"Swap Counterparty" means Lehman Brothers Derivative Products, Inc., and any successor thereto under the Swap Agreement.

"Swap Policy" means the [financial guaranty insurance policy] issued by _____, insuring the obligations of the City under the Swap Agreement.

"Tax Act" mean Chapter 351 of the Texas Tax Code, Vernon's Texas Codes Annotated, as amended.

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

"Transfer Date" mean each February 14, May 14, August 14, and November 14, beginning May 14, 2005.

"Transfer Period" mean the period of time beginning on any Transfer Date and ending on the day immediately preceding the next succeeding Transfer Date.

"Variable Rate Obligations" mean any obligation pursuant to which the City is to pay interest at an interest rate that is not fixed for the life of the obligation and any obligation, such as an interest rate exchange agreement or other Credit Agreement, pursuant to which the City is to make payments the amounts of which are not known at the time the obligation is issued.

"Venue Project Fund" mean the Fund so designated created and established pursuant to Ordinance No. 980709-G, adopted by the City Council on July 9, 1998, providing for the levy, assessment and collection of the Special Hotel Occupancy Tax.

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

Section 1.02 Interpretations. All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. Unless otherwise specified references to Sections, Exhibits and Appendix A are to Sections, Exhibits and Appendix A of this Ordinance. Terms "herein", "hereof" and the like refer to this Ordinance as a whole and not just to a particular portion of it. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the Bonds and

the validity of the lien on and pledge of the Pledged Revenues to secure the payment of the Bonds.

Section 1.03 Exhibits, Appendix A

The Exhibits and Appendix A attached hereto are fully incorporated herein by reference as if fully set forth in this Ordinance.

ARTICLE 2. bonds and other parity obligations

Section 2.01 Authorization-Designation-Principal Amount-Purpose. The City is authorized to issue Bonds in an aggregate principal amount not to exceed \$_____ to be designated and bear the title "CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX SUBORDINATE LIEN REVENUE REFUNDING BONDS, SERIES 2005" for the purpose of providing funds for the discharge and final payment of certain outstanding obligations of the City (identified in the preamble hereof and referred to as the "Refunded Bonds"), in accordance with authority conferred by the Bond Act. Any Authorized Official is authorized to determine whether it is appropriate to sell and issue the Bonds, the principal amount thereof, the Mode in which the Bonds will initially be issued, and on what terms the Bonds are to be sold, so long as the original principal amount of the Bonds does not exceed the amount stated above, the maximum interest rate on the Bonds does not exceed [12/15]% per annum, and _____. [Other parameter?]

Section 2.02 Full Registration-Date-Denomination-Maturities-Interest Rates. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated the date of their sale pursuant to the Bond Purchase Agreement and shall be in Authorized Denominations (as defined in Appendix A hereto), and shall be numbered consecutively from One (1) upward and shall become due and payable no later than November 15, 20__ (such date and any date that may be later established as a Serial Stated Maturity in accordance with Appendix A, being a "Stated Maturity"). Unpaid principal of the Bonds shall bear interest from the Issue Date until paid at the applicable per annum rates established, calculated and payable in accordance with Appendix A.

Section 2.03 Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity or otherwise, shall be payable only to the Holders of the Bonds appearing on the Security Register maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders. A Security Register shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided herein and in accordance with the terms and provisions of the Paying Agent/Registrar Agreement authorized by Section 7.01.

Principal of and premium, if any, on the Bonds shall be payable at their Stated Maturities or redemption, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its Designated Payment/Transfer Office. Interest on the Bonds shall be paid to the Holders whose names appear in the Security Register at the close of business on the Record Date (as provided in Appendix A) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder.

In the event of a non-payment of interest on one or more maturities on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment for such maturity or maturities (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of such maturity or maturities appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

Section 2.04 Redemptions and Tenders. The Bonds shall be subject to optional and mandatory redemption prior to maturity as provided in this Section. The Bonds shall be subject to optional and mandatory tender for purchase as set forth in Appendix A.

(a) Optional Redemption of Bonds in the SAVRS, Daily, Weekly Modes. Bonds in the SAVRS, Daily and Weekly Modes are subject to optional redemption in whole or in part, on any *[Interest Payment Date]*, at a redemption price equal to the principal amount thereof, plus unpaid accrued interest, if any, to the redemption date.

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

(i) Bonds in the Term and Commercial Paper Modes and shall be subject to redemption, in whole or in part, on their individual Mandatory Tender Dates at a redemption price equal to the principal amount thereof, plus unpaid accrued interest, if any, to the redemption date.

(ii) Bonds in a Term Mode or Fixed Mode are subject to redemption, in whole or in part, on any date at the redemption prices set forth below, together with unpaid accrued interest, if any, to the redemption date:

LENGTH OF LONG-TERM INTEREST PERIOD	COMMENCEMENT OF REDEMPTION PERIOD	REDEMPTION PRICE
Greater than or equal to 15 years	Tenth anniversary of the commencement of Long-Term Interest Period	102%, declining by 1.0% on each succeeding anniversary of the first day of the redemption period until reaching 100% and thereafter at 100%
Less than 15 years and greater than or equal to 10 years	Seventh anniversary of the commencement of Long-Term Interest Period	102%, declining by 1.0% on each succeeding anniversary of the first day of the redemption period until reaching 100% and thereafter at 100%

Less than 10 years and greater than or equal to 5 years	Third anniversary of the commencement of Long-Term Interest Period	101%, declining by 1.0% on each succeeding anniversary of the first day of the redemption period until reaching 100% and thereafter at 100%
Less than 5 years	Bonds not subject to optional redemption	

(iii) The City, in connection with a Mode change for the Bonds to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any Bonds so changed to a Long-Term Mode at any time without premium; provided that notice describing the waiver or alteration shall be submitted to the Notice Parties, together with an Opinion of Counsel addressed to the City that such waiver or alteration will not adversely affect the excludability of interest on the Bonds from the gross incomes of owners thereof for federal income tax purposes.

(c) Mandatory Redemption. The Bonds shall be subject to mandatory redemption in part prior to maturity at the redemption price of par and unpaid, accrued interest to the date of redemption on the respective dates and in principal amounts as follows:

<u>Redemption Date*</u>	<u>Principal Amount</u>
November 15, 20	
November 15, 20	
November 15, 20	
To Come	

* Notwithstanding the specific dates identified, however, if the Bonds are in a SAVRS Mode on any above scheduled redemption date and such date is not an Interest Payment Date, then the redemption shall occur on the immediately preceding Interest Payment Date.

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

The principal amount of the Bonds required to be redeemed pursuant to the operation of such mandatory redemption provisions may be reduced, at the option of the City, by the principal amount of Bonds which, at least 50 days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions set forth in paragraph(a) of this Section and not theretofore credited against a mandatory redemption requirement.

(d) Selection of Bonds for Redemption. If less than all Outstanding Bonds of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Bonds as representing the number of Bonds Outstanding which is obtained by dividing the principal amount of such Bonds by the Authorized Denomination and shall select the Bonds to be redeemed within such Stated Maturity by such method as the Paying Agent/Registrar may select.

(e) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Bonds, a notice of redemption shall be sent by United States Mail, first class postage prepaid, in the name of the City and at the City's expense, to each Holder of a Bond to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. If a Bond is subject by its terms to prior redemption and has been called for redemption and notice of redemption thereof has been duly given as hereinabove provided, such Bond (or the principal amount thereof to be redeemed) shall become due and payable and interest thereon shall cease to accrue from and after the redemption date therefor; provided money sufficient for the payment of such Bond (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

Section 2.05 Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each registered owner of the Bonds issued under and pursuant to the provisions of this Ordinance. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/ Registrar.

Upon surrender for transfer of any Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds, executed on behalf of, and furnished by, the City of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of

like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of, and furnished by, the City, to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States Mail, first class postage prepaid, to the Holder and, upon the delivery thereof, the same shall be valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof pursuant to Section 2.09 hereof and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/ Registrar shall be required to issue or transfer to an assignee of a Holder any Bond called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Bond; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

Section 2.06 Book-Entry Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 2.03, 2.04 and 2.05 hereof relating to the payment, redemption and transfer/exchange of the Bonds, the City hereby approves and authorizes the use of "Book-Entry Only" securities clearance, settlement and transfer system provided by The Depository Trust Company (DTC), a limited purpose trust company organized under the laws of the State of New York, in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representation by and between the City and DTC (the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC who shall hold said Bonds for its participants (the "DTC Participants") and, while the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the fact that beneficial ownership of the Bonds is recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities

transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders to cause Bonds to be printed in definitive form and provide for the Bond certificates to be issued and delivered to the Persons identified by DTC as those entitled to receive the same and to become the Holders of the Bonds. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 2.03, 2.04 and 2.05 hereof.

Section 2.07 Execution - Registration. The Bonds shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City Clerk. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Issue Date shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in V.T.C.A., Government Code, Chapter 1201.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 3.03, manually executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 3.04, manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond duly signed shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.

Section 2.08 Initial Bond(s). The Bonds herein authorized shall be initially issued as a single fully registered bond in the total principal amount shown in Section 2.01 and numbered T-1 (hereinafter called the "Initial Bond") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond shall be submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of authorized denominations, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

Section 2.09 Mutilated-Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like series, form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying

Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds.

Section 2.10 Swap Agreement.

(a) The City is authorized to enter into a Swap Agreement substantially in the form of Exhibit B hereto in connection with the Bonds if an Authorized Official determines that, based on market conditions, doing so would be in the best interest of the City. Any Authorized Official is authorized to determine whether it is appropriate to enter into the Swap Agreement, and to execute and deliver the Swap Agreement in substantially the form set forth in Exhibit A with such changes as an Authorized Official may approve; provided, however, that payments by the City under the Swap Agreement may not commence prior to the issuance of the Bonds, the notional amount of the Swap Agreement may not exceed the original principal amount of the Bonds, the term of the Swap Agreement may not extend beyond the last Stated Maturity of the Bonds, and the Swap Agreement must provide for the reduction of the notional amount to the extent that the principal amount of the Bonds is paid. Any Authorized Official is authorized to establish the fixed payor rate (expressed as a percent per annum) to be paid by the City under the Swap Agreement, provided, however, that the rate applicable to scheduled payments may not exceed ___ % per annum.

(b) In connection with the incurrence of the Swap Agreement, the City is authorized to purchase a Swap Policy and enter into an agreement evidencing the City's Reimbursement Obligations related to the Swap Policy. Any Authorized Official is authorized to determine whether it is appropriate to purchase a Swap Policy and on what terms, and to execute and deliver any such agreement evidencing the related Reimbursement Obligations.

(c) The payment obligations of the City under the Swap Agreement that are termination payments, settlement payments or other payments that are not Parity Obligations are payable from and secured by a lien on the Pledged Revenues that is junior and subordinate to the lien on Pledged Revenues that secures the Parity Obligations.

Section 2.11 Credit Facility. The City is authorized to purchase and enter into an Initial Credit Facility in the form of a financial guaranty insurance policy insuring the scheduled payments of interest and principal on the Bonds if an Authorized Official determines that, based on market conditions, doing so would be in the best interest of the City. Any Authorized Official is authorized to determine whether it is appropriate to purchase and enter into a Credit Facility, to select the Credit Provider and to approve the terms, and terms of purchase, of the Credit

Facility. Any Authorized Official is authorized to execute and deliver an agreement evidencing the Reimbursement Obligations related to any such Credit Facility.

Section 2.12 Liquidity Facility. The City is authorized to purchase and enter into an initial Liquidity Facility substantially in the form of Exhibit 5 to Appendix A hereto in connection with the Bonds if an Authorized Official determines that, based on market conditions, doing so would be in the best interest of the City. Any Authorized Official is authorized to determine whether it is appropriate to purchase and enter into a Liquidity Facility, to select the Liquidity Provider, and to approve the terms, and terms of purchase, of the Liquidity Facility. Any Authorized Official is authorized to execute and deliver an agreement evidencing the Reimbursement Obligations related to any such Liquidity Facility.

ARTICLE 3. FORM OF BONDS AND CERTIFICATES

Section 3.01 Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms provided for in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including legends reflecting the purchase of insurance for payment of the Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Bonds as evidenced by their execution. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds and the Initial Bond shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution.

Section 3.02 Form of Bond. The form of definitive Bond shall be as set forth in Exhibit 1 to Appendix A with respect to Bonds in a Weekly Mode or Daily Mode and Exhibit 2 to Appendix A with respect to Bonds in a SAVRS Mode, Commercial Paper Mode, Term Mode or Fixed Mode.

Section 3.03 Form of Registration Certificate of Comptroller of Public Accounts. To Appear on Initial Bonds only.

REGISTRATION CERTIFICATE OF COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER
OF PUBLIC ACCOUNTS

THE STATE OF TEXAS

)
)
)
)

REGISTER NO. _____

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

(SEAL)

Comptroller of Public Accounts
of the State of Texas

Section 3.04 Form of Certificate of Paying Agent/ Registrar. To Appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar in _____
is the "Designated Payment/Transfer Office" for this Bond.

Registration Date:

as Paying Agent/Registrar

By: _____
Authorized Signature

Section 3.05 Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee:) _____

(Social Security or other identifying number: _____)
_____) the within Bond and all rights thereunder, and hereby
irrevocably constitutes and appoints _____

attorney to transfer the within Bond on the books kept for registration thereof, with full power of
substitution in the premises.

DATED:

Signature guaranteed:

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

Section 3.06 CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

ARTICLE 4. SECURITY AND SOURCE OF PAYMENT FOR Parity Obligations

Section 4.01 Pledge and Source of Payment. The Bonds and other Parity Obligations shall constitute special obligations of the City payable from and, subject and subordinate to the payment of the Prior Lien Bonds and priority of uses contained in the ordinances authorizing the issuance of the Prior Lien Bonds and, together with any Additional Parity Bonds, equally and ratably secured by a lien on the Pledged Revenues. Such Pledged Revenues or other lawfully available funds of the City shall, in the manner herein provided, be set aside for and pledged to the payment of the Parity Obligations, and all expenses of providing for their full and timely payment in accordance with their terms, in the Bond Fund and the Reserve Fund as hereinafter provided. The City hereby grants a lien on the Pledged Revenues and further grants a lien on the Bond Fund and the Reserve Fund to secure the payment of principal of and premium, if any, and interest on the Parity Bonds and all other payments due on the Parity Obligations. Except as otherwise expressly provided by their terms, all Parity Obligations shall be in all respects on a parity with and of equal dignity with one another. The lien on the Pledged Revenues granted hereunder shall be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer or transfer of control of the Pledged Revenues, the filing of this Ordinance or any other act; all as provided in Chapter 1208 of the Texas Government Code. The Holders of the Parity Bonds shall never have the right to demand payment of the principal of, interest on or any redemption premium on the Parity Bonds out of any funds raised or to be raised by taxation, other than the Pledged Revenues.

If Texas law is amended at any time while the Parity Obligations are Outstanding such that the pledge of the Pledged Revenues granted by the City under this Section 4.01 is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, or other law, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable filing requirements to continue the perfection of such security interest.

Section 4.02 Levy of Hotel Occupancy Tax.

(a) The City has levied, and while any Bonds remain Outstanding the City hereby levies and covenants that it shall continue to levy, a Hotel Occupancy Tax on the cost of occupancy of any sleeping room furnished by any hotel within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day, at a rate of at least 7% of the consideration paid by the occupant of the sleeping room to the hotel, all as authorized by the Tax Act. The City further covenants that it shall enforce the provisions of this Ordinance, or any other ordinance levying a Hotel Occupancy Tax, concerning the

collection, remittance and payment of the Hotel Occupancy Tax.

(b) In addition the Hotel Occupancy Tax levied and to be collected pursuant to (a) above, the City has levied, and while any Bonds remain Outstanding the City hereby levies and covenants that it shall continue to levy, a Special Hotel Occupancy Tax on the cost of occupancy of any sleeping room furnished by any hotel within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day, at a rate of at least 2% of the consideration paid by the occupant of the sleeping room to the hotel, to finance the costs of the Convention Center/Waller Creek Venue Project, all as authorized by V.T.C.A. Local Government Code, Chapter 334, particularly Subchapter H and an election held in the City on May 2, 1998. The City further covenants that it shall enforce the provisions of this Ordinance and Ordinance No. 980709-G, or any other ordinance levying a Hotel Occupancy Tax, concerning the collection, remittance and payment of the Special Hotel Occupancy Tax.

Section 4.03 Special Fund.

(a) Hotel Occupancy Tax Special Funds. In accordance with the ordinances authorizing the issuance of the Prior Lien Bonds payable from and secured by a lien on and pledge of the Hotel Occupancy Tax Revenues, the following special funds and accounts have been created, established and shall be maintained while any of the Prior Lien Bonds remain Outstanding:

- (i) Convention Center Hotel Occupancy Tax Fund ("Tax Fund");
- (ii) Convention Center Hotel Occupancy Tax Bond Debt Service Fund ("Debt Service Fund"); and
- (iii) Convention Center Hotel Occupancy Tax Bond Debt Service Reserve Fund ("Debt Service Reserve Fund").

Such funds and accounts identified in (a) above and herein may also include any additional accounts or subaccounts as may from time to time be designated by the City, including specifically rebate accounts or subaccounts for accumulating rebatable arbitrage payable to the federal government, provided such accounts or subaccounts are not inconsistent with the ordinance authorizing the issuance of the Prior Lien Bonds and this Ordinance.

(b) Special Hotel Occupancy Tax Special Funds. In accordance with the ordinances authorizing the issuance of the Special Venue Project Bonds, the City hereby confirms the establishment of the Venue Project Fund maintained at an official depository of the City for the Convention Center/Waller Creek Venue Project in accordance with Section 334.042 of the Venue Act and pursuant to Ordinance No. 980709-G and the establishment of the following sub-accounts within such Venue Project Fund on the books of the City for the benefit of such Prior Lien Bonds, to wit:

- (i) Convention Center/Waller Creek Venue Project Special Hotel Occupancy Tax Account ("Tax Account");
- (ii) Convention Center/Waller Creek Venue Project Bond Debt Service Account ("Debt Service Account"); and

(iii) Convention Center/Waller Creek Venue Project Bond Debt Service Reserve Account ("Debt Service Reserve Account").

Such funds and accounts identified in (b) above and herein may also include any additional accounts or subaccounts as may from time to time be designated by the City, including specifically rebate accounts or subaccounts for accumulating rebatable arbitrage payable to the federal government, provided such accounts or subaccounts are not inconsistent with the ordinance authorizing the issuance of the Special Venue Project Bonds and this Ordinance.

(c) Special Funds for Parity Bonds. For the benefit of the Holders of the Parity Bonds and the beneficiaries of the other Parity Obligations, the City hereby agrees and covenants to establish and maintain the following special funds or accounts:

(i) Subordinate Lien Hotel Occupancy Tax Debt Service Fund (the "Bond Fund") for the payment of the Parity Obligations when and as the same shall become due and payable, and

(ii) Subordinate Lien Hotel Occupancy Tax Debt Service Reserve Fund (the "Reserve Fund") to provide a reserve amount to pay the principal of and interest on the Parity Bonds when funds in the Bond Fund are insufficient.

The Bond Fund and Reserve Fund may also include any additional accounts or subaccounts as may from time to time be designated by the City, including specifically rebate accounts or subaccounts for accumulating rebatable arbitrage payable to the federal government, provided such accounts or subaccounts are not inconsistent with the provisions of this Ordinance.

Section 4.04 Flow of Funds.

(a) Flow of Funds re Hotel Occupancy Tax Revenues. The City covenants and agrees all Pledged Hotel Occupancy Tax Revenues shall be deposited as received into the Tax Fund. Money from time to time credited to the Tax Fund shall be applied as follows in the following order of priority:

1. to transfer all amounts to the Debt Service Fund required by the ordinance authorizing the issuance of the Prior Lien Bonds.

2. to transfer all amounts to the Debt Service Reserve Fund required by the ordinance authorizing the issuance of the Prior Lien Bonds.

3. to transfer to the Bond Fund all amounts necessary to provide for the payment of Parity Obligations.

4. to transfer to the Reserve Fund the amounts required pursuant to Section 4.06.

5. for any lawful purpose under the Tax Act.

(b) Flow of Funds regarding Special Hotel Occupancy Tax. The City covenants and agrees all receipts and revenues collected and received by the City from the Special Hotel Occupancy Tax shall be deposited to the credit of the Venue Project

Fund and more particularly to the credit of the Tax Account. Following the issuance of the Bonds and while Parity Bonds remain Outstanding, money from time to time credited to the Tax Account shall be applied as follows in the following order of priority:

1. to transfer all amounts to the Debt Service Account required by the ordinance authorizing the issuance of the Prior Lien Bonds.

2. to transfer all amounts to the Debt Service Reserve Account required by the ordinance authorizing the issuance of the Prior Lien Bonds.

3. to transfer all amounts to the Bond Fund all amounts necessary to provide for the payment of Parity Obligations.

4. to transfer to the Reserve Fund the amounts required pursuant to Section 4.06.

5. to pay the costs of operating or maintaining the Convention Center/Waller Creek Venue Project

Section 4.05 Bond Fund. Subject to satisfying the required payments for the benefit of the Prior Lien Bonds in accordance with the ordinances authorizing their issuance, the City hereby covenants and agrees that prior to each Interest Payment Date, stated maturity date and mandatory redemption date for the Parity Bonds there shall be deposited into the Bond Fund from the Pledged Revenues, an amount equal to one hundred percent (100%) of the amount required to fully pay the amount then due and payable on the Parity Obligations, and such deposits *[In substantially equal quarterly installments (based on the total annual Debt Service Requirements to be paid on the Parity Obligations divided by the number of Transfer Dates to occur during the period covered by such calculation) on or before each Transfer Date, beginning on the first Transfer Date to occur after the delivery of the Bonds]*.

In addition, on each Transfer Date, the City covenants and agrees to cause to be deposited into the Bond Fund from the Pledged Revenues an amount calculated to pay all expenses of providing for the full and timely payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms, including without limitation, all fees charged or incurred by the Paying Agent/Registrar and any Remarketing Agent, Tender Agent, Auction Agent, Broker-Dealer and Calculation Agent, and for trustee services rendered in connection with the Bonds.

Money credited to the Bond Fund shall be used solely for the purpose of paying principal (at maturity or prior redemption or to purchase Parity Bonds issued as term bonds in the open market to be credited against mandatory redemption requirements), interest and redemption premiums on Parity Bonds and all other amounts due on other Parity Obligations, plus all other charges, costs and expenses relating to such payment, including those described in the preceding paragraph. On or before each payment due date for the Parity Obligations, the City shall transfer from the Bond Fund to the appropriate paying agent/registrar amounts equal to the amounts due on the Parity Obligations on such date.

Section 4.06 Reserve Fund.

(a) The City shall establish and maintain as hereinafter provided a balance in

the Reserve Fund equal to the Reserve Fund Requirement for the Parity Bonds. The Reserve Fund Requirement shall initially be funded at the time of issuance and delivery of the Bonds by a Surety Bond issued by an Insurance company or other entity that is rated either for the long term unsecured debt of the issuer of such Surety Bond or for obligations insured, secured or guaranteed by such issuer have a rating in the highest letter category by two major municipal securities evaluation services.

(b) In any Transfer Period in which the Reserve Fund contains less than the Reserve Fund Requirement or in which the City is obligated to repay or reimburse any issuer of a Reserve Fund Surety Bond (in the event such Reserve Fund Surety Bond is drawn upon), then after making all required transfers to the Bond Fund, there shall be transferred into the Reserve Fund from the available Pledged Revenues on each Transfer Date such amounts as shall be necessary to reestablish the Reserve Fund Requirement and satisfy any repayment obligations to the issuer of any Reserve Fund Surety Bond. After such amount has been accumulated in the Reserve Fund and after satisfying any repayment obligation to any Reserve Fund Surety Bond issuer and so long thereafter as such fund contains such amount and all such repayment obligations have been satisfied, no further transfers shall be required to be made, and any excess amounts in such fund shall be transferred to the Bond Fund. But if and whenever the balance in the Reserve Fund is reduced below the Reserve Fund Requirement or any Reserve Fund Surety Bond repayment obligations arise, transfers to the Reserve Fund shall be resumed and continued in the manner stated above to restore the Reserve Fund Requirement and to pay such reimbursement obligations.

(c) The Reserve Fund shall be used to pay the principal of and interest on the Parity Bonds at any time when there is not sufficient money available in the Bond Fund for such purpose, and to make any payments required to satisfy repayment obligations to issuers of Reserve Fund Surety Bonds, and may be used to make the final payments for the retirement or defeasance of the Parity Bonds.

(d) As noted above, the Reserve Fund Requirement is to be funded in full on the Issue Date with a Surety Bond issued by _____, a _____ domiciled stock insurance company (hereinafter referred to as "_____"). In accordance with _____'s terms for the issuance of such Surety Bond, it is hereby expressly provided:

(i) Notwithstanding any other provision of this Ordinance, the Paying Agent/Registrar shall immediately notify _____ if at any time there is insufficient money to make any payments of principal and interest on the Parity Bonds as required and immediately upon the occurrence of (A) any event of default under this Ordinance or (B) any payment default under any Parity Obligation.

(ii) The City and the Paying Agent/Registrar, if appropriate, agree to comply with the following provisions:

(1) In the event and to the extent that money on deposit in the Bond Fund is insufficient to pay the amount of principal and interest coming due on the Parity Bonds, then upon the later of: (i) one (1) day after receipt by _____ of a demand for payment in the form attached to the Surety Bond as Attachment 1 (the "Demand for Payment"), duly

executed by the Paying Agent/Registrar certifying that payment due under the Ordinance has not been made to the Paying Agent/Registrar; or (ii) the payment date of the Bonds as specified in the Demand for Payment presented by the Paying Agent/Registrar to _____. _____ will make a deposit of funds in an account with the Paying Agent/Registrar or its successor, in New York, New York, sufficient for the payment to the Paying Agent/Registrar, of amounts which are then due to the Paying Agent/Registrar under the Resolution (as specified in the Demand for Payment) up to but not in excess of the "Surety Bond Coverage," as defined in the Surety Bond; provided, however, that in the event that the amount on deposit in, or credit to, the Reserve Fund, in addition to the amount available under the Surety Bond, includes amounts available under a letter of credit, insurance policy, surety bond or other such funding instrument (the "Additional Funding Instrument"), draws on the Surety Bond and the Additional Funding Instrument shall be made on a pro rata basis to fund the insufficiency.

(2) the Paying Agent/Registrar, if appropriate, shall, after submitting to _____ the Demand for Payment as provided in subparagraph (ii)(1) above, make available to _____ all records relating to the funds and accounts maintained under this Ordinance.

(3) the Paying Agent/Registrar, if appropriate, shall, upon receipt of money received from the draw on the Surety Bond, as specified in the Demand for Payment, credit the Reserve Fund to the extent of money received pursuant to such Demand for Payment.

(4) the Reserve Fund shall be replenished in the following priority: (i) amounts owing to reimburse claims under the Surety Bond shall be paid from first available Pledged Revenues or principal and interest on the Surety Bond and on the Additional Funding Instrument shall be paid from first available Pledged Revenues on a pro rata basis; (ii) after all such amounts are paid in full, amounts necessary to fund the Reserve Fund Requirement to the required level, after taking into account the amounts available under the Surety Bond and the Additional Funding Instrument shall be deposited from next available Pledged Revenues as provided in (a) above.

Furthermore, the "Guaranty Agreement" (the "Guaranty Agreement") by and between the City and _____, attached hereto as Exhibit E and incorporated herein by reference as a part of this Ordinance for all purposes, is hereby approved as to form and content, and such Guaranty Agreement in substantially the form and substance attached hereto, together with such changes or revisions as may be necessary to comply with Texas law, is hereby authorized to be executed by an authorized official of City for and on behalf of the City and as the act and deed of this Council; and such Guaranty Agreement as executed by said official shall be deemed approved by the City Council and constitute the Guaranty Agreement herein approved. Unless otherwise provided herein, the terms capitalized in this Section relating to the Surety Bond and the Guaranty Agreement shall have the meanings specified in Guaranty Agreement.

Section 4.07 Deficiencies in Funds or Accounts. If on any Transfer Date there shall not be transferred into any fund or account maintained pursuant to this Article the full amounts

required herein, amounts equivalent to such deficiency shall be set apart and transferred to such fund or account from the first available and unallocated Pledged Revenues, and such transfer shall be in addition to the amounts otherwise required to be transferred to such fund or account on any succeeding Transfer Date or Dates.

Section 4.08 Investment of Funds; Transfer of Investment Income.

(a) Money in all funds shall, at the option of the City, be invested in the manner provided by Texas law; provided that all such deposits and investments shall be made in such manner that the money required to be expended from any fund will be available at the proper time or times. Money in such funds may be subjected to further investment restrictions imposed from time to time by ordinances authorizing the issuance of Prior Lien Bonds and the Parity Bonds. All such investments shall be valued no less frequently than the last business day of the City's Fiscal Year at market value, except that any direct obligations of the United States of America - State and Local Government Series shall be continuously valued at their par value or principal face amount. For purposes of maximizing investment returns, money in such funds may be invested, together with money in other funds or with other money of the City, in common investments or in a common pool of such investments maintained by the City at an official depository of the City or in any fund or investment vehicle permitted by Texas law, which shall not be deemed to be a loss of the segregation of such money or funds provided that safekeeping receipts, certificates of participation or other documents clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such funds are held by or on behalf of each such fund. If and to the extent necessary, such investments or participations therein shall be promptly sold to prevent any default.

(b) All interest and income derived from deposits and investments credited to the Bond Fund and Reserve Fund shall remain a part of the fund from which such investment was made, and such investment interest and income shall reduce by like amount any required transfer to such Funds from the Pledged Revenues, provided that at any time when the Reserve Fund has on deposit an amount in excess of the Reserve Fund Requirement, all investment interest and income received on any investment of funds in such fund shall be deposited to the credit of the Bond Fund.

(c) Notwithstanding anything to the contrary contained herein, any interest and income derived from deposits and investments of any amounts credited to any fund or account may be (i) transferred into any rebate account or subaccount and (ii) paid to the federal government if in the opinion of nationally recognized bond counsel such payment is required to comply with any covenant contained in an order, resolution or ordinance to prevent interest on any Parity Bonds from being includable within the gross income of the owners thereof for federal income tax purposes.

Section 4.09 Security for Uninvested Funds. While any Bonds remain Outstanding, all uninvested money on deposit in, or credited to, the above described funds and accounts shall be secured by the pledge of security, as provided by Texas law.

ARTICLE 5. ADDITIONAL BONDS

Section 5.01 No Prior Lien Bonds. The City covenants that it will not issue any additional bonds payable from and secured by a lien on and pledge of the Pledged Revenues

that is senior to the lien securing the Parity Bonds.

Section 5.02 Refunding Bonds. The City expressly reserves the right to issue refunding bonds to refund the Bonds or refunding bonds previously issued to refund the Bonds; provided the maximum annual and the average annual Debt Service Requirements for all Parity Bonds to be Outstanding in any Fiscal Year after the issuance of such refunding bonds will not exceed (1) [] % of the maximum annual for all Parity Bonds Outstanding in any Fiscal Year prior to the issuance of such refunding bonds and (2) [] % of the average annual Debt Service Requirement for all Parity Bonds Outstanding at the end of the last completed Fiscal Year prior to the issuance of such refunding bonds.

Section 5.03 Additional Parity Bonds/Junior Subordinate Lien Bonds.

(a) In regard to the Pledged Hotel Occupancy Tax Revenues, the City reserves and retains the right to issue or incur additional obligations secured in whole or in part by a parity lien on such Pledged Hotel Occupancy Tax Revenues or by a lien junior and subordinate to the lien on such Pledged Hotel Occupancy Tax Revenues securing payment of the Parity Bonds; provided, however, that no such Parity Bonds or Junior Subordinate Lien Bonds shall be issued unless the following conditions satisfied:

(i) the City's Director of Finance and Administrative Services (or other officer of the City having primary responsibility for the financial affairs of the City) shall provide a certificate showing that, for the City's most recent completed Fiscal Year or for any consecutive 12-month period out of the most recent 18 months preceding the month the ordinance authorizing the issuance of the Prior Lien Bonds or Subordinate Lien Bonds is adopted (the "Coverage Period"), (A) the Pledged Hotel Occupancy Tax Revenues for the Coverage Period are equal to at least 130% of the maximum annual Debt Service Requirement of all Prior Lien Bonds and Parity Bonds then Outstanding scheduled to occur in the then current or any future Fiscal Year after taking into consideration the issuance of the Prior Lien Bonds, if any, proposed to be issued, and deducting from the maximum annual Debt Service Requirement for such Prior Lien Bonds and Parity Bonds an amount equal to the revenues received from the Special Hotel Occupancy Tax for the Coverage Period and (B) the "Net Pledged Hotel Occupancy Tax Revenues" for the Coverage Period (i.e., the Pledged Hotel Occupancy Tax Revenues after deducting an amount equal to the maximum annual Debt Service Requirement applied in satisfying the coverage requirement in clause (A) above), together with any other revenues pledged in whole or in part to the payment of any Subordinate Lien Bonds, are equal to at least 130% of the maximum annual Debt Service Requirement on all Subordinate Lien Bonds then Outstanding and scheduled to occur in the then current or any future Fiscal Year after giving effect to the issuance of the Subordinate Lien Bonds then being issued, if any; provided, however, at such time as the Bonds are no longer Outstanding, the coverage requirement in clause (A) above shall be reduced to 125% and the coverage requirement of clause (B) shall be reduced to 100%; and

(ii) provision is made in the ordinance authorizing issuance of the Prior Lien Bonds or Subordinate Lien Bonds, as the case may be, for the complete funding of any reserves for payment of principal of and interest on such Prior Lien Bonds or Subordinate Lien Bonds as of the initial delivery thereof.

(b) Among the future obligations authorized to be issued or incurred pursuant to Section 5.03(a) are Credit Agreements. The City may enter into such a Credit Agreement payable from and secured by a lien on Pledged Hotel Occupancy Tax Revenues if it obtains either (i) the consent from any insurance company insuring the payment of the Bonds or (ii) written confirmation from each Rating Agency then rating the Bonds at the request of the City that issuance of the Credit Agreement will not cause a withdrawal or reduction in the rating assigned to the Bonds. The City may secure its obligations under a future Credit Agreement by a lien on Pledged Hotel Occupancy Tax Revenues if such lien is on a parity with or subordinate to the lien securing the Parity Bonds.

(c) If the City issues Variable Rate Obligations, it shall use the following procedures for purposes of determining the maximum and the average annual Debt Service Requirements of Variable Rate Obligations:

(i) At the option of the City, such Variable Rate Obligation shall be deemed to bear interest at one of the following rates: (A) an interest rate equal to the average rate borne by such obligations (or by comparable debt in the event that such obligations have not been outstanding during the preceding 24 months) for any 24-month period ending within 30 days prior to the date of calculation; (B) if the City has entered into a Credit Agreement in the nature of a Matched Interest Rate Exchange Agreement, the rate payable by the City under such Credit Agreement; or (C) an interest rate equal to the 30-Year Tax-Exempt Revenue Bond Index rate as published in The Bond Buyer on any date selected by the City within 30 days prior to the date of calculation. If such index is no longer published in The Bond Buyer, an index of tax-exempt revenue bonds with maturities of 20 years, or more, published in the financial newspaper or journal with national circulation may be selected by the City and used for this purpose.

(ii) If the City has entered into a Credit Agreement in connection with an issue of obligations payable from and secured by Pledged Revenues and if Clause B of paragraph (d)(i) above does not apply, (X) payments due under the Credit Agreement, from either the City or the other party to the Credit Agreement, shall be included in such calculation except to the extent that the payments are already taken into account in the debt service calculation, (Y) any payments that would otherwise be included under the debt service calculation which are to be replaced by payments under a Credit Agreement from either the City or the other party to the Credit Agreement shall be excluded from such calculation, and (Z) payments due under a Credit Agreement that are paid at a variable rate shall be deemed to be made at a fixed rate determined in a manner consistent with the first sentence of this paragraph (d). For any calculation of historic data, only those payments actually made in the subject period shall be taken into account in making such calculation and for prospective calculations, only those payments reasonably expected to be made in the subject period shall be taken into account in making the calculation.

(d) If the City has entered into a Credit Agreement to discharge or purchase any of its obligations payable from or secured by Pledged Revenues under arrangements whereby the City's obligation to repay the amounts advanced under the Credit Agreement for the discharge or purchase is payable over more than one year from the advance under the Credit Agreement, then the portion of the obligations committed

to be discharged or purchased pursuant to the Credit Agreement shall be excluded from any calculation of debt service requirements, and the principal of and interest requirements that constitute the City's reimbursement obligation shall be added.

(e) In determining the Pledged Hotel Occupancy Tax Revenues to satisfy the coverage requirements of condition (a) above, the City may take into consideration an increase in the portion of the Pledged Hotel Occupancy Tax Revenues that became effective during the Coverage Period and, for purposes of satisfying the above coverage tests, make a pro forma determination of the Pledged Hotel Occupancy Tax Revenues for the Coverage Period based on such increased portion of the Pledged Hotel Occupancy Tax Revenues being in effect for the entire Coverage Period.

(f) Any Additional Parity Bonds or Junior Subordinate Bonds may bear any name or designation provided by the ordinance authorizing their issuance and be issued and such form and manner as may be authorized by law. Furthermore, any such bonds may be secured by any other source of payment lawfully available for such purposes, including a Credit Agreement, financial guaranty insurance policy or similar credit or liquidity support. Any Reimbursement Obligation or obligation under a Credit Agreement may be secured by Pledged Revenue on a basis *pari passu* with the Parity Bonds or Junior Subordinate Bonds.

ARTICLE 6. COVENANTS AND PROVISIONS RELATING TO ALL BONDS

Section 6.01 Punctual Payment of Bonds. The City covenants it will punctually pay or cause to be paid the interest and any premium on and principal of all Parity Obligations according to the terms thereof and will faithfully do and perform, and at all times fully observe, any and all covenants, undertakings, stipulations and provisions contained in this Ordinance and in any other ordinance authorizing the issuance of such Parity Obligations.

Section 6.02 Pledge and Encumbrance of Pledged Revenues. The City covenants and represents that it has the lawful power to create a lien on and to pledge the Pledged Revenues to secure the payment of the Parity Obligations and has lawfully exercised such power under the Constitution and laws of the State of Texas. The City further covenants and represents that, other than to the payment of the Prior Lien Bonds, the bonds and obligations authorized and reserved to be issued in this Ordinance, the Pledged Revenues are not and will not be made subject to any other lien, pledge or encumbrance to secure the payment of any debt or obligation of the City.

Section 6.03 Bondholders Remedies. This Ordinance shall constitute a contract between the City and the Holders of the Bonds from time to time Outstanding and the beneficiaries of other Parity Obligations and this Ordinance shall be and remain irrevocable until the Bonds and the other Parity Obligations shall be fully paid or discharged or provision therefor shall have been made as provided herein. In the event of a default in the payment of the principal of or interest or any premium on any of the Bonds or a default in the performance of any duty or covenant provided by law or in this Ordinance, each Holder of a Bond and each beneficiary of any Parity Obligation may pursue all legal remedies afforded by the Constitution and laws of the State of Texas to compel the City to remedy such default and to prevent further default or defaults. Without in any way limiting the generality of the foregoing, it is expressly provided that each Holder of a Bond and each beneficiary of any Parity Obligation may at law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required to be performed by the City under this Ordinance, including the application of

Pledged Revenues in the manner required in this Ordinance; provided, however, that no Holder of a Bond and no beneficiary of a Parity Obligation shall ever have the right to demand payment of the principal of, interest on or any redemption premium on the Bonds or any payment on any Parity Obligation out of any funds raised or to be raised by taxation, other than the Pledged Hotel Occupancy Tax Revenues and the Special Hotel Occupancy Tax.

Section 6.04 Discharge by Deposit. The City may discharge its obligation to the Holders of any or all of the Bonds to pay principal, interest and redemption premium (if any) thereon by depositing with the Paying Agent/Registrar cash in an amount equal to the principal amount and redemption premium, if any, of such Bonds plus interest thereon to the date of maturity or redemption, or by depositing either with the Paying Agent/Registrar or with any national banking association with capital and surplus in excess of \$100,000,000, pursuant to an escrow or trust agreement to which the Paying Agent/Registrar is a party, cash and/or direct obligations of, or obligations the principal and interest of which are guaranteed by the United States of America in principal amounts and maturities and bearing interest at rates sufficient to provide for the timely payment of the principal amount and redemption premium, if any, of such Bonds plus interest thereon to the date of maturity or redemption. Upon such deposit, such Bonds shall no longer be regarded to be Outstanding. In case any Bonds are to be redeemed on any date prior to their maturity, the City, shall give to the Paying Agent/Registrar irrevocable instructions to give notice of redemption of Bonds to be so redeemed in the manner required in the ordinance or ordinances authorizing such Bonds. For any Bonds not to be redeemed or paid in full within the next succeeding sixty (60) days from the date of deposit provided for in this Section 6.04, the City shall give the Paying Agent/Registrar in form satisfactory to it irrevocable instructions to mail, by first class mail, a notice to the Holder of each such Bond that the deposit required by this Section 6.04 has been made and that said Bonds are deemed paid in accordance with this Section and stating such maturity or redemption date upon which money is to be available for the payment of the principal amount and redemption premium if any on such Bonds plus interest thereon to the date of maturity or redemption. Any failure, error or delay in giving such notices shall not affect the defeasance of such Bonds.

Section 6.05 Non-Business Days. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds or the due date for the payment or performance of any obligation shall be other than a Business Day, then such payment need not be made on such due date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption or other due date, and no interest shall accrue for the period from the scheduled due date to the date of actual payment. In case any Transfer Date shall not be a Business Day, then the transfer otherwise required to be made on such date pursuant to Section 5.05 shall be made on the next preceding date which is not a Business Day.

ARTICLE 7. CONCERNING Certain Agents

Section 7.01 Paying Agent/Registrar Agreement. The selection and appointment of _____, to serve as Paying Agent/Registrar for the Bonds is hereby approved and confirmed. The substantial form of Paying Agent/Registrar Agreement between the City and the Paying Agent/Registrar attached hereto as Exhibit A is hereby approved. Any Authorized Official is authorized to execute and deliver the Paying Agent/Registrar Agreement in substantially the form set forth in Exhibit A with such changes as an Authorized Official may approve. The Paying Agent/Registrar, by undertaking the performance of the duties of the Paying Agent/Registrar hereunder and under said agreement, and in consideration of the payment of fees and/or deposits of money pursuant

to this Ordinance and said agreement, accepts and agrees to abide by the terms of this Ordinance and said Agreement.^{^^}

Section 7.02 Trust Funds. All money transferred by the City to the Paying Agent/Registrar under this Ordinance (except sums representing Registrar's/Paying Agent's fees) shall be held in trust for the benefit of the City, shall be the property of the City, and shall be disbursed in accordance with this Ordinance.

Section 7.03 Bonds Presented. Subject to the provisions of Section 7.04, all matured Bonds presented to the Paying Agent/Registrar for payment shall be paid without the necessity of further instructions from the City. Such Bonds shall be canceled as provided herein.

Section 7.04 Unclaimed Funds Held by the Paying Agent/Registrar. Funds held by the Paying Agent/Registrar which represent principal of and interest and any premium on the Bonds remaining unclaimed by the owner after the expiration of three years from the date such funds have become due and payable shall be reported and disposed of by the Paying Agent/Registrar in accordance with the provisions of Texas law including, to the extent applicable, Title 6 of the Texas Property Code, as amended.

The Paying Agent/Registrar shall have no liability to the Holders of the Bonds by virtue of actions taken in compliance with this Section.

Section 7.05 Paying Agent/Registrar May Own Bonds. The Paying Agent/Registrar in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights it would have if it were not the Paying Agent/Registrar.

Section 7.06 Successor Paying Agent/Registrars. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Section 7.07 Remarketing Agent. The selection and appointment of Lehman Brothers, Inc. to serve as Remarketing Agent for the Bonds is hereby approved and confirmed, and such appointment shall be governed by Section 4.01 of Appendix A hereto and a Remarketing Agreement between the City and Lehman Brothers, Inc., substantially in the form of Exhibit 3 to Appendix A hereto, which is hereby approved. One or more Authorized Officials are and shall be authorized to execute and deliver such Remarketing Agreement with such changes as the Authorized Official executing such Remarketing Agreement may approve.

Section 7.08 Tender Agent. The selection and appointment of _____ to serve as Tender Agent for the Bonds is hereby approved and confirmed, and such appointment shall be governed by Section 4.02 of Appendix A hereto, and a Tender Agent Agreement between the City and _____, substantially in the form of Exhibit 4 to Appendix A hereto, which is hereby approved. One or more Authorized Officials are and shall be authorized to execute and deliver such Tender Agent Agreement with such changes as the Authorized Official executing the same may approve.

ARTICLE 8. ALTERATION OF RIGHTS AND DUTIES; AMENDMENT OF ORDINANCE

Section 8.01 Alteration of Rights and Duties. The rights, duties, and obligations of the City and the Holders of the Bonds are subject in all respects to all applicable federal and state laws including, without limitation, the provisions of federal law regarding the composition of indebtedness of political subdivisions, as the same now exist or may hereafter be amended.

Section 8.02 Amendment of Ordinance Without Consent. The City may, without the consent of or notice to any of the Holders of the Bonds, amend this Ordinance for any one or more of the following purposes:

(a) to cure any ambiguity, defect, omission or inconsistent provision in this Ordinance or in the Bonds; or to comply with any applicable provision of law or regulation of federal agencies; provided, however, that such action shall not adversely affect the interests of the Holders of the Bonds;

(b) to change the terms or provisions of this Ordinance to the extent necessary to prevent the interest on the Bonds from being includable within the gross income of the owners thereof for federal income tax purposes;

(c) to grant to or confer upon the Holders of the Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders of the Bonds;

(d) to add to the covenants and agreements of the City contained in this Ordinance other covenants and agreements of, or conditions or restrictions upon, the City or to surrender or eliminate any right or power reserved to or conferred upon the City in this Ordinance;

(e) to amend any provisions hereof relating to the issuance of Additional Parity Bonds or Additional Junior Subordinate Bonds provided that the City first obtains a Rating Confirmation with respect to such amendment; and

(f) to subject to the lien and pledge of this Ordinance additional Pledged Revenues, provided such amendment does not cause any reduction in any rating assigned to the Bonds by any major municipal securities evaluation service then rating the Bonds;

provided, however, that if and to the extent required by a Credit Facility, Liquidity Facility, the Swap Agreement, another Credit Agreement or other provision of this Ordinance, the City shall first obtain the consent of the Credit Provider, any Liquidity Provider and the Swap Counterparty to any such amendment pursuant to this Section 8.02.

Section 8.03 Amendments of Ordinance Requiring Consent.

(a) The City may at any time adopt one or more ordinances amending, modifying, adding to or eliminating any of the provisions of this Ordinance but, if such amendment is not of the character described in Section 8.02 hereof, only with the consent given in accordance with Section 8.04 hereof of the Holders of not less than 66-2/3% of the aggregate unpaid principal amount of the Parity Bonds then Outstanding and affected by such amendment, modification, addition, or elimination; provided, however, that nothing in this Section shall permit (1) an extension of the maturity of the

principal of or interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest on any Bond or redemption price therefor, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of the Bonds required for consent to such amendment.

(b) If and to the extent required by a Credit Facility, Liquidity Facility, the Swap Agreement, another Credit Agreement or other provision of this Ordinance, the City shall first obtain the consent of the Credit Provider, any Liquidity Provider and the Swap Counterparty to any such amendment pursuant to this Section 8.03.

Section 8.04 Consent of Holders.

(a) Any consent required by Section 8.03 by shall be deemed given

(i) By all Holders of Outstanding Bonds if a Credit Facility is in effect, the Credit Provider is not in default thereunder and the Credit Provider has given its written consent to the amendments in writing,

(ii) By all Holders of Outstanding Bonds if the Bonds are remarketed following a mandatory tender of all Bonds and the substance of such amendment has been disclosed to the market in connection with such remarketing,

(iii) By all Holders of Outstanding Bonds if the Bonds are in a SAVRS Mode and if written notice of the substance of the proposed amendment has been furnished to the Holders and if following such disclosure, there have occurred at least two consecutive Auctions (as defined in Appendix A) and in each such Auction *[Sufficient Clearing Bids existed][the SAVRS Rate determined was the Winning Bid Rate]*;

(iv) By any Holder in any number of concurrent writings of similar tenor, signed by such Holder or his duly authorized attorney. Proof of the execution of any such consent or of the writing appointing any such attorney and of the ownership of Parity Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted to be taken, by the City under such instrument, namely:

(1) the fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution; and

(2) the fact of the ownership by any person of any Bond and the date of the ownership of same may be proved by a certificate executed by an appropriate officer of the Paying Agent/Registrar, stating that at the date thereof such Bond was registered in the name of such party in the Register.

In lieu of the foregoing the City may accept such other proofs of the foregoing as it shall deem appropriate.

Consents obtained pursuant to Section 8.04(iv) shall be valid only if given following the mailing of notice by or on behalf of the City requesting such consent and setting forth the substance of the amendment of this Ordinance in respect of which such consent is sought and stating that copies thereof are available at the office of the City Clerk for inspection. Such notice shall be mailed by certified mail to each Holder of the Parity Bonds affected at the address shown on the Security Register.

Section 8.05 Revocation of Consent. Any consent by any Holder of a Bond pursuant to the provisions of Section 8.04(iv) shall be irrevocable for a period of six months from the date of mailing of the notice provided for in this Article, and shall be conclusive and binding upon all future Holders of the same Bond and any Bond delivered on transfer thereof or in exchange for or replacement thereof during such period. Such consent may be revoked at any time after six months from the date of the first mailing of such notice by the owner who gave such consent or by a successor in title, by filing notice thereof with the Paying Agent/Registrar, but such revocation shall not be effective if the Holders of a majority in aggregate principal amount of the Parity Bonds Outstanding as in this Ordinance defined have, prior to the attempted revocation, consented to and approved the amendment.

ARTICLE 9. PROVISIONS CONCERNING SALE AND APPLICATION OF PROCEEDS OF BONDS

Section 9.01 Sale of Bonds. The Bonds authorized by this Ordinance are hereby authorized to be sold by the City to Lehman Brothers (herein referred to as the "Underwriter") on a sales date specified by an Authorized Official that is no later than _____, 2005, in accordance with the Bond Purchase Agreement, to be dated the date of sale of the Bonds, attached hereto as Exhibit F. One or more Authorized Officials are authorized to execute and deliver the Bond Purchase Agreement substantially in the form attached as Exhibit F and with such changes thereto as may be approved by the Authorized Official executing the same. The purchase price of the Bonds shall be as set forth in the Bond Purchase Agreement, provided that underwriter's discount shall not exceed \$_____. The City Council hereby finds, determines and declares that the representations, warranties and agreements of the City contained in the Bond Purchase Agreement are true and correct in all material respects as of this date and shall be honored and performed by the City.

Section 9.02 Control and Custody of Bonds. The Mayor of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending the delivery of the Bonds, and shall take and have charge and control of the Initial Bond(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Underwriter.

Furthermore, any Authorized Official is hereby authorized and directed to furnish and execute such documents relating to the City and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General and registration by the Comptroller of Public Accounts and, together with the City's financial advisor, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond to the initial purchasers thereof and the exchange thereof for obligations described herein and in the Official Statement.

Offering Documents. The Preliminary Official Statement relating to the Bonds submitted at the meeting at which this Ordinance is adopted is hereby approved and is deemed final, except for such omissions as are permitted by Rule 15c2-12 of the Securities and Exchange

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

Section 9.03 Special Escrow Agreement Approval and Execution. The "Special Escrow Agreement" (the "Agreement") by and between the City and _____ (the "Escrow Agent"), attached hereto as Exhibit D is hereby approved as to form and content, and any Authorized Official is authorized to execute and deliver such Agreement in substantially such form, together with such changes or revisions as may be necessary to accomplish the refunding or benefit the City.

Furthermore, appropriate officials of the City in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the Federal Securities referenced in the Agreement and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Underwriter for deposit to the credit of the "SPECIAL 2005 CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX REVENUE REFUNDING BOND ESCROW FUND" (the "Escrow Fund"); all as contemplated and provided in V.T.C.A., Government Code, Chapter 1207, as amended, this Ordinance and the Agreement.

Section 9.04 Proceeds of Sale. Immediately following the delivery of the Bonds, proceeds of sale in the sum of (i) \$ _____ shall be deposited to the credit of the Escrow Fund and (ii) the \$ _____ shall be deposited to the credit of the Bond Fund. The balance of the proceeds of sale of the Bonds shall be expended to pay costs of issuance, purchase prices and premiums of the Credit Facility and Liquidity Facility, and related fees and expenses, and any excess amount budgeted for such purpose shall be deposited to the credit of the Bond Fund.

[Additionally, on or immediately prior to the date of the delivery of the Bonds to the Underwriter, the Chief Financial Officer shall cause to be transferred in immediately available funds to the Escrow Agent from money on deposit in the funds of the City maintained for the payment of the Refunded Bonds the sum of \$ _____ to accomplish the refunding.]

Section 9.05 Redemption of Refunded Bonds. The Refunded Bonds maturing on and after November 15, 2010, aggregating in principal amount \$96,255,000, shall be redeemed and the same are hereby called for redemption on November 15, 2009, at the price of par and 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, National Association (the paying agent for such bonds), in accordance with the redemption provisions applicable to such bonds; such suggested form of notice of redemption being attached hereto as Exhibit E and incorporated herein by reference as a part of this Ordinance for all purposes.

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

ARTICLE 10. CONTINUING DISCLOSURE OF INFORMATION

Section 10.01 Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"MSRB" means the Municipal Securities Rulemaking Board.

"NRMSIR" means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"SID" means any person designated by the State of Texas or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

Section 10.02 Annual Reports. The City shall provide annually to each NRMSIR and any SID, within six months after the end of each Fiscal Year (beginning with the Fiscal Year ending September 30, 2005) financial information and operating data with respect to the City of the general type included in the final Official Statement approved by Section 9.04 of this Ordinance, being the information described in Exhibit C hereto. Financial statements to be provided shall be (1) prepared in accordance with the accounting principles described in Exhibit C hereto and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available at the time the financial information and operating data must be provided, then the City shall provide unaudited financial statements for the applicable Fiscal Year to each NRMSIR and any SID with the financial information and operating data and will file the audited financial statements, when and if audited financial statements become available.

If the City changes its Fiscal Year, it will notify each NRMSIR and any SID of the change (and of the date of the new Fiscal Year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

Section 10.03 Material Event Notices. The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the

Bonds, if such event is material within the meaning of the federal securities laws:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
7. Modifications to rights of holders of the Bonds;
8. Bond calls;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds; and
11. Rating changes.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 10.02 hereof by the time required by such Section.

Section 10.04 Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by Section 10.03 hereof of any Bond calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount of the Outstanding Bonds consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with Section 10.02 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Section 10.05 Disclosure USA. In accordance with the Interpretive Letter of the United States SEC dated September 7, 2004 and to the extent permitted by the Rule, any notices to or filings with each NRMSIR, the MSRB and any SID, if any, may be effected by sending the notice or filing to Disclosure USA, in accordance with its published procedures, for further submission by Disclosure USA to such NRMSIR, the MSRB or any SID, as follows:

For electron submissions

www.DisclosureUSA.org

For paper submissions
(permitted only through December 31, 2007):

Mailing Address:

Disclosure USA
P.O. Box 684667
Austin, Texas 78768-4667

Physical Address:

Disclosure USA
600 West 8th Street
Austin, Texas 78701

ARTICLE 11. BOND INSURANCE PROVISIONS

[TO BE INSERTED]

ARTICLE 12. TAX MATTERS

[These placeholder provisions are subject to review and change by Joy.]

Section 12.01 Tax Exemption. Definitions. When used in this Section, the following terms shall have the following meanings:

"Closing Date" means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

(a) **Not to Cause Interest to Become Taxable.** The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(b) **No Private Use or Private Payments.** Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Bonds), and not use or permit the use of such

Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Bonds), other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(c) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(d) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(e) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(f) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

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

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account

separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Underwriter and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Debt Service Account or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (ii) and (iii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(h) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(i) Elections. The City hereby directs and authorizes the City Manager and Chief Financial Officer, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem

necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

(j) Bonds Not Hedge Bonds. (1) The City reasonably expects to spend at least 85% of the spendable proceeds of the Bonds within three years after such Bonds are issued and (2) not more than 50% of the proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(k) Qualified Advance Refunding. The Bonds are issued to refund the Refunded Bonds, and the Bonds will be issued more than 90 days before the redemption of the Refunded Bonds. The City represents as follows:

(i) The Bonds are the first advance refunding of the Refunded Bonds, within the meaning of section 149(d)(3) of the Code.

(ii) The Refunded Bonds are being called for redemption, and will be redeemed not later than the earliest date on which such bonds may be redeemed.

(iii) The initial temporary period under section 148(c) of the Code will end: (i) with respect to the proceeds of the Bonds not later than 30 days after the date of issue of such Bonds; and (ii) with respect to proceeds of the Refunded Bonds on the Closing Date if not ended prior thereto.

(iv) On and after the date of issue of the Bonds, no proceeds of the Refunded Bonds will be invested in Nonpurpose Investments having a Yield in excess of the Yield on such Refunded Bonds.

(v) The Bonds are being issued for the purposes stated in the preamble of this Ordinance. There is a present value savings associated with the refunding. In the issuance of the Bonds the City has neither: (i) overburdened the tax exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than reasonably necessary to accomplish the governmental purposes for which the Bonds were issued; (ii) employed on "abusive arbitrage device" within the meaning of Section 1.148-10(a) of the Regulations; nor (iii) employed a "device" to obtain a material financial advantage based on arbitrage, within the meaning of section 149(d)(4) of the Code, apart from savings attributable to lower interest rates and reduced debt service payments in early years.

ARTICLE 13. MISCELLANEOUS

Section 13.01 Further Procedures. The Mayor, the City Manager, the Chief Financial Officer, City Treasurer and the City Clerk and other appropriate officials of the City are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms of this Ordinance.

Section 13.02 Severability. If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 13.03 Meeting. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of the meeting of the City Council at which this Ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public at the City Hall of the City for the time required by law preceding this meeting, as required by V.T.C.A., Government Code, Chapter 551, as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 13.04 Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, the Credit Provider, the Liquidity Provider, the Swap Provider, the Remarketing Agent, the Tender Agent, any future Auction Agent or Broker-Dealer, the Holders and any other beneficiary of a Parity Obligation, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of such Persons.

Section 13.05 Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

Section 13.06 Authorized Officials. Any agreement, instrument, certificate or other document which this Ordinance provides may be approved or executed by one or more Authorized Officials shall be deemed conclusively to be duly approved, executed and delivered on behalf of the City, as its act and deed, in the form and content executed and delivered by an Authorized Official. Any finding or determination made by an Authorized Official relating to the issuance of the Bonds and the terms and execution of documents in connection therewith, and the terms and execution of the other agreements and documents referenced herein, shall have the same force and effect as a finding or determination made by the City Council.

Section 13.07 Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 13.08 Incorporation of Findings and Determinations. The findings and determinations of the City Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

Section 13.09 Effective Date. This Ordinance is hereby passed one reading as authorized by V.T.C.A., Government Code, Section 1201.028 and shall be effective immediately upon its passage and adoption.

[remainder of page left blank intentionally]

PASSED AND ADOPTED, this June 23, 2005.

CITY OF AUSTIN, TEXAS

ATTEST:

WILL WYNN
Mayor

SHIRLEY A. BROWN
City Clerk

APPROVED:

DAVID ALLAN SMITH
City Attorney

(City Seal)

**Exhibit A
to
Ordinance**

Paying Agent/Registrar Agreement

**Exhibit B
to
Ordinance**

**Exhibit C
to
Ordinance**

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Article Ten of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect the City's Hotel Occupancy Taxes presented in the Table entitled "Hotel/Motel Occupancy Tax"

The City annual audit report, which covers receipts and disbursements relating to the Hotel/Motel Occupancy Tax

**Exhibit D
to
Ordinance**

Special Escrow Agreement

**Exhibit E
to
Ordinance**

Guaranty Agreement

**Exhibit F
to
Ordinance**

Bond Purchase Agreement

Draft June 1, 2005

APPENDIX A
TO ORDINANCE NO. 050623-____

CITY OF AUSTIN
HOTEL OCCUPANCY TAX
SUBORDINATE LIEN
REVENUE REFUNDING BONDS, series 2005

_____, 2005

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LIST OF EXHIBITS

- Exhibit 1 - Form of Variable Rate Bond**
- Exhibit 2 - Form of Auction Rate, Term Rate and Fixed Rate Bond**
- Exhibit 3 - Remarketing Agreement**
- Exhibit 4 - Tender Agent Agreement**
- Exhibit 5 - Initial Liquidity Facility**

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ARTICLE 1

GENERAL

Section 1.01 **Scope.** This Appendix A, dated _____, 2005, to the City of Austin, Texas (the "City") Ordinance No. 050623-____, adopted and passed on _____, 2005 (the "Ordinance"), pertains to the Bonds as defined in the Ordinance. This Appendix A and other portions of the Ordinance are intended to be construed together as one document; provided, however, that in the event of a conflict between the terms of this Appendix A and the terms of other provisions of the Ordinance with respect to the Bonds, the terms of this Appendix A shall control.

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

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

"Agent Member" means a member of, or participant in, the Securities Depository who shall act on behalf of a Bidder.

"All Hold Rate" means, as of any Auction Date, 45% of the Reference Rate in effect on such Auction Date.

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

"Alternate Letter of Credit" means a letter of credit or other security or liquidity device issued in accordance with Section 4.11 hereof which shall have a term of not less than one year and shall have the same material terms as the Letter of Credit.

"Alternate Rate" means for a Bond in a particular Mode, the following as the same shall be applied in accordance with the provisions of Section 2.08 of this Appendix A.

(1) For a Bond in the Commercial Paper Mode, the Lehman Brothers Tax Exempt Commercial Paper Index.

(2) For a Bond in the Daily Mode, the last lawful interest rate for such Bond set by the Remarketing Agent pursuant to Section 2.06 of this Appendix A.

(3) For a Bond in the Weekly Mode, the BMA Municipal Swap Index.

(4) For a Bond in the Term Mode, the Alternate Term Rate.

"Alternate Term Rate" means for a Bond in the Term Mode, an index published or provided by Kenny Information Systems, which index is based on yield evaluations at par of bonds, the interest on which is excluded from gross income for purposes of Federal income taxation and are not subject to a "minimum tax" or similar tax under the Code (unless all tax-exempt bonds are subject to such tax). The bonds upon which the index is based shall include not less than five "high grade" component issuers selected by Kenny Information Systems which shall include, without limitation, issuers of general obligation bonds. The specific issuers included among the component issuers may be changed from time-to-time by Kenny Information Systems in its discretion. The yield evaluation period for the index shall be a one year evaluation.

"Applicable Percentage" means, as of any Auction Date, the Percentage of Reference Rate (in effect on such Auction Date) determined as set forth below, based on the Prevailing Rating of the Bonds in effect at the close of business on the Business Day immediately preceding such Auction Date:

<u>Prevailing Rating</u>	<u>Percentage of Reference Rate</u>
[Change according to number of ratings]	
AAA/Aaa	175%
AA/Aa	200
A/A	250
BBB/Baa	275
Below BBB/Baa	300

"Auction" means each periodic implementation of the Auction Procedures.

"Auction Agent" means the auctioneer appointed in accordance with Section 3.9 of this Appendix A.

"Auction Agreement" means an agreement between the Auction Agent and the City pursuant to which the Auction Agent agrees to follow the procedures specified in this Appendix A with respect to the Bonds while bearing interest at a SAVRS Rate, as such agreement may from time to time be amended or supplemented.

"Auction Date" means during any period in which the Auction Procedures are not suspended in accordance with the provisions hereof, (a) if the Bonds are in a daily Auction Period, each Business Day, (b) if the Bonds are in a Special Rate Period, the last Business Day of

the Special Rate Period, and (c) if the Bonds are in any other Auction Period, the Business Day next preceding each Interest Payment Date for such Bonds (whether or not an Auction shall be conducted on such date); provided, however, that the last Auction Date with respect to the Bonds in an Auction Period other than a daily Auction Period or a Special Rate Period shall be the earlier of (i) the Business Day next preceding the Interest Payment Date next preceding the Conversion Date for the Bonds and (ii) the Business Day next preceding the Interest Payment Date next preceding the final maturity date for the Bonds; and provided, further, that if the Bonds are in a daily Auction Period, the last Auction Date shall be the earlier of (x) the Business Day next preceding the Conversion Date for the Bonds and (y) the Business Day next preceding the final maturity date for the Bonds. The last Business Day of a Special Rate Period shall be the Auction Date for the Auction Period which begins on the next succeeding Business Day, if any. On the Business Day preceding the conversion from a daily Auction Period to another Auction Period, there shall be two Auctions, one for the last daily Auction Period and one for the first Auction Period following the conversion.

"Auction Period" means with respect to the Bonds:

- (1) a Special Rate Period;
- (2) with respect to the Bonds in a daily Auction Period, a period beginning on each Business Day and extending to but not including the next succeeding Business Day;
- (3) with respect to the Bonds in a seven day Auction Period and with Auctions generally conducted on (a) Fridays, a period of generally seven days beginning on a Monday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Sunday) and ending on the Sunday thereafter (unless such Sunday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (b) Mondays, a period of generally seven days beginning on a Tuesday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Monday) and ending on the Monday thereafter (unless such Monday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (c) Tuesdays, a period of generally seven days beginning on a Wednesday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Tuesday) and ending on the Tuesday thereafter (unless such Tuesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (d) Wednesdays, a period of generally seven days beginning on a Thursday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Wednesday) and ending on the Wednesday thereafter (unless such Wednesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), and (e) Thursdays, a period of generally seven days beginning on a Friday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Thursday) and ending on the Thursday thereafter (unless such Thursday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day);

- (4) with respect to the Bonds in a 28-day Auction Period and with Auctions generally conducted on (a) Fridays, a period of generally 28 days beginning on a Monday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a

Sunday) and ending on the fourth Sunday thereafter (unless such Sunday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (b) Mondays, a period of generally 28 days beginning on a Tuesday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Monday) and ending on the fourth Monday thereafter (unless such Monday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (c) Tuesdays, a period of generally 28 days beginning on a Wednesday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Tuesday) and ending on the fourth Tuesday thereafter (unless such Tuesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (d) Wednesdays, a period of generally 28 days beginning on a Thursday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Wednesday) and ending on the fourth Wednesday thereafter (unless such Wednesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), and (e) Thursdays, a period of generally 28 days beginning on a Friday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on a Thursday) and ending on the fourth Thursday thereafter (unless such Thursday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day);

(5) with respect to the Bonds in a 35-day Auction Period and with Auctions generally conducted on (a) Fridays, a period of generally 35 days beginning on a Monday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on Sunday) and ending on the fifth Sunday thereafter (unless such Sunday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (b) Mondays, a period of generally 35 days beginning on a Tuesday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on Monday) and ending on the fifth Monday thereafter (unless such Monday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (c) Tuesdays, a period of generally 35 days beginning on a Wednesday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on Tuesday) and ending on the fifth Tuesday thereafter (unless such Tuesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (d) Wednesdays, a period of generally 35 days beginning on a Thursday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on Wednesday) and ending on the fifth Wednesday thereafter (unless such Wednesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), and (e) Thursdays, a period of generally 35 days beginning on a Friday (or the day following the last day of the prior Auction Period if the prior Auction Period does not end on Thursday) and ending on the fifth Thursday thereafter (unless such Thursday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day); and

(6) with respect to the Bonds in a six-month Auction Period, a period of generally six months (or shorter period upon a conversion from another Auction Period) beginning on the day following the last day of the prior Auction Period and ending on the next succeeding _____ or _____;

provided, however, that

(1) if there is a conversion of the Bonds with Auctions generally conducted on Fridays (a) from a daily Auction Period to a seven-day Auction Period, the next Auction Period shall begin on the date of the conversion (i. e. the Interest Payment Date for the prior Auction Period) and shall end on the next succeeding Sunday (unless such Sunday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (b) from a daily Auction Period to a 28-day Auction Period, the next Auction Period shall begin on the date of the conversion (i.e. the Interest Payment Date for the prior Auction Period) and shall end on the Sunday (unless such Sunday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 21 days but not more than 28 days from such date of conversion, and (c) from a daily Auction Period to a 35-day Auction Period, the next Auction Period shall begin on the date of the conversion (i.e. the Interest Payment Date for the prior Auction Period) and shall end on Sunday (unless such Sunday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 28 days but no more than 35 days from such date of conversion;

(2) if there is a conversion of the Bonds with Auctions generally conducted on Mondays (a) from a daily Auction Period to a seven-day Auction Period, the next Auction Period shall begin on the date of the conversion (i.e. the Interest Payment Date for the prior Auction Period) and shall end on the next succeeding Monday (unless such Monday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (b) from a daily Auction Period to a 28-day Auction Period, the next Auction Period shall begin on the date of the conversion (i.e. the Interest Payment Date for the prior Auction Period) and shall end on the Monday (unless such Monday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 21 days but not more than 28 days from such date of conversion, and (c) from a daily Auction Period to a 35-day Auction Period, the next Auction Period shall begin on the date of the conversion (i.e. the Interest Payment Date for the prior Auction Period) and shall end on Monday (unless such Monday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 28 days but no more than 35 days from such date of conversion;

(3) if there is a conversion of the Bonds with Auctions generally conducted on Tuesdays (a) from a daily Auction Period to a seven-day Auction Period, the next Auction Period shall begin on the date of the conversion (i.e. the Interest Payment Date for the prior Auction Period) and shall end on the next succeeding Tuesday (unless such Tuesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (b) from a daily Auction Period to a 28-day Auction Period, the next Auction Period shall begin on the date of the conversion (i.e. the Interest Payment Date for the prior Auction Period) and shall end on the Tuesday (unless such Tuesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 21 days but not more than 28 days from such date of conversion, and (c) from a daily Auction Period to a 35-day Auction Period, the next Auction Period shall begin on the date of the conversion (i.e. the Interest Payment Date for the prior Auction Period) and shall

end on Tuesday (unless such Tuesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 28 days but no more than 35 days from such date of conversion;

(4) if there is a conversion of the Bonds with Auctions generally conducted on Wednesdays (a) from a daily Auction Period to a seven-day Auction Period, the next Auction Period shall begin on the date of the conversion (*i.e.* the Interest Payment Date for the prior Auction Period) and shall end on the next succeeding Wednesday (unless such Wednesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (b) from a daily Auction Period to a 28-day Auction Period, the next Auction Period shall begin on the date of the conversion (*i.e.* the Interest Payment Date for the prior Auction Period) and shall end on the Wednesday (unless such Wednesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 21 days but not more than 28 days from such date of conversion, and (c) from a daily Auction Period to a 35-day Auction Period, the next Auction Period shall begin on the date of the conversion (*i.e.* the Interest Payment Date for the prior Auction Period) and shall end on Wednesday (unless such Wednesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 28 days but no more than 35 days from such date of conversion; and

(5) if there is a conversion of the Bonds with Auctions generally conducted on Thursdays (a) from a daily Auction Period to a seven-day Auction Period, the next Auction Period shall begin on the date of the conversion (*i.e.* the Interest Payment Date for the prior Auction Period) and shall end on the next succeeding Thursday (unless such Thursday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day), (b) from a daily Auction Period to a 28-day Auction Period, the next Auction Period shall begin on the date of the conversion (*i.e.* the Interest Payment Date for the prior Auction Period) and shall end on the Thursday (unless such Thursday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 21 days but not more than 28 days from such date of conversion, and (c) from a daily Auction Period to a 35-day Auction Period, the next Auction Period shall begin on the date of the conversion (*i.e.* the Interest Payment Date for the prior Auction Period) and shall end on Thursday (unless such Thursday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day) which is more than 28 days but no more than 35 days from such date of conversion.

Notwithstanding the foregoing, if an Auction is for an Auction Period of more than seven days and the Auction Rate on such Auction Date is the Maximum SAVRS Rate because Sufficient Clearing Bids do not exist or the SAVRS Rate is the Default Rate, the Auction Period will automatically change to a seven-day Auction Period.

“Auction Procedures” means the procedures for conducting Auctions for the Bonds during a SAVRS Rate Period set forth in Article Three of this Appendix A.

“Auction Rate” means for each Auction Period, (a) if Sufficient Clearing Bids exist, the Winning Bid Rate, provided, however, if all of the Bonds are the subject of Submitted Hold Orders, the All Hold Rate and (b) if Sufficient Clearing Bids do not exist, the Maximum SAVRS

Rate.

"Authorized Denominations" mean (a) with respect to Bonds in a Commercial Paper Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof, (b) with respect to Bonds in a Short-Term Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof, (c) with respect to Bonds in a Long-Term Mode, \$5,000 and any integral multiple thereof, and (d) with respect to Bonds in an SAVRS Mode, \$25,000 and any integral multiple thereof.

"Available Amount" means the amount available under the Credit Facility or Liquidity Facility, as applicable, to pay the principal of and interest on the Bonds or the Purchase Price of the Bonds, as applicable.

"Available Bonds" means on each Auction Date, the aggregate principal amount of Bonds that are not the subject of Submitted Hold Orders.

"Bank Rate" means, for each date of determination, the rate per annum specified below with respect to each period:

Period	Rate
Date of advance through 30th day thereafter	Base Rate
31st day after date of advance through 90th day after date of advance	Base Rate plus .50%
After 90th day of date of advance	Base Rate plus 1.00%

"Bank Sales Date" the date as of which a Bond ceases to be a Liquidity Provider Bond by virtue of being purchased (or retained at the election of the Liquidity Provider in lieu of being purchased) with the proceeds of remarketing.

"Bank Sales Price" for Liquidity Provider Bonds sold on any Bank Sales Date means the principal amount of such Liquidity Bonds, plus, if applicable, accrued, unpaid interest thereon at the rate determined by the Remarketing Agent and included in the purchase price of the Bonds as remarketed.

"Base Rate" means, for any day, a rate per annum equal to the higher of (a) the Federal Funds Rate plus 1.00% per annum or (b) the Prime Rate.

"Bid" has the meaning specified in subsection A of Section 3.01 of this Appendix A.

"Bidder" means each Existing Owner and Potential Owner who places an Order.

"BMA Municipal Swap Index" means, with respect to any Bond in the Weekly Mode for which a rate is not set pursuant to Section 2.06B of this Appendix A, the rate per annum determined on the basis of an index based upon the weekly interest rates of tax-exempt variable

rate issues included in a database maintained by the Indexing Agent which meet specific criteria established by the Bond Market Association, formerly known as the Public Securities Association. In the event the Indexing Agent no longer publishes an index satisfying the requirements of the preceding sentence, the rate shall be the "J.J. Kenny Index", provided, however, that if the J.J. Kenny Index also ceases to be published, an alternative index shall be calculated by an entity selected in good faith by the City, and shall be determined using the criteria for the BMA Municipal Swap Index.

"Book-Entry System" means the book entry system of registering ownership described in Section 3.07 of the Ordinance.

"Broker-Dealer" means any entity that is permitted by law to perform the function required of a Broker-Dealer described in this Article Three of this Appendix A, that is a member of, or a direct participant in, the Securities Depository, that has been selected by the City with the consent of Lehman Brothers, Inc., so long as Lehman Brothers, Inc. is a Broker-Dealer, and that is a party to a Broker-Dealer Agreement with the Auction Agent.

"Broker-Dealer Agreement" means an agreement among the Auction Agent, the City and a Broker-Dealer pursuant to which such Broker-Dealer agrees to follow the procedures described in Article Three of this Appendix A, as such agreement may from time to time be amended or supplemented.

"Business Day" means any business day other than (a) a Saturday or Sunday or (b) a day on which the designated office of the Tender Agent (if applicable), Paying Agent/Registrar, Remarketing Agent (if applicable), Credit Provider (if applicable), or Liquidity Provider (if applicable) are required or authorized by law or executive order to be closed, (c) a day on which The New York Stock Exchange is closed or (d) a day on which the payment system of the Federal Reserve System is not operational. In addition, while the Bonds bear interest at a SAVRS Rate, the term Business Day shall not include April 14 or 15 or December 30 or 31 or days on which the Auction Agent or any Broker-Dealer are not open for business.

"City Consent," "City Order," and "City Request" mean, respectively, a written consent, order or request signed in the name of the City by any Authorized Official of the City.

"Commercial Paper Bond" means any Bond which is in the Commercial Paper Mode.

"Commercial Paper Mode" means, with respect to a particular Bond, the Mode during which such Bond bears interest at a Commercial Paper Rate.

"Commercial Paper Rate" means the interest rate (per annum) on any Bond in the Commercial Paper Mode determined pursuant to Section 2.05 of this Appendix A.

"Commercial Paper Rate Period" means the period of time when a Bond in the Commercial Paper Mode shall bear a Commercial Paper Rate, which shall be a period of from one to 360 calendar days as established by the Remarketing Agent pursuant to Section 2.05 of this Appendix A.

"Credit Facility" means a direct-pay letter of credit, standby bond purchase agreement, insurance policy, surety bond, line of credit or other instrument then in effect which secures or guarantees the payment of principal of and interest on the Bonds. The initial Credit Facility for the Bonds is the Bond Policy.

"Credit Facility Failure" or "Liquidity Facility Failure" means a failure of the Credit Provider or Liquidity Provider, as applicable, to pay or honor a properly presented and conforming draw, claim or request for advance under the Credit Facility or Liquidity Facility, as applicable, or the filing or commencement of any bankruptcy, receivership or other insolvency proceedings by or against the Credit Provider or Liquidity Provider, as applicable, or the Credit Provider or Liquidity Provider, as applicable (provided, however, that no Credit Facility Failure or Liquidity Facility Failure shall occur as a result of an involuntary bankruptcy, receivership, or other insolvency proceeding unless such proceeding has not been dismissed within 90 days after it commenced), shall declare in writing a moratorium on the payment of its unsecured debt obligations or shall repudiate in writing the Credit Facility or Liquidity Facility, as applicable.

"Credit Provider" means any bank, insurance company, pension fund or other financial institution which provides a Credit Facility or Alternate Credit Facility for the Bonds. The initial Credit Provider is _____.

"Credit Reimbursement Agreement" means any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement, by and between the City and the Credit Provider or Liquidity Provider, as applicable. Initially, there are two Credit Reimbursement Agreements between the City and the Credit Provider related to the Bond Policy, [the Reserve Fund Policy,] and the Swap Policy. The initial Liquidity Facility also constitutes the Credit Reimbursement Agreement among the City, the Tender Agent and the Liquidity Provider.

"Current Mode" means the Mode then prevailing with respect to the Bonds.

"Daily Mode" means the period of time when the Bonds bear interest at the Daily Rate.

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

"Daily Rate Period" means the period of time when a Bond in the Daily Mode shall bear a Daily Rate, which shall be the period commencing on the applicable Mode Change Date or the day immediately following each Rate Determination Date and continuing through the following Rate Determination Date or, if applicable, the day before the Mode Change Date.

"Default Rate" means (a) with respect to Liquidity Provider in the SAVRS Mode, means in respect of any Auction Period other than a daily Auction Period, a per annum rate equal to three hundred percent (300%) of the Reference Rate determined on the Auction Date next preceding the first day of such Auction Period or in the case of the Bonds in a daily Auction Period, three hundred percent (300%) of the Reference Rate determined on the Auction Date which was the first day of such Auction Period; provided, however, that if the Bonds have borne interest at the Default Rate for 60 days, then for the next Auction Period and all subsequent

Auction Periods until the Auctions resume pursuant to Section 3.01C(4) of this Appendix A, the SAVRS Rate shall be the Maximum Lawful Rate; and provided further, the Default Rate shall not exceed the Maximum Lawful Rate, and (b) with respect to Bonds in any Mode other than SAVRS Mode, means the Base Rate plus 3.0%.

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

"Differential Interest Amount" means the excess of (a) the amount of interest on a Bond which has accrued and will actually be paid at the Bank Rate (but not in excess of the Maximum Lawful Rate), up to but excluding the Bank Sales Date, over (b) the amount of interest accrued on such Bond which is received by the Liquidity Provider (or its assignee) as part of the Bank Sale Price.

"Electronic Means" mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

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

"Excess Interest Amount" has the meaning set forth in Section 2.21A(2).

"Excluded Person" means the City and any corporate affiliate of the City, and the Credit Provider.

"Existing Owner" means a Person who is listed as the beneficial owner of the Bonds in the records of the Auction Agent.

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

"Expiration Tender Date" means the day five Business Days prior to the Expiration Date.

"Federal Funds Rate" means, for any day a fluctuating interest rate per annum equal to the weighted average (rounded to the next higher 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded to the next higher 1/100 of 1%) of the quotations for such day on such transactions received by the Liquidity Provider from three

Federal funds brokers of recognized standing selected by the Liquidity Provider. Each determination of the Fed Funds Rate by the Liquidity Provider shall be conclusive and binding on the City.

"Fitch" means Fitch, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City after consultation with the Remarketing Agent.

"Fixed Mode" means the period of time when the Bonds bear interest at the Fixed Rate.

"Fixed Rate" means the per annum interest rate on Bonds in the Fixed Mode determined pursuant to Section 2.07C.

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

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

"Hold Order" has the meaning specified in subsection A of Section 3.01 of this Appendix A.

"Interest Accrual Period" means the period during which a Bond accrues interest payable on any Interest Payment Date applicable thereto. With respect to Bonds in the Daily Mode, the Interest Accrual Period shall commence on (and include) the first day of each month and shall extend through (and include) the last day of such month; provided, that if such month is the month in which the Bonds are authenticated and delivered, or if the Bonds are changed to the Daily Mode during such month, the Interest Accrual Period shall commence on the date of authentication and delivery of the Bonds or the Mode Change Date, as the case may be; provided, further, that if no interest has been paid on Bonds in the Daily Mode, interest shall accrue from the date of original authentication and delivery of the Bonds or the Mode Change Date, as appropriate. With respect to a Bond in a Mode other than the Daily Mode (except for a Bond in the SAVRS Mode), the Interest Accrual Period shall commence on (and include) the last Interest Payment Date to which interest has been paid (or, if no interest has been paid in such Mode, from the date of original authentication and delivery of such Bond, or the Mode Change Date, as the case may be) to, but not including, the Interest Payment Date on which interest is to be paid. With respect to a Bond in the SAVRS Mode, as set forth in the definition of Auction Period. If, at the time of authentication of any Bond, interest is in default or overdue on the Bonds, such Bond shall bear interest from the date to which interest has previously been paid in full or made available for payment in full on Outstanding Bonds.

"Interest Payment Date" means each date on which interest is to be paid and is: (a) with respect to a Commercial Paper Bond, the Purchase Date; (b) with respect to a Bond in the Daily Mode, the first Business Day of each month, (c) with respect to a Bond in the Weekly Mode, the first Business Day of each month; (d) with respect to a Bond in the Term Mode, each Term Rate

Interest Payment date for such Bond; (e) with respect to a Bond in the Fixed Mode, each [November 15th]; and (f) with respect to Liquidity Provider Bonds, the dates required under the applicable Reimbursement Agreement; and (without duplication as to any Interest Payment date listed above), (g) with respect to Bonds bearing interest at SAVRS Rates, means (i) when used with respect to any Auction Period other than a daily Auction Period or a Special Rate Period, the Business Day immediately following such Auction Period, (ii) when used with respect to a daily Auction Period, the first Business Day of the month immediately succeeding such Auction Period, (iii) when used with respect to a Special Rate Period of (x) seven or more but fewer than 92 days, the Business Day immediately following such Special Rate Period, or (y) 92 or more days, each thirteenth _____ after the first day of such Special Rate Period or the next Business Day if such _____ is not a Business Day and on the Business Day immediately following such Special Rate Period, and (h) any Mode Change Date and each Stated Maturity.

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

"Lehman Brothers Tax Exempt Commercial Paper Index" means the index by that name published from time-to-time by Lehman Brothers, Inc.

"LIBOR," on any date of determination for any Auction Period, means: (a) for any Auction Period of fewer than 49 days, the offered rate for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London time, on such date, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market (the "calculation date") and (b) for any Auction Period of (i) 49 or more but fewer than 70 days, such rates for deposits in U.S. dollars for a two-month period, (ii) 70 or more but fewer than 85 days, the arithmetic average of such rates for deposits in U.S. dollars for two and three-month periods, (iii) 85 or more but fewer than 120 days, such rate for deposits in U.S. dollars for a three-month period, (iv) 120 or more but fewer than 148 days, the arithmetic average of such rates for deposits in U.S. dollars for three and six-month periods, (v) 148 or more but fewer than 180 days, such rate for deposits in U.S. dollars for a six-month period, (vi) 180 or more but fewer than 225 days, the arithmetic average of such rates for deposits in U.S. dollars for six and nine-month periods, (vii) 225 or more but fewer than 290 days, such rate for deposits in U.S. dollars for a nine-month period, (viii) 290 or more but fewer than 325 days, the arithmetic average of such rates for deposits in U.S. dollars for nine-month and one-year periods and (ix) 325 or more but fewer than 365 days, such rate for deposits in U.S. dollars for a one-year period.

"Liquidity Facility" means any letter of credit, line of credit, standby bond purchase agreement or other instrument then in effect which provides for the purchase of the Bonds upon their tender in the event remarketing proceeds are insufficient. The initial Liquidity Facility for the Bonds is the Standby Bond Purchase Agreement dated as of _____, 2005 between the City and the Liquidity Provider attached as Exhibit 5 hereto.

"Liquidity Facility Failure" – see "Credit Facility Failure" defined above.

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

"Liquidity Provider Bonds" mean any Bonds held by or for the benefit of the Liquidity Provider (or its assignee) following purchase of such Bonds with funds drawn on or advanced under the Liquidity Facility other than Bonds which the Liquidity Provider (or its assignee) has elected to continue to hold following receipt of a Purchase Notice (as defined in the initial Liquidity Facility).

"Liquidity Provider Interest Amount" means the amount of the interest portion of the Liquidity Facility, which (a) during the Commercial Paper Mode, the Daily Mode and the Weekly Mode shall be an amount equal to 31 days' interest on the Outstanding Bonds calculated at the Maximum Lawful Rate on the basis of a 365/366 day year for the actual number of days elapsed, and (b) during the Term Mode and the Fixed Mode shall be an amount equal to 205 days' interest on the Outstanding Bonds then covered by the Liquidity Facility, calculated at the Maximum Lawful Rate on the basis of a 360 day year composed of twelve 30-day months.

"Long-Term Interest Period" means a Term Rate Period or a Fixed Rate Period.

"Long-Term Mode" means a Term Mode or a Fixed Mode.

"Mandatory Tender Date" means each of the following dates (except that in the case of a Bond in the Daily or Weekly Mode, such dates shall be a Mandatory Tender Date only if a Liquidity Facility is in effect pursuant to which the Liquidity Provider is obligated to pay or advance funds to pay the Purchase Price of the Bonds tendered on such date):

- (1) any Purchase Date for Bonds in the Commercial Paper Mode;**
- (2) for Bonds in the Term Mode, the first Business Day following the last day of each Term Rate Period,**
- (3) each Mode Change Date, except in connection with a change between a Daily Mode and Weekly Mode or between a Weekly Mode and a Daily Mode,**
- (4) any Substitution Date (except a Substitution Date that occurs when the Bonds are in a Term Mode or Fixed Mode and no Liquidity Facility is in effect with respect to such Bonds on such Mandatory Tender Date),**
- (5) the seventh Business Day prior to any Expiration Date (but there shall be no separate mandatory tender in respect of an Expiration Date if notice has been given of a mandatory tender that will occur prior to the Expiration Date and the Bonds will not subsequently be remarketed under the Liquidity Facility that is expiring),**
- (6) the Business Day specified by the Paying Agent as the tenth day after any default in the payment of any interest upon any Bond when such interest becomes due**

and payable or after any default in the payment of any Purchase Price when due or any principal of (or premium, if any, on) any Bond at its Maturity if either (a) Credit Provider so directs the Paying Agent/Registrar in writing or (b) Credit Provider is in payment default under the Bond Policy (unless on such Mandatory Tender Date there is no Liquidity Facility in effect with respect to such Bonds), and

(7) each date established by the City for mandatory tender pursuant to Section 2.12C hereof.

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

"Mandatory Tender Notice" means a notice delivered by Electronic Means or in writing to the Holders of all Bonds pursuant to Section 2.12 hereof that states (a) that all Bonds are to be purchased, (b) the Mandatory Tender Date on which such Bonds are to be purchased, and (c) applicable instructions with respect to such purchase and the tender of Bonds for payment of the Purchase Price.

"Maturity" means a Stated Maturity and any date upon which principal of a Bond becomes due, whether by means of redemption, acceleration of maturity or otherwise.

"Maximum Lawful Rate" means the lesser of either (a) (i) in the case of Liquidity Provider Bonds, the per annum interest rate used to calculate the Liquidity Provider Interest Amount applicable to such Bond, which shall initially be ____% per annum or (ii) for all other Bonds ____% per annum, as applicable, or (b) the maximum lawful nonusurious interest rate allowed under Texas law.

"Maximum SAVRS Rate" means, with respect to Bonds in an SAVRS Mode, as of any Auction Date, the product of the Reference Rate multiplied by the Applicable Percentage; provided, however, that if the Bonds have borne interest at the Maximum SAVRS Rate for 60 days, the Maximum SAVRS Rate shall, beginning with the immediately succeeding Auction Period, equal the Maximum Lawful Rate; and, provided further, the Maximum SAVRS Rate shall not exceed the Maximum Lawful Rate.

"Mode" means, as the context may require, the Commercial Paper Mode, the Daily Mode, the Weekly Mode, the SAVRS Mode, the Term Mode, the Fixed Mode or another Mode established pursuant to Section 2.08F hereof. Initially, the Bonds shall be in the Weekly Mode.

"Mode Change" means a conversion from one Mode to another pursuant to Sections 2.03, 2.09 and 2.10 of this Appendix A.

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

"Mode Change Notice" means the notice from the City to the other Notice Parties of the

City's intention to change the Mode with respect to the Bonds.

"Moody's" means Moody's Investors Service, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City after consultation with the Remarketing Agent.

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

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

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

"Optional Tender Notice" means a notice delivered by Electronic Means or in writing to the Tender Agent that states (a) the principal amount of such Bond to be purchased pursuant to Section 2.11 hereof, (b) the Purchase Date on which such Bond is to be purchased, and (c) applicable payment instructions with respect to the Bonds being tendered for purchase.

"Order" means a Hold Order, Bid or Sell Order.

"Potential Owner" means any Person, including any Existing Owner, who may be interested in acquiring a beneficial interest in the Bonds in addition to any Bonds currently owned by such Person, if any.

"Prevailing Rating" means (a) AAA/Aaa, if the Bonds shall have a rating of AAA or better by S&P and a rating of Aaa or better by Moody's, (b) if not AAA/Aaa, AA/Aa if the Bonds shall have a rating of AA- or better by S&P and a rating of Aa3 or better by Moody's, (c) if not AAA/Aaa or AA/Aa, A/A if the Bonds shall have a rating of A- or better by S&P and a rating of A3 or better by Moody's, and (d) if not AAA/Aaa, AA/Aa or A/A, then below A/A, whether or not the Bonds are rated by any securities rating agency. For purposes of this definition, S&P's rating categories of "AAA," "AA," and "A-" and Moody's rating categories of "Aaa," "Aa3" and "A3," shall be deemed to refer to and include the respective rating categories correlative thereto in the event that any such Rating Agencies shall have changed or modified their generic rating categories or if any successor thereto appointed in accordance with the definitions thereof shall use different rating categories. If the Bonds are not rated by a Rating Agency, the requirement of a rating by such Rating Agency shall be disregarded. If the ratings for the Bonds are split between two of the foregoing categories, the lower rating shall determine the Prevailing Rating. If there is no rating, then the SAVRS Rate shall be the Maximum SAVRS Rate.

"Prime Rate" means the rate established by _____, from time to time as its prime rate; the Liquidity Provider may lend to its customers at rates that are at, above or below the Prime Rate.

"Principal Office" means, with respect to the Auction Agent, the office thereof designated in writing to the City and each Broker-Dealer.

"Purchase Date" means (a) for a Bond in the Commercial Paper Mode, the last day of the Interest Period for the Bond, (b) for a Bond in the Daily Mode or the Weekly Mode, any Business Day selected by the Owner of said Bond pursuant to the provisions of Section 2.11 hereof, (c) for a Bond in the Term Mode, the last day of the Interest Period for such Bond (or the next Business Day if such last day is not a Business Day), but only if the Owner thereof shall have elected to have such Bond purchased on such date pursuant to Section 2.11 of this Appendix A, and (d) any Mandatory Tender Date.

"Purchase Fund" means the fund by that name created in Article Five.

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

"Rate Determination Date" means the date on which the interest rate on a Bond shall be determined, which, (a) in the case of the Commercial Paper Mode, shall be the first day of an Interest Period; (b) in the case of the Daily Mode, shall be each Business Day commencing with the first day the Bonds become subject to the Daily Mode; (c) in the case of the initial conversion to the Weekly Mode, shall be no later than the Business Day prior to the Mode Change Date, and thereafter, shall be each _____ or, if _____ is not a Business Day, the next succeeding day or, if such day is not a Business Day, then the Business Day next preceding such Tuesday; (d) in the case of the Term Mode, shall be a Business Day no earlier than thirty (30) Business Days and no later than the Business Day next preceding the first day of an Interest Period, as determined by the Remarketing Agent; and (e) in the case of the Fixed Mode, shall be a date determined by the Remarketing Agent which shall be at least one Business Day prior to the Mode Change Date.

"Reference Rate" shall have the meaning specified in Section 3.06 of this Appendix A.

"Regular Record Date" means (a) with respect to Bonds in a Commercial Paper Mode or a Weekly Mode, the day (whether or not a Business Day) next preceding each Interest Payment Date, (b) with respect to Bonds in the Daily Mode, the last day of each month (whether or not a Business Day), (c) with respect to Bonds in a Term Mode or a Fixed Mode, the fifteenth (15th) day (whether or not a Business Day) of the month next preceding each Interest Payment Date and (d) with respect to Bonds in a SAVRS Mode, the Business Day immediately preceding an Interest Payment Date.

"Remarketing Agent" means any investment banking firm appointed by the City to serve

as Remarketing Agent for the Bonds. Until such time as an alternate Remarketing Agent is appointed, the Remarketing Agent shall be _____.

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

"Remarketing Proceeds Account" means the account by that name created in Article Five.

"SAVRS" means the Bonds while they bear interest at the SAVRS Rate.

"SAVRS Mode" means the period of time when the Bonds bear interest at the SAVRS Rate.

"SAVRS Rate" means the rate of interest to be borne by the Bonds during each Auction Period determined in accordance with Section 3.03 of this Appendix A; provided, however, in no event may the SAVRS Rate exceed the Maximum SAVRS Rate.

"SAVRS Rate Conversion Date" means with respect to the Bonds in an SAVRS Mode, the date on which the Bonds convert from an interest rate period other than a SAVRS Rate Period and begin to bear interest at a SAVRS Rate.

"SAVRS Rate Period" means the period of time when a Bond in the SAVRS Mode shall bear a SAVRS Rate, which shall be an Auction Period.

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

"Sell Order" has the meaning specified in subsection A of Section 3.01 of this Appendix A.

"Serial Bonds" mean the Bonds maturing on the Serial Stated Maturities, as determined pursuant to Section 2.09B or 2.10C hereof.

"Serial Stated Maturities" mean the dates on which the Serial Bonds mature, as determined pursuant to Section 2.09B or 2.10C hereof.

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

"Short-Term Mode" means the Daily Mode, the Weekly Mode or the Commercial Paper Mode.

"Short-Term Interest Period" means a Daily Rate Period or a Weekly Rate Period.

"Special Rate Period" means, with respect to the Bonds in SAVRS Mode, (a) any period

of 182 days or less which is divisible by seven and which begins on an Interest Payment Date and ends (i) in the case of the Bonds with Auctions generally conducted on Fridays, on a Sunday unless such Sunday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day, (ii) in the case of the Bonds with Auctions generally conducted on Mondays, on a Monday unless such Monday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day, (iii) in the case of the Bonds with Auctions generally conducted on Tuesdays, on a Tuesday unless such Tuesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day, (iv) in the case of the Bonds with Auctions generally conducted on Wednesdays, on a Wednesday unless such Wednesday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day, and (v) in the case of the Bonds with Auctions generally conducted on Thursdays, on a Thursday unless such Thursday is not followed by a Business Day, in which case on the next succeeding day which is followed by a Business Day or (b) any period which is longer than 182 days which begins on an Interest Payment Date and ends not later than the final scheduled maturity date of the Bonds.

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Standard & Poor's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the City after consultation with the Remarketing Agent.

"Stated Maturity" means the Stated Maturity specified in Section 3.02 of the Ordinance or if established pursuant to Section 2.09 or Section 2.10 hereof upon a change to the Fixed Mode, any Serial Stated Maturity.

"Submission Deadline" means with respect to Bonds in the SAVRS Mode, 1:00 p.m., New York City time, on each Auction Date not in a daily Auction Period and 11:00 a.m., New York City time, on each Auction Date in a daily Auction Period, or such other time on such date as shall be specified from time to time by the Auction Agent pursuant to the Auction Agreement as the time by which Broker-Dealers are required to submit Orders to the Auction Agent.

"Submitted Bid" has the meaning specified in subsection B of Section 3.03 of this Appendix A.

"Submitted Hold Order" has the meaning specified in subsection B of Section 3.03 of this Appendix A.

"Submitted Order" has the meaning specified in subsection B of Section 3.03 of this Appendix A.

"Submitted Sell Order" has the meaning specified in subsection B of Section 3.03 of this Appendix A.

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

"Sufficient Clearing Bids" means with respect to Bonds in an SAVRS Mode, an Auction for which the aggregate principal amount of Bonds that are the subject of Submitted Bids by Potential Owners specifying one or more rates not higher than the Maximum SAVRS Rate is not less than the aggregate principal amount of Bonds that are the subject of Submitted Sell Orders and of Submitted Bids by Existing Owners specifying rates higher than the Maximum SAVRS Rate.

"Tender Agent" means a commercial bank or a trust company which may from time to time be appointed by the City to serve as Tender Agent for the Bonds. Until such time as an alternate Tender Agent is appointed, the Tender Agent shall be _____.

"Tender Notice Deadline" means,

(1) with respect to a Mandatory Tender Notice,

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

(b) no less than five days prior to a Mandatory Tender Date that is described in clause (5) or (6) of the definition thereof or that is a result of the termination of the initial Liquidity Facility pursuant to Section _____ thereof; and

(c) for all other Mandatory Tender Dates, not less than fifteen days prior to the Mandatory Tender Date; and

(2) during the Daily Rate Period, with respect to an Optional Tender Notice, 11:00 a.m. New York City time on a specified Purchase Date; and

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

"Term Mode" means the period of time when the Bonds bear interest at the Term Rate.

"Term Rate" means the per annum interest rate for Bonds in the Term Mode determined pursuant to Section 2.07(A) hereof.

"Term Rate Period" means, with respect to a Bond in the Term Mode, the period from (and including) the immediately preceding Mode Change Date, as applicable, to (but excluding) the last day of the first period that the Bonds shall be in the Term Mode as established by the City for the Bonds pursuant to Sections 2.09A or 2.10C hereof and, thereafter, the period from (and including) the beginning date of each successive Interest Period selected for the Bonds by the City pursuant to Section 2.067A hereof while it is in the Term Mode to (but excluding) the

commencement date of the next succeeding Interest Period, including another Term Rate Period. Each Term Rate Period shall be a period of one year or longer.

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

“Weekly Mode” means the period of time when the Bonds bear interest at the Weekly Rate.

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

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

“Winning Bid Rate” means with respect to Bonds in an SAVRS Mode, the lowest rate specified in any Submitted Bid which if selected by the Auction Agent as the SAVRS Rate would cause the aggregate principal amount of Bonds that are the subject of Submitted Bids specifying a rate not greater than such rate to be not less than the aggregate principal amount of Available Bonds.

ARTICLE 2

INTEREST RATES AND CHANGES IN RATES

Section 2.01 **Initial Rate.** From the date of initial issuance and delivery of the Bonds to but not including _____, 2005, the Bonds shall bear interest at the per annum rate established on the Business Day prior to the date of initial issuance and delivery of the Bonds, in accordance with the Bond Purchase Agreement and the Ordinance. Thereafter, until a Mode Change, the interest rate on the Bonds shall be the Weekly Rate established as provided in Section 2.06 of this Appendix A.

Section 2.02 **Rates Generally.** Pursuant to the Ordinance and this Appendix A, the Bonds may bear interest in an SAVRS Mode, a Fixed Mode, a Daily Mode, a Weekly Mode, or a Term Mode. After the issuance of the Bonds, the Mode may only be changed pursuant to a Mode Change as set forth in this Appendix A.

Section 2.03 **Mode Change.** Upon City Order, all Bonds (in an amount which is an

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

Section 2.04 Calculation and Payment of Interest; Mode Change; Maximum Lawful Rate. When a Short-Term Mode is in effect, interest on Bonds shall be calculated on the basis of a 365/366 day year for the actual number of days elapsed. When a Term Mode or Fixed Mode is in effect, interest on Bonds shall be calculated on the basis of a 360 day year comprised of twelve 30-day months. When an SAVRS Mode is in effect and the Auction Period is 180 days or less, interest shall be calculated on the basis of a 360 day year for the actual days elapsed. When an SAVRS Mode is in effect and the Auction Period is greater than 180 days, interest on Bonds shall be calculated on the basis of a 360 day year of twelve 30 day months. When an SAVRS Mode is in effect, interest shall accrue from and including one Interest Payment Date to, but excluding the next latest Payment Date. Interest on Liquidity Provider Bonds shall be calculated on the basis of a 365/366 day year for the actual number of days elapsed. Payment of interest on each Bond shall be made on each Interest Payment Date for such Bond (as applicable based on the Mode applicable to the Bond) for unpaid interest accrued during the Interest Accrual Period to the Holder of such Bond on the applicable Regular Record Date.

No Bonds in any Mode shall bear interest at an interest rate higher than the Maximum Lawful Rate.

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

Section 2.05 Determination of Commercial Paper Rates and Interest Periods During the Commercial Paper Mode.

A. An Interest Period for a Commercial Paper Bond shall be of such duration, ending on a Business Day (but not later than the current Expiration Tender Date), of from one to 360 calendar days, as the Remarketing Agent shall determine in accordance with the provisions of this Section 2.05. A Commercial Paper Bond can have an Interest Period, and bear interest at a rate, different than other Commercial Paper Bonds. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and in Section 2.04 of this Appendix A, on each Rate Determination Date for a Commercial Paper Bond, the Remarketing Agent shall select for such Bond the Interest Period which would result in the Remarketing Agent being able to remarket such Bond at par in the secondary market at the lowest interest rate then

available and for the longest Interest Period available at such rate, provided that if on any Rate Determination Date, the Remarketing Agent determines that current or anticipated future market conditions or anticipated future events are such that a different Interest Period would result in a lower average interest cost on such Bond, then the Remarketing Agent shall select the Interest Period which in the judgment of the Remarketing Agent would permit such Bond to achieve such lower average interest cost; provided, however, that if the Remarketing Agent has received notice from the City that any Bond is to be changed from the Commercial Paper Mode to any other Mode or is to be purchased in accordance with a mandatory purchase described in subsection (4) of the definition of Mandatory Tender Date, the Remarketing Agent shall, with respect to such Bond, select Interest Periods which do not extend beyond the Mandatory Purchase Date.

B. On or after 4:00 p.m., New York City time, on the Business Day next preceding each Rate Determination Date for a Commercial Paper Bond, any Owner of such Bond may telephone the Remarketing Agent and receive notice of the anticipated next Interest Period and the anticipated Commercial Paper Rate for such Interest Period for such Bond.

C. By 12:30 p.m., New York City time, on each Rate Determination Date for a Commercial Paper Bond, the Remarketing Agent shall determine the Commercial Paper Rate for the Interest Period then selected for such Bond and shall give notice by Electronic Means to the Paying Agent of the new Owner, the Interest Period, the Purchase Date and the Commercial Paper Rate.

D. By 1:00 p.m., New York City time, on each Rate Determination Date, the Remarketing Agent will assign CUSIP numbers for each Commercial Paper Bond for which a Commercial Paper Rate and Interest Period have been determined on such date and notify the Paying Agent/Registrar of such assignment by Electronic Means.

Section 2.06 Determination of Interest Rates During the Daily Mode and the Weekly Mode. The interest rate for the Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of the Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period.

A. During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m., New York City time, on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available by telephone to any Owner or Notice Party requesting such rate, and on the last Business Day of each month, shall give notice to the Paying Agent/Registrar of the Daily Rates that were in effect for each day of such month by Electronic Means.

B. During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m., New York City time, on each Rate Determination Date. The Weekly Rate shall be in effect (i) initially, from and including the first day the Bonds become subject to the Weekly Mode to and including the following _____ and (ii) thereafter, from and including each _____ to and including the following _____. The Remarketing Agent shall make the Weekly Rate available (i) after 4:00 p.m., New York City time, on the Rate Determination Date by telephone to any Owner or Notice Party requesting such rate and (ii) by Electronic Means to the Paying Agent not later than the second Business Day immediately succeeding the Rate Determination Date.

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

Section 2.07 Determination of Term Rates and Fixed Rates.

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

A Bond on the date it is converted to the Term Mode and while it is in the Term Mode does not have to be secured by a Liquidity Facility if so determined by the City. If, however, it is secured by the Liquidity Facility, then, notwithstanding anything to the contrary contained herein, no Interest Period for such Bond may extend beyond the Expiration Tender Date.

B. Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for Bonds being converted to the Fixed Mode in the manner and at the times as follows: not later than 4:00 p.m., New York City time, on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Rates, if the Bonds will have Serial Stated Maturities in accordance with Section 2.09(B)(5) or Section 2.10C(7) of this Appendix A. Except as set forth in Section 2.09(B)(5) or Section 2.10C(7) of this Appendix A, the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent

shall make the Fixed Rates available by telephone or by Electronic Means after 5:00 p.m., New York City time, on the Rate Determination Date to the City, the Paying Agent/Registrar and any Holder requesting such Fixed Rate. The Remarketing Agent may also furnish any such Fixed Rate to any other Person in the discretion of the Remarketing Agent. Subject to Section 2.09(B)(5) and Section 2.10C(7) of this Appendix A, the Fixed Rate so established shall remain in effect until the Stated Maturity of such Bonds.

Section 2.08 Alternate Rates. The following provisions shall apply in the event (1) the Remarketing Agent is required to, but fails or is unable to, determine the interest rate or Interest Period for the Bonds, (2) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to the Bonds (or the selection by the City of the Interest Periods for such Bonds in the Term Mode) shall be held to be unenforceable by a court of law of competent jurisdiction or (3) if the Remarketing Agent suspends its remarketing efforts as to the Bonds in accordance with the applicable Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent (or the City if applicable) again makes such determinations or selection and, if applicable, the Remarketing Agent is conducting remarketing efforts in accordance with the applicable Remarketing Agreement. In the case of clause (2) above, the Remarketing Agent (or the City, if applicable) shall again make such determination (or selection) at such time as there is delivered to the Remarketing Agent an Opinion of Counsel to the effect that there are no longer any legal prohibitions against such determinations (or selections). The following shall be the methods by which the interest rates and, in the case of the Term Mode, the Interest Periods, shall be determined for such Bonds as to which either of the events described in clauses (1), (2) or (3) shall be applicable. Such methods shall be applicable from and after the date either of the events described in clauses (1), (2) or (3) first become applicable to the Bonds until such time as the events described in clauses (1), (2) or (3) are no longer applicable to such Bonds. These provisions shall not apply if the City fails to select an Interest Period for the Bonds in the Term Mode for a reason other than as described in clause (2) above.

A. For a Commercial Paper Bond, the next Interest Period shall be from, and including, the last day of the current Interest Period for such Bond to, but excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such Bond shall be the Lehman Brothers Tax Exempt Commercial Paper Index in effect on the Business Day that begins an Interest Period.

B. If such Bond is in the Daily Mode, then such Bond shall bear interest during each subsequent Interest Period at the last lawful interest rate for such Bond set by the Remarketing Agent pursuant to Section 2.06 of this Appendix A.

C. If such Bond is in the Weekly Mode, then such Bond shall bear interest during each subsequent Interest Period at the BMA Municipal Swap Index in effect on the first day of such Interest Period.

D. If such Bond is in the Term Mode and if (i) such Bond is secured by an Alternate Liquidity Facility, it will be changed automatically to the Commercial Paper

Mode with an Interest Period and Commercial Paper Rate to be determined by the Remarketing Agent in accordance with Section 2.05 of this Appendix A or (ii) if such Bond is not secured by a Liquidity Facility, then such Bond shall stay in the Term Mode for subsequent Interest Periods, each beginning on the last Interest Payment Date and ending on the next Interest Payment Date, and shall bear interest at the Alternate Term Rate in effect at the beginning of each such Interest Period.

Section 2.09 Mode Change (Other than to or from the SAVRS Mode). Subject to the provisions of this Section, the City, may effect a Mode Change from one Mode to another (except for to or from the SAVRS Mode which is set forth under Section 2.10 below) with respect to the Bonds by following the procedures set forth in this Section.

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

(1) **Mode Change Notice: Notice to Holders.** No later than a Business Day which is at least 45 days (or such shorter time as may be agreed to by the City, any Tender Agent and the Remarketing Agent) preceding the proposed Mode Change Date, the City shall give written notice to the Notice Parties, of its intention to effect a change in the Mode from the Current Mode to the New Mode specified in such written notice, and, if the change is to a Term Mode, the length of the initial Interest Period as set by the City. In the case of a change to a Term Mode, such notice to the Notice Parties shall also include a statement as to whether there will be a Liquidity Facility and/or Credit Facility in effect with respect to the Bonds following such change. Bonds may not be changed to a Daily Mode or Weekly Mode unless there will be a Liquidity Facility in effect. The notice shall state the identity of any provider of such Liquidity Facility and/or Credit Facility. Notice of the proposed Mode Change shall be given by the Tender Agent to the Owners not later than the 30th day next preceding the Mode Change Date. Such notice shall state: (a) the Mode to which the conversion will be made and the Mode Change Date; (b) except in the case of a change from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode, that the Bonds will be subject to mandatory tender for purchase on the Mode Change Date and the Purchase Price of the Bonds; and (c) if the Book-Entry System is no longer in effect, information with respect to required delivery of Bond certificates and payment of Purchase Price.

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

(3) **Conditions Precedent.** Conditions precedent are applicable to a certain Mode Change to a Mode other than a Fixed Mode, as follows:

- a. The Mode Change Date shall be:
- (i) a Business Day;
 - (ii) from the Commercial Paper Mode, shall be the next Purchase Date for the Commercial Paper Bond to be changed to the New Mode;
 - (iii) in the case of a change from the Daily or Weekly Mode, any Interest Payment Date (without regard to the Mode Change);
 - (iv) in the case of a change from the Term Mode to another Mode, or from a Term Rate Period to a Term Rate Period of a different duration, the Mode Change Date shall be limited to any Interest Payment Date (without giving effect to the planned Mode Change) on which the Bonds are subject to optional redemption or to the last Interest Payment Date of the current Term Rate Period, as the case may be. Such Bonds shall be purchased on such Mode Change Date at a Purchase Price equal to 100% of the principal amount thereof, provided that if such Bonds are to be purchased on an Interest Payment Date other than the last Interest Payment Date and would otherwise be subject to optional redemption on such Mode Change Date at a Redemption Price of more than 100% of the principal amount thereof, such Bonds shall be purchased at a Purchase Price equal to such Redemption Price; and
- b. In the case of a change from any Mode other than a change between the Daily Mode and the Weekly Mode, the City must receive on the Mode Change Date an Opinion of Counsel to the effect that the Mode Change will not adversely affect the excludability of interest on the Bonds subject to the change from the gross incomes of the owners thereof for federal income tax purposes;
- c. If there is to be an Alternate Liquidity Facility or Alternate Credit Facility delivered in connection with such Mode Change, the Remarketing Agent must receive on or prior to the Mode Change Date the items required by Section 2.19B of this Appendix A; and
- d. On or prior to the Mode Change Date, a Rating Confirmation Notice, unless the Mode Change Date is a Mandatory Tender Date, in which event only a notice from the Rating Agencies of the rating(s) to be assigned the Bonds on such Mode Change Date is required.
- e. If the Bonds to be changed are in the Commercial Paper Mode, no Interest Period set after delivery by the City to the Remarketing

Agent of the notice of the intention to effect a Mode Change with respect to such Bonds shall extend beyond the proposed Mode Change Date.

B. Change to Fixed Mode. At the option of the City, the Bonds may be changed to the Fixed Mode as provided in this Section 2.09B. On any Business Day which is at least 45 days (or such shorter time as may be agreed to by the City, the Tender Agent and the Remarketing Agent, before the proposed Mode Change Date, the City shall give written notice to the Notice Parties stating that the Mode will be changed to the Fixed Mode and setting forth the proposed Mode Change Date. Such notice shall also state whether or not there shall be Credit Facility with respect to the Bonds following such change and, if so, the identity of the Credit Provider. In addition, such notice shall state whether some or all of the Bonds to be converted shall be converted to Serial Bonds and, if so, the applicable Serial Stated Maturities and Serial Payments, all as determined pursuant to subsection (5) of this subsection (B). Any such Mode Change shall be subject to the following:

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

a. in the case of a change from the Commercial Paper Mode, the Purchase Date for the Commercial Paper Bond to be changed to the Fixed Mode;

b. in the case of a change from the Daily Mode or Weekly Mode, any Interest Payment Date (determined without regard to the Mode Change);

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

(2) Notice to Holders. Not later than the 30th day next preceding the Mode Change Date, the Tender Agent shall mail, in the name of the City, a notice of such proposed change to the Holders of the Bonds stating that the Mode will be changed to the Fixed Mode, the proposed Mode Change Date and that such Holder is required to tender such Holder's Bonds for purchase on such proposed Mode Change Date.

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

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

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

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

(4) Determination of Interest Rate. The Fixed Rate (or rates in the case of Serial Bonds) for the Bonds to be converted to the Fixed Mode shall be established by the Remarketing Agent on the Rate Determination Date applicable thereto pursuant to the provisions of Section 2.07B. Such Rate shall remain in effect until the Stated Maturity(ies) of the Bonds.

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

C. Failure to Satisfy Conditions Precedent to a Mode Change. In the event the conditions described above in subsections A or B, as applicable, of this Section have not been satisfied by the applicable Mode Change Date, then the New Mode shall not take effect (although any mandatory tender shall be made on such date if notice has been sent to the Holders stating that such Bonds would be subject to mandatory tender on such date). If the failed Mode Change was from the Daily Mode, the Bonds shall remain in the Daily Mode, and if the failed Mode Change was from the Weekly Mode, the Bonds shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 2.06 on and as of the failed Mode Change Date. If the failed Mode Change was from the Term Mode, then the Bonds shall stay in the Term Mode with an Interest Period of one year, commencing on the first day

following the last day of the current Interest Period for the Bonds and extend to, but exclude, the first Business Day on or after 365 days later and the interest rate for such new Interest Period shall remain the same as during the preceding Interest Period.

D. Rescission of Election. Notwithstanding anything herein to the contrary, the City may rescind any election by it to change a Mode as described above prior to the Mode Change Date by giving written notice thereof to the Notice Parties prior to such Mode Change Date. If the Tender Agent receives notice of such rescission prior to the time it has given notice of the Mode Change Date to the Holders of the Bonds, then such notice of Mode Change shall be of no force and effect. If the Tender Agent receives notice from the City of rescission of a Mode change after the Tender Agent has given notice thereof to the Holders of the Bonds, then if the proposed Mode Change Date would have been a Mandatory Tender Date, such date shall continue to be a Mandatory Tender Date. If the proposed Mode Change was from the Daily Mode, the Bonds shall remain in the Daily Mode, and if the proposed Mode Change was from the Weekly Mode, the Bonds shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 2.06 on and as of the proposed Mode Change Date. If the proposed Mode Change was from the Term Mode, then the Bonds shall stay in the Term Mode for an Interest Period ending on the following Interest Payment Date for the Bonds in the Term Mode and the interest rate shall be established by the Remarketing Agent on the proposed Mode Change Date in accordance with Section 2.07A hereof. If the Remarketing Agent is unable to determine the interest rate on the proposed Mode Change Date, the provisions of Section 2.08 shall apply.

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

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

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

F. Alternative Modes. Upon the written recommendation of the Remarketing Agent and with the consent of the Credit Provider, and upon compliance with the procedures set forth in Section 2.09A above, the City may cause the Bonds (other than Bonds in the Fixed Mode) to be converted to a Mode other than a Daily Mode, Weekly

Mode or Fixed Mode. Such alternate Mode may include an auction rate mode. The recommendation of the Remarketing Agent shall specify the terms and conditions of the Mode, including the applicable Interest Payment Date, Rate Determination Date, rate adjustment date, Interest Period(s), Interest Accrual Period(s), method of determining and announcing interest rates, and method of calculating interest payable during such Mode, all of which shall be certified by the Remarketing Agent to be customary and consistent with similar interest rate modes then being utilized by issuers in the tax-exempt bond market.

G. Termination Obligations. If a Mode Change would result in the termination of an interest rate exchange agreement or other obligation of the City as a result of which the City would be obligated to make a payment to a third party, the City may not effect the Mode Change unless the City has made adequate provision for the payment.

Section 2.10 Mode Change to or from the SAVRS Mode.

A. Mode Change to SAVRS Mode. At the option of the City, all of the Bonds (in an amount which is an Authorized Denomination for the New Mode) may be converted from another Mode to the SAVRS Mode. Any such conversion shall be made as follows:

(1) In any such conversion from another Mode, the Mode Change Date shall be a regularly scheduled Interest Payment Date on which interest is payable for the Interest Period from which the conversion is to be made; provided, however, that if the conversion is from a Term Mode, the Mode Change Date shall be a regularly scheduled Interest Payment Date on which a new Term Rate Period would otherwise have commenced, and in any such conversion from a Commercial Paper Mode, the Mode Change Date shall be the last regularly scheduled Interest Payment Date on which interest is payable for any Interest Period theretofore established for the Bonds to be converted.

(2) The City shall give written notice of any such Mode Change to the Notice Parties not less than seven (7) Business Days prior to the date on which the Tender Agent is required to notify the Owners of the conversion pursuant to subparagraph (3) below. Such notice shall specify the Mode Change Date and the length of the initial Auction Period. Together with such notice, the City shall deliver to the Auction Agent, the Remarketing Agent, the Tender Agent, the Credit Provider and the Paying Agent/Registrar an Opinion of Bond Counsel to the effect that the conversion of the Bonds to the Auction Rate shall not adversely affect the validity of the Bonds or any exclusion from gross income for federal income tax purposes to which interest on the Bonds would otherwise be entitled. No such change to the Auction Rate shall become effective unless the City shall also obtain an Opinion of Bond Counsel to the same effect dated the Mode Change Date.

(3) Not less than fifteen (15) days prior to the Mode Change Date, the

Tender Agent shall mail a written notice of the Mode Change to the Owners of all Bonds to be converted; provided, however, that the Paying Agent/Registrar shall not mail such written notice if converting from a Commercial Paper Mode until it has received a written confirmation from the Remarketing Agent that no Interest Period for the Bonds extends beyond the Mode Change Date.

(4) The SAVRS Rate for the Auction Period commencing on the Mode Change Date shall be the lowest rate which, in the judgment of the Broker-Dealer, is necessary to enable the Bonds to be remarketed at a price equal to the principal amount thereof, plus accrued interest, if any, on the Mode Change Date. Such determination shall be conclusive and binding upon the City, the Auction Agent and the Owners of the Bonds to which such rate will be applicable.

(5) Not later than 5:00 p.m., New York City time, on the date of determination of the SAVRS Rate, the Broker-Dealer shall notify the City, the Paying Agent/Registrar and the Auction Agent of the SAVRS Rate by telephone, promptly confirmed in writing.

(6) The City may revoke its election to effect a conversion of the interest rate on any Bonds to a SAVRS Rate by giving written notice of such revocation to the Notice Parties at any time prior to the setting of the SAVRS Rate by the Broker-Dealer.

(7) No Bonds may be converted to the SAVRS Mode when the Bonds are not held in Book-Entry System.

(8) If there is to be an Alternate Liquidity Facility or an Alternate Credit Facility delivered in connection with such Mode Change, then the City shall deliver the items required by Section 2.19B of this Appendix A in connection with the delivery of such Alternate Liquidity Facility or Alternate Credit Facility prior to or on the Mode Change Date.

B. Mode Change from SAVRS Mode. At the option of the City, all of the Bonds (in an amount which is an Authorized Denomination for the New Mode) may be converted from the Auction Rate to another Mode. Any such conversion shall be made as follows:

(1) If the Bonds are in an Auction Period other than the daily Auction Period, the Mode Change Date shall be the second regularly scheduled Interest Payment Date following the final Auction Date. If the Bonds are in a daily Auction Period, the Mode Change Date shall be the next regularly scheduled Interest Payment Date.

(2) The City shall give written notice of any such Mode Change to the Notice Parties not less than seven (7) Business Days prior to the date on which the Tender Agent is required to notify the Owners of the Mode Change pursuant to subparagraph (3) below. Such notice shall specify the Mode Change Date and the

Mode to which the conversion will be made (and the length of any Term Rate Period). Together with such notice, the City shall deliver to the Auction Agent, the Remarketing Agent, the Tender Agent, the Credit Provider and the Paying Agent/Registrar an Opinion of Bond Counsel to the effect that the conversion of the Bonds to be converted will not adversely affect the validity of the Bonds or any exclusion from gross income for federal income tax purposes to which interest on the Bonds would otherwise be entitled. No change to the Mode shall become effective unless the City shall also obtain an Opinion of Bond Counsel to the same effect dated the Mode Change Date.

(3) Not less than twenty (20) days prior to the Mode Change Date, the Tender Agent shall mail a written notice of the conversion to the Owners of all the Bonds to be converted, specifying the Mode Change Date.

(4) If there is to be an Alternate Liquidity Facility or an Alternate Credit Facility delivered in connection with such Mode Change, then the City shall deliver the items required by Section 2.19B of this Appendix A in connection with the delivery of such Alternate Liquidity Facility or Alternate Credit Facility prior to or on the Mode Change Date.

(5) If on the Mode Change Date any condition precedent to such conversion required under the Ordinance or this Appendix A is not satisfied, the Tender Agent will give written notice by first class mail postage prepaid as soon as practicable and in any event not later than the next succeeding Business Day to the Owners of the Bonds to have been converted, and the Notice Parties that such conversion has not occurred, that the Bonds will not be purchased on the failed Mode Change Date, that the Auction Agent will continue to implement the Auction Procedures on the Auction Dates with respect to such Bonds which otherwise would have been converted excluding however, the Auction Date falling on the Business Day next preceding the failed Mode Change Date, and that the interest rate will continue to be the SAVRS Rate; provided, however, that the interest rate borne by such Bonds during the Auction Period commencing on such failed Mode Change Date will be the Maximum SAVRS Rate, and the Auction Period will be the seven-day Auction Period.

(6) On the Mode Change Date date applicable to the Bonds to be converted, the Bonds to be converted shall be subject to mandatory tender at a purchase price equal to 100% of the principal amount thereof, plus accrued interest. The purchase price of such Bonds so tendered shall be payable solely from the proceeds of the remarketing of such Bonds. In the event that the conditions of a conversion are not satisfied, including the failure to remarket all applicable Bonds on a mandatory tender date, the Bonds to have been converted will not be subject to mandatory tender, will be returned to their owners, will automatically convert to a seven-day Auction Period and will bear interest at the Maximum SAVRS Rate.

C. Conversion from SAVRS Mode to Fixed Mode. At the option of the City,

all of the Bonds in the Auction Rate (in an amount which is an Authorized Denomination for the New Mode) may be converted to bear interest in a Fixed Rate as follows:

(1) The Mode Change Date shall be, in the case of a conversion from the Auction Rate in other than a daily Auction Period, the second regularly scheduled Interest Payment Date following the final Auction Date and in the case of a conversion from a daily Auction Period, the first Business Day of any calendar month.

(2) Not less than seven (7) Business Days prior to the date on which the Tender Agent is required to notify the Owners of the conversion pursuant to subparagraph (3) below, the City shall give written notice of the Mode Change to the Notice Parties, setting forth the Mode Change Date. Together with such notice, the City shall deliver to the Auction Agent, the Remarketing Agent, the Credit Provider and the Paying Agent/Registrar an Opinion of Bond Counsel to the effect that the conversion of the Bonds to the Fixed Mode, including the assignment of new Serial Stated Maturities, if any, pursuant to subparagraph (7) of this Section 2.10, will not adversely affect the validity of the Bonds or any exclusion from gross income for federal income tax purposes to which interest on the Bonds would otherwise be entitled. No conversion to the Fixed Mode shall occur unless the City shall also obtain an Opinion of Bond Counsel to the same effect dated the Mode Change Date.

(3) The Tender Agent shall mail a notice of the proposed conversion to the Owners of the Bonds to be converted not less than twenty (20) days prior to the Mode Change Date.

(4) Not later than 12:00 noon, New York City time, on the Business Day prior to the Mode Change Date, the Remarketing Agent shall determine the Fixed Rate for the Bonds to be converted.

(5) Such determination shall be conclusive and binding upon the City, the Credit Provider, the Liquidity Provider, if any, the Broker-Dealer, if any, the Auction Agent, if any, and the Owners of the Bonds to which such rate will be applicable. Not later than 5:00 p.m., New York City time, on the date of determination of the Fixed Rate, the Remarketing Agent shall notify the Paying Agent/Registrar, the Liquidity Provider and the City of such rate by telephone.

(6) The City may revoke its election to effect a conversion of the interest rate on the Bonds to the Fixed Rate by giving written notice of such revocation to the Notice Parties, at any time prior to the determination of the Fixed Rate by the Remarketing Agent.

(7) Prior to the conversion of any of the Bonds to a Fixed Rate pursuant to this Section 2.10, the Remarketing Agent shall deliver to the Notice Parties a certificate which includes the principal amount of the Bonds converted to Fixed Mode, any mandatory sinking fund redemption amounts, the Serial

Stated Maturities, if any, the Serial Payments, if any, and the interest rate payable on such Bonds (and each Serial Stated Maturity, if any) to be converted to a Fixed Rate. In determining the Serial Stated Maturities, the Serial Payments and interest rates, the Remarketing Agent shall use the following guidelines:

a. The Remarketing Agent shall determine the schedule of principal payments on the Bonds to be converted to a Fixed Rate to achieve annual level debt service with respect to the converted Bonds. In making such schedule, the Remarketing Agent shall, to the extent necessary, alternately round down and up to the nearest \$5,000 the amount allocable to the Bonds which are being converted;

b. The Remarketing Agent shall allocate the Bonds to be converted to a Fixed Rate between serial bonds and term bonds in such manner as shall produce the lowest aggregate interest payable with respect to such Bonds; and

c. The Remarketing Agent shall set the interest rate on each Bond to be converted to a Fixed Rate of a particular Stated Maturity at the lowest interest rate that will enable such Bond, upon conversion, to be remarketed at par (plus any accrued interest) taking into account the Stated Maturity of such Bond and mandatory redemption of the Bonds of such Stated Maturity.

The foregoing notwithstanding, the City may agree to another method for providing for payment of principal of the Bonds after the Mode Change Date if (i) the Remarketing Agent deems the utilization of such other method necessary in order to remarket the Bonds at a price of par, and (ii) the City obtains an Opinion of Bond Counsel to the effect that utilization of such other method will not adversely affect the validity of any Bonds or any exclusion from federal income taxation to which the interest on the Bonds would otherwise be entitled.

(8) Mandatory redemption of the Bonds converted to the Fixed Rate by operation of a mandatory sinking fund shall be without premium. The Bonds converted to the Fixed Rate shall be redeemed by the City pursuant to the provisions of this Section and the Ordinance without any notice from or direction by the City.

D. Termination Obligations. If a Mode Change would result in the termination of an interest rate exchange agreement or other obligation of the City as a result of which the City would be obligated to make a payment to a third party, the City may not effect the Mode Change unless the City has made adequate provision for the payment.

Section 2.11 Optional Tenders of Bonds in the Daily Mode or the Weekly Mode.

A. Subject to Section 2.20, the Owners (other than Excluded Persons) in a Daily Mode or a Weekly Mode may elect to have their Bonds (or portions of those Bonds in amounts equal to an Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery to the Tender Agent of an Optional Tender Notice by the Tender Notice Deadline; provided, however, that the Purchase Date for any optional tender of Bonds in a Weekly Mode must be the first Business Day on or after the commencement of a Weekly Rate Period. The Tender Agent shall promptly notify the Liquidity Provider and the Remarketing Agent by Electronic Means confirmed by mailed written notice of each such tender notice.

Section 2.12 Mandatory Tender.

A. The Bonds shall be subject to mandatory tender on each Mandatory Tender Date at the Purchase Price. The Tender Agent shall give notice of such mandatory tender by mail to the Holders of the Bonds subject to mandatory tender by the applicable Tender Notice Deadline. No later than the Business Day immediately after the Tender Agent becomes aware of a Mandatory Tender Date, it shall notify by Electronic Means confirmed by mailed written notice the Liquidity Provider, the Credit Provider, the City and the Remarketing Agent of the Mandatory Tender Date and the clause of the definition thereof pursuant to which the Mandatory Tender Date exists. The City shall give each Rating Agency written notice of each mandatory tender as soon as practicable after the related Mandatory Tender Date has been established. Any notice shall state the Mandatory Tender Date, the Purchase Price, the numbers of the Bonds to be purchased if less than all of the Bonds owned by such Holder are to be purchased, and that interest on Bonds subject to mandatory tender shall cease to accrue for the account of such Holders from and after the Mandatory Tender Date. If notice of a mandatory tender is given by the Tender Agent as provided in the Ordinance, the failure of any Holder or other Person to receive such notice for any reason shall not affect the requirement that such Bonds be mandatorily tendered and such Bonds shall be deemed to be mandatorily tendered on the mandatory tender date at the price stated in the tender notice and shall not be deemed outstanding for any purpose other than to receive the tender price for such Bonds from the tender agent. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder.

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

C. With the consent of the Liquidity Provider, which shall not be unreasonably withheld, the City may direct that all or part of the Bonds be subject to mandatory tender on a Mandatory Tender Date that is a Business Day selected by the City pursuant to a City Order; provided, however, that such Mandatory Tender Date may not occur during a Term Mode or Fixed Mode unless the Bonds subject to mandatory tender are, as of such date, eligible for optional redemption. Subsections A and B of this Section 2.12 shall apply to any mandatory tender effected pursuant to this subsection C; provided, however, that if Bonds subject to such mandatory tender are in a Term Mode or

Fixed Mode, the Purchase Price shall consist of the same price that would have been paid upon redemption of the same if the redemption date were to occur on the Mandatory Tender Date.

Section 2.13 Remarketing of Bonds; Notices.

A. Remarketing of Bonds. Subject to Section 2.18, the Remarketing Agent shall use its best efforts to offer for sale to Persons other than Excluded Persons and at not less than par:

(1) all Bonds or portions thereof as to which notice of tender pursuant to Section 2.11 has been given; and

(2) all Bonds required to be purchased on a Mandatory Tender Date described in clauses (1), (2), (3), (4), (5) and (7) of the definition thereof; and

(3) any Liquidity Provider Bonds (i) purchased on a Purchase Date described in clause (1) or (2) above, (ii) with respect to which the Liquidity Facility has been reinstated in accordance with its terms, (iii) with respect to which an Alternate Liquidity Facility and Alternate Credit Facility is in effect (if such Bond were secured by a Credit Facility prior to becoming Liquidity Provider Bonds which Credit Facility is no longer in effect), or (iv) which are being marketed as Fixed Rate Bonds.

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

(1) the Remarketing Agent shall notify, by Electronic Means, the City and the Tender Agent by 11:30 a.m., New York City time, (a) if it has been unable to remarket any tendered Bonds, and shall include in such notice the principal amount of Bonds it has been unable to remarket, or (b) if it has remarketed all of the tendered Bonds;

(2) the Remarketing Agent shall notify the Tender Agent by Electronic Means not later than 11:30 a.m., New York City time, of the names of the purchasers of the remarketed Bonds and such information as may be necessary to register the Bonds and the registration instructions (i.e., the names, addresses and taxpayer identification numbers of the purchasers and the desired Authorized Denominations) with respect thereto;

(3) the Remarketing Agent shall, at or prior to 11:45 a.m., New York City time, cause the aggregate Purchase Price of tendered Bonds that have been successfully remarketed to be paid to the Tender Agent in immediately available funds for deposit to the Remarketing Proceeds Account of the Purchase Fund;

(4) if any Liquidity Provider Bonds are remarketed, the City shall pay to the Liquidity Provider the Differential Interest Amount; and

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

C. Draw on Liquidity Facility. On each Purchase Date, if the Tender Agent has not received the notice specified in clause B(1)(b) above that the Remarketing Agent has remarketed all of the Bonds, the Tender Agent shall draw on the Liquidity Facility, or make demand for the purchase of tendered Bonds thereunder, by 12:00 noon, New York City time, in an amount equal to the Purchase Price of all such Bonds which have not been successfully remarketed; provided, however, that the Tender Agent shall not draw on the Liquidity Facility or make demand for the purchase of tendered Bonds if such Bonds are Liquidity Provider Bonds or are held by Excluded Persons. In connection with a draw on the Liquidity Facility in connection with a substitution of an Alternate Credit Facility or Alternate Liquidity Facility, the draw on the Liquidity Facility shall be on the Liquidity Facility in effect at the time the Mandatory Tender Notice is issued and not on the Alternate Liquidity Facility.

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

Section 2.14 Source of Funds for Purchase of Bonds. By the close of business on the date on which a Bond is to be purchased pursuant to a remarketing, and except as set forth in Section 2.20, the Tender Agent shall purchase tendered Bonds from the tendering Holders at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated and neither the Tender Agent nor the Remarketing Agent shall be obligated to provide funds from any other source:

A. First, immediately available funds on deposit in the Remarketing Proceeds Account; and

B. Second, immediately available funds on deposit in the Liquidity Facility Purchase Account.

Section 2.15 Delivery of Remarketed Bonds. Bonds issued or sold to pay the Purchase Price of Bonds on a Purchase Date shall be delivered as follows:

A. Bonds sold by the Remarketing Agent and purchased with money described in Section 2.14A shall be delivered by the Remarketing Agent to the purchasers of such Bonds by 3:00 p.m., New York City time; and

B. Bonds purchased by the Tender Agent with moneys described in Section 2.14B shall be registered as soon as practicable in the name of the Liquidity Provider or its designee (which may be the Securities Depository) on or before 3:00 p.m., New York City time on the Purchase Date. The Tender Agent shall hold Liquidity Provider Bonds

on behalf of the Liquidity Provider as provided in the Liquidity Facility. Such Bonds may not be subsequently delivered to any purchaser pursuant to a remarketing unless the Tender Agent has received written confirmation that the Liquidity Provider has reinstated the Available Amount with respect to such Bonds.

Section 2.16 Book-Entry Tenders.

A. Notwithstanding any other provision of this Article to the contrary, all tenders for purchase during any period in which the Bonds are registered in the name of Cede & Co. (or the nominee of any successor Securities Depository) shall be subject to the terms and conditions set forth in the Representation Letter and to any regulations promulgated by DTC (or any successor Securities Depository). For so long as the Bonds are registered in the name of Cede & Co., as nominee for DTC, the tender option rights of Holders of Bonds may be exercised only by a Direct Participant of DTC acting, directly or indirectly, on behalf of a beneficial owner of Bonds by giving notice of its election to tender Bonds or portions thereof at the times and in the manner described above. Procedures under which a beneficial owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Director Participant of DTC, to exercise a tender option right in respect of Bonds or portions thereof in an amount equal to all or a portion of such beneficial owner's beneficial ownership interest therein shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. For so long as the Bonds are registered in the name of Cede & Co., as nominee for DTC, delivery of Bonds required to be tendered for purchase shall be effected by the transfer by a Direct Participant on the applicable Purchase Date of a book-entry credit to the account of the Tender Agent of a beneficial interest in such Bonds.

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

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

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

(2) except as provided in (3), below, none of the Tender Agent, the Remarketing Agent, or the Paying Agent/Registrar shall have any responsibility for paying the Purchase Price of any tendered Bond or for remitting remarketing proceeds to any person; and

(3) the Tender Agent's sole responsibilities in connection with the

purchase and remarketing of a tendered Bond shall be to:

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

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

Section 2.17 No Book-Entry System. If at any time the Bonds shall no longer be in the Book-Entry System, the following procedures shall be followed on each Purchase Date:

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

B. If a Bond to be purchased is not delivered by the Holder to the Tender Agent by 12:00 noon on the date on which such Bond is to be purchased, the Tender Agent shall hold any funds received for the purchase of those Bonds in trust in a separate account and shall pay such funds to the former Holders of the Bonds upon presentation of the Bonds. Such undelivered Bonds shall cease to accrue interest as to the former Holders on such purchase date and moneys representing the Purchase Price shall be available against delivery of those Bonds at the Designated Office of the Tender Agent; provided, however, that any funds which shall be so held by the Tender Agent and which remain unclaimed by the former Holder of a Bond not presented for purchase for a period of three years after delivery of such funds to the Tender Agent, shall, to the extent permitted by law, upon request in writing by the City and the furnishing of security or indemnity to the Tender Agent's satisfaction, be paid to the City free of any trust or lien and thereafter the former Holder of such Bond shall look only to the City and then only to the extent of the amounts so received by the City without any interest thereon and the Tender Agent shall have no further responsibility with respect to such moneys or payment of the purchase price of such Bonds. The Paying Agent/Registrar shall authenticate a replacement Bond for any undelivered Bond which may then be remarketed by the Remarketing Agent.

C. The Tender Agent shall hold all Bonds properly tendered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Holders

of the Bonds which shall have so tendered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Holders.

Section 2.18 No Remarketing After Credit Provider or Liquidity Provider Failure.

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

B. All other provisions of this Appendix A, including without limitation those relating to the setting of interest rates and Interest Periods and mandatory and optional purchases, shall remain in full force and effect during the continuance of such an event. As provided in Section 2.09E, a Liquidity Facility Failure may result in a Mode Change.

Section 2.19 Credit Facility and Liquidity Facility.

A. On each Purchase Date, the Tender Agent shall, as provided in Section 2.12C, by demand given as provided in the Liquidity Facility before 12:00 noon, New York City time, draw on the Liquidity Facility, or make demand for the purchase of tendered Bonds thereunder, in accordance with the terms thereof so as to receive thereunder by 2:30 p.m., New York City time, on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of Bonds on such date, to enable the Tender Agent to pay the Purchase Price in connection therewith. The proceeds of such draw shall be paid to the Tender Agent, who shall deposit said proceeds in the Liquidity Facility Purchase Account pursuant to Article Five, paragraph B.

B. Subject to Subsections C and E below, if at any time there shall have been delivered to the Paying Agent/Registrar or the Tender Agent (1) an Alternate Credit Facility or an Alternate Liquidity Facility in substitution for the Credit Facility or Liquidity Facility then in effect, (2) an Opinion of Counsel specifying that such change will not adversely affect the excludability of interest on the Bonds subject to the change from the gross incomes of the owners thereof for federal income tax purposes and specifying that the City is authorized to execute the Alternate Credit Facility or Alternate Liquidity Facility under Texas law, (3) a written Opinion of Counsel for the provider of the Alternate Credit Facility or Alternate Liquidity Facility, as applicable, to the effect that such Alternate Credit Facility or Alternate Liquidity Facility is a valid, legal and binding obligation of the provider thereof, (4) as to any Alternate Liquidity Facility, the written consent of the Credit Provider (unless a Credit Facility Failure exists) to the Alternate Liquidity Provider and to the Alternate Liquidity Facility, and (5) unless waived by such entity, written evidence satisfactory to the Credit Provider and the Liquidity Provider of the provision for purchase from the Liquidity Provider of all

Liquidity Provider Bonds, at a price equal to the principal amount thereof plus accrued and unpaid interest, and payment of all amounts due to the Credit Provider and the Liquidity Provider under the Ordinance and the applicable Credit Reimbursement Agreement on or before the effective date of such Alternate Letter of Credit or Alternate Liquidity Facility, then the Paying Agent/Registrar or Tender Agent, as applicable, shall accept such Alternate Letter of Credit or Alternate Liquidity Facility on the Substitution Date and shall surrender the Credit Facility or Liquidity Facility then in effect to the provider thereof on the Substitution Date, but only if all draws in connection with the mandatory tender occurring on such Substitution Date have been honored in full. The City shall give the Notice Parties written notice of the proposed substitution of an Alternate Credit Facility or Alternate Liquidity Facility no less than thirty (30) days prior to the proposed Substitution Date. The City shall cause to be given notice of such proposed substitution by first-class mail to the Holders of the Bonds no less than fifteen (15) days prior to the proposed Substitution Date. Notwithstanding any other provision of this clause C, so long as the Bonds are in a Term Mode or Fixed Mode, no Alternate Credit Facility shall be substituted for the Credit Facility then in effect unless the Paying Agent/Registrar has obtained a Rating Confirmation Notice with respect to such substitution. The City and the Tender Agent shall not cause the Bond Policy to be substituted, cancelled, terminated, amended or modified in any respect which materially and adversely affects the rights of the initial Liquidity Provider without the prior written consent of the initial Liquidity Provider.

C. Without the prior written consent of the Credit Provider, the City may not substitute an Alternate Liquidity Facility in substitution for the Liquidity Facility then in effect, unless the Liquidity Provider is rated at least "A-1" by Standard & Poor's or "VMIG-1" or "P1" by Moody's or "F1" by Fitch. So long as the Bonds are in the Daily Mode or Weekly Mode, the City shall maintain in effect a Liquidity Facility meeting the requirements hereof.

D. The City shall provide a Liquidity Facility or an Alternate Liquidity Facility upon a Mode Change, instituted at the direction of the City, of the Bonds to a Commercial Paper Mode, Daily Mode, or Weekly Mode and the City shall comply with subsection B of this Section 2.19 in connection therewith. The City is not required to provide a Liquidity Facility or an Alternate Liquidity Facility upon a Mode Change, instituted at the direction of the City, of the Bonds to a SAVRS Mode, Term Mode or Fixed Mode.

E. Other Liquidity Provider Charges. To the extent permitted by applicable Texas law, the City shall pay the Liquidity Provider, in addition to the amounts specified in the Ordinance and this Appendix A, the other amounts required to be paid pursuant to the applicable Liquidity Facility or Credit Reimbursement Agreement with respect to the Liquidity Facility. With respect to the initial Liquidity Facility, such additional amounts include (without limitation, but only to the extent permitted by applicable Texas law),

(1) If the Liquidity Provider advances interest as part of the Purchase Price and such interest is not promptly reimbursed by the City, the same shall constitute an advance to the City, and shall bear interest at the Bank Rate from the

date of advance until paid. The City shall pay such amounts on the first Interest Payment Date after the applicable Purchase Date.

(2) The City shall pay the amounts required under Sections ____ of the initial Liquidity Facility.

Section 2.20 Inadequate Funds for Tenders. If sufficient funds are not available for the purchase of all tendered Bonds required to be purchased on any Purchase Date, other than due to a default by the Remarketing Agent, the Tender Agent shall not apply any remarketing proceeds from the Remarketing Proceeds Account to purchase tendered Bonds until such deficiency is cured, and then only if the Remarketing Agent has not directed the Tender Agent to return such remarketing proceeds to the Remarketing Agent. Subject to the immediately preceding sentence, if a deficiency does exist, the Tender Agent shall apply the money available to pay, on a pro rata basis, the Purchase Price of portions of the Bonds tendered, and shall take all actions available to it to obtain sufficient funds from the Remarketing Agent and the Liquidity Provider to purchase all such Bonds on or before 12:00 noon, New York City time, on the Business Day next succeeding such Purchase Date. Thereafter, the Tender Agent shall continue to take all such action available to it to obtain such funds from the Remarketing Agent and the Liquidity Provider to cause the deposit of such funds from remarketing proceeds or proceeds of the Liquidity Facility, respectively. Until such purchase of the entire principal amount of tendered Bonds is consummated and the full Purchase Price paid (which shall include interest on the unpaid principal portion to the date of payment), the Tender Agent shall, at the expense of the City, hold the tendered but unpurchased Bonds for the account of the tendering Holders.

Section 2.21 Liquidity Provider Bonds.

A. Liquidity Provider Bonds shall bear interest at the Liquidity Provider Interest Rate for the period commencing from the date that the Liquidity Provider shall have purchased such Bond or advanced funds for such purpose and, subject to Subsection 2.21B below and the last sentence of this Subsection 2.21A(1), continuing until the Liquidity Provider (or a purchaser from the Liquidity Provider pursuant to Subsection 2.21B) shall no longer be the owner of such Bond. Interest payable on Liquidity Provider Bonds shall be payable on each Interest Payment Date. The Liquidity Provider Interest Rate at any time shall be equal to either (x) the Bank Rate if no event of default referenced in the following clause (y) has occurred or (y) during the occurrence and continuance of an event of default described in Section ____ of the initial Liquidity Facility, and to the extent provided in such Section ____, the Default Rate; subject in each case to any applicable adjustment pursuant to Section 2.21A(2) and further subject to the limitation that in no event shall interest borne by the Liquidity Provider Bonds on any date ever exceed the Maximum Lawful Rate. With respect to any Liquidity Provider Bonds which the Liquidity Provider (or any purchaser from the Liquidity Provider pursuant to Subsection 2.21B) elects not to sell to the Remarketing Agent (or to Persons identified by the Remarketing Agent) following receipt of a Purchase Notice as defined in the initial Liquidity Facility, the Liquidity Provider Interest Rate for such Bonds commencing on the day the Liquidity Provider or any purchaser

from the Liquidity Provider pursuant to Subsection 2.21B so elects not to sell such Bonds shall be equal to the interest rate applicable to Bonds other than Liquidity Provider Bonds.

(1) If the amount of interest that would have been payable hereunder under any Liquidity Provider Bond for any period in accordance with the terms hereof without limiting such rate to the Maximum Lawful Rate exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Lawful Rate, then interest for such period shall be payable in an amount calculated at the Maximum Lawful Rate. Any interest that would have been due and payable for any period without regard to the Maximum Lawful Rate limitation shall, less interest actually paid to the Liquidity Provider for such period, constitute the "Excess Interest Amount." To the extent permitted by applicable Texas law, if there is accrued and unpaid Excess Interest Amount as of any date, then the Liquidity Provider Bonds shall, so long as they remain outstanding, bear interest at the Maximum Lawful Rate, until the date as of which the Liquidity Provider will be paid the entire Excess Interest Amount. To the extent permitted by applicable Texas law, on the first to occur of the date on which no Bonds are Liquidity Bonds or on the date on which no Bonds remain outstanding, the City shall pay to the Liquidity Provider a fee equal to any accrued and unpaid Excess Interest Amount in accordance with the terms of the Liquidity Facility.

B. Payment of Liquidity Provider Bonds. The City shall redeem each Liquidity Provider Bond, in equal semi-annual principal installments, the first such installment being payable on the fifteenth (15th) of _____ or _____ first occurring at least six (6) months after the Purchase Date on which the Liquidity Provider acquired the Bonds, with subsequent redemption installments on _____ and _____ thereafter until such Liquidity Provider Bond is fully paid, so that all of such Liquidity Provider Bonds are paid in full no later than the fifth (5th) anniversary of the date that is six months following the Purchase Date.

All obligations of the City with respect to each Liquidity Provider Bond owned by the Liquidity Provider (or its assignees) shall be due and payable in full on the earliest of (a) the date such Bonds are remarketed and sold or deemed sold by the Liquidity Provider (or its assignee) pursuant to a remarketing, (b) the date the Bonds are converted to a Mode other than the Weekly Mode or the Daily Mode, or (c) on the date of the effectiveness of an Alternate Liquidity Facility.

C. Right To Sell Bonds. The Liquidity Provider may sell, to the extent permitted by law, at any time, Liquidity Provider Bonds (upon notice to the purchasers thereof that no rating will be applicable to such Liquidity Provider Bonds if no rating will be applicable to such Liquidity Provider Bonds); provided that Liquidity Provider Bonds may only be sold pursuant to this Subsection 2.21C subject to the limitation that they may not again be sold, assigned or otherwise disposed of by the assignee of the Liquidity Provider, beneficially or on the Security Register without the assignee of the Liquidity Provider obtaining an authorization from the subsequent purchaser that the Remarketing Agent is authorized to sell such Bonds on behalf of such purchaser. All Liquidity

Provider Bonds shall be noted indicating the requirement of such authorization. Any such sales may be made only to affiliates of the Liquidity Provider or to institutional investors or other entities or individuals which customarily purchase commercial paper or municipal securities in large denominations. After any such sale, the Bonds so sold shall continue to bear interest at the Liquidity Provider Interest Rate until such Bonds are resold by the Remarketing Agent or until an election not to sell such Bonds has been made in writing by the Liquidity Provider (or such other purchaser) following the receipt of a Purchase Notice (as defined in the initial Liquidity Facility).

ARTICLE 3

Auction rate

Section 3.01 Orders by Existing Owners and Potential Owners.

A. Prior to the Submission Deadline on each Auction Date:

(1) each Existing Owner may submit to a Broker-Dealer, in writing or by such other method as shall be reasonably acceptable to such Broker-Dealer, information as to:

a. the principal amount of Bonds, if any, held by such Existing Owner which such Existing Owner irrevocably commits to continue to hold for the next succeeding Auction Period without regard to the rate determined by the Auction Procedures for such Auction Period,

b. the principal amount of Bonds, if any, held by such Existing Owner which such Existing Owner irrevocably commits to continue to hold for the next succeeding Auction Period if the rate determined by the Auction Procedures for such Auction Period shall not be less than the rate per annum then specified by such Existing Owner (and which such Existing Owner irrevocably offers to sell on the next succeeding Interest Payment Date (or the same day in the case of a daily Auction Period) if the rate determined by the Auction Procedures for the next succeeding Auction Period shall be less than the rate per annum then specified by such Existing Owner), and/or

c. the principal amount of Bonds, if any, held by such Existing Owner which such Existing Owner irrevocably offers to sell on the next succeeding Interest Payment Date (or on the same day in the case of a daily Auction Period) without regard to the rate determined by the Auction Procedures for the next succeeding Auction Period; and

(2) for the purpose of implementing the Auctions and thereby to achieve the lowest possible interest rate on the Bonds, the Broker-Dealers shall contact Potential Owners, including Persons that are Existing Owners, to determine the principal amount of Bonds, if any, which each such Potential

Owner irrevocably offers to purchase if the rate determined by the Auction Procedures for the next succeeding Auction Period is not less than the rate per annum then specified by such Potential Owner.

For the purposes hereof an Order containing the information referred to in clause (I)a. above is herein referred to as a "Hold Order", an Order containing the information referred to in clause (1)b or (ii) above is herein referred to as a "Bid", and an Order containing the information referred to in clause (1)c above is herein referred to as a "Sell Order."

B. A Bid by an Existing Owner shall constitute an irrevocable offer to sell:

a. the principal amount of Bonds specified in such Bid if the rate determined by the Auction Procedures on such Auction Date shall be less than the rate specified therein; or

b. such principal amount or a lesser principal amount of Bonds to be determined as set forth in subsection A(5) of Section 3.04 hereof if the rate determined by the Auction Procedures on such Auction Date shall be equal to such specified rate; or

c. a lesser principal amount of Bonds to be determined as set forth in subsection B(4) of Section 3.04 hereof if such specified rate shall be higher than the Maximum SAVRS Rate and Sufficient Clearing Bids do not exist.

(2) A Sell Order by an Existing Owner shall constitute an irrevocable offer to sell:

a. the principal amount of Bonds specified in such Sell Order; or

b. such principal amount or a lesser principal amount of Bonds as set forth in subsection B(4) of Section 3.04 hereof if Sufficient Clearing Bids do not exist.

(3) A Bid by a Potential Owner shall constitute an irrevocable offer to purchase:

a. the principal amount of Bonds specified in such Bid if the rate determined by the Auction Procedures on such Auction Date shall be higher than the rate specified therein; or

b. such principal amount or a lesser principal amount of Bonds as set forth in subsection A(6) of Section 3.04 hereof if the rate determined by the Auction Procedures on such Auction Date shall be equal to such specified rate.

C. Anything herein to the contrary notwithstanding:

(1) for purposes of any Auction, any Order which specifies Bonds to be held, purchased or sold in a principal amount which is not \$25,000 or an integral multiple thereof shall be rounded down to the nearest \$25,000, and the Auction Agent shall conduct the Auction Procedures as if such Order had been submitted in such lower amount;

(2) for purposes of any Auction other than during a daily Auction Period, any portion of an Order of an Existing Owner which relates to a Bond which has been called for redemption on or prior to the Interest Payment Date next succeeding such Auction shall be invalid with respect to such portion and the Auction Agent shall conduct the Auction Procedures as if such portion of such Order had not been submitted;

(3) for purposes of any Auction other than during a daily Auction Period, no portion of a Bond which has been called for redemption on or prior to the Interest Payment Date next succeeding such Auction shall be included in the calculation of Available Bonds for such Auction; and

(4) the Auction Procedures shall be suspended during the period commencing on the date of the Auction Agent's receipt of notice from the City of the occurrence of an Event of Default resulting from a failure to pay principal, premium or interest on any Bond when due (provided, however, that for purposes of this provision payment by the Credit Provider shall be deemed to cure such Event of Default and no suspension of the Auction Procedures shall occur) but shall resume two Business Days after the date on which the Auction Agent receives notice from the City that such Event of Default has been waived or cured, with the next Auction to occur on the next regularly scheduled Auction Date occurring thereafter.

Section 3.02 Submission of Orders by Broker-Dealers to Auction Agent.

A. Each Broker-Dealer shall submit to the Auction Agent in writing or by such other method as shall be reasonably acceptable to the Auction Agent, prior to the Submission Deadline on each Auction Date, all Orders obtained by such Broker-Dealer and specifying, if requested, with respect to each Order:

(1) the aggregate principal amount of Bonds, if any, that are the subject of each Order;

(2) to the extent that such Bidder is an Existing Owner:

a. the principal amount of Bonds, if any, subject to any Hold Order placed by such Existing Owner;

b. the principal amount of Bonds, if any, subject to any Bid

placed by such Existing Owner and the rate specified in such Bid; and

c. the principal amount of Bonds, if any, subject to any Sell Order placed by such Existing Owner; and

(3) to the extent such Bidder is a Potential Owner, the rate specified in such Bid.

B. If any rate specified in any Bid contains more than three figures to the right of the decimal point, the Auction Agent shall round such rate up to the next highest one thousandth of one percent (0.001%).

C. If an Order or Orders covering all of the Bonds held by an Existing Owner is not submitted to the Auction Agent prior to the Submission Deadline, the Auction Agent shall deem a Hold Order to have been submitted on behalf of such Existing Owner covering the principal amount of Bonds held by such Existing Owner and not subject to Orders submitted to the Auction Agent; provided, however, that if there is a conversion from one Auction Period to another Auction Period and Orders have not been submitted to the Auction Agent prior to the Submission Deadline covering the aggregate principal amount of Bonds to be converted held by such Existing Owner, the Auction Agent shall deem a Sell Order to have been submitted on behalf of such Existing Owner covering the principal amount of Bonds to be converted held by such Existing Owner not subject to Orders submitted to the Auction Agent.

D. If one or more Orders covering in the aggregate more than the principal amount of Outstanding Bonds held by any Existing Owner are submitted to the Auction Agent, such Orders shall be considered valid as follows:

(1) all Hold Orders shall be considered Hold Orders, but only up to and including in the aggregate the principal amount of Bonds held by such Existing Owner;

(2) any Bid of an Existing Owner shall be considered valid as a Bid of an Existing Owner up to and including the excess of the principal amount of Bonds held by such Existing Owner over the principal amount of the Bonds subject to Hold Orders referred to in paragraph (1) above;

a. subject to clause "a" above, all Bids of an Existing Owner with the same rate shall be aggregated and considered a single Bid of an Existing Owner up to and including the excess of the principal amount of Bonds held by such Existing Owner over the principal amount of Bonds held by such Existing Owner subject to Hold Orders referred to in paragraph (1) above;

b. subject to clause a. above, if more than one Bid with different rates is submitted on behalf of such Existing Owner, such Bids shall be considered Bids of an Existing Owner in the ascending order of

their respective rates up to the amount of the excess of the principal amount of Bonds held by such Existing Owner over the principal amount of Bonds held by such Existing Owner subject to Hold Orders referred to in paragraph (1) above; and

c. the principal amount, if any, of such Bonds subject to Bids not considered to be Bids of an Existing Owner under this paragraph (2) shall be treated as the subject of a Bid by a Potential Owner; and

(3) all Sell Orders shall be considered Sell Orders, but only up to and including a principal amount of Bonds equal to the excess of the principal amount of Bonds held by such Existing Owner over the sum of the principal amount of the Bonds considered to be subject to Hold Orders pursuant to paragraph (1) above and the principal amount of Bonds considered to be subject to Bids of such Existing Owner pursuant to paragraph (2) above.

E. If more than one Bid is submitted on behalf of any Potential Owner, each Bid submitted with the same rate shall be aggregated and considered a single Bid and each Bid submitted with a different rate shall be considered a separate Bid with the rate and the principal amount of Bonds specified therein.

F. Neither the City nor the Auction Agent shall be responsible for the failure of any Broker-Dealer to submit an Order to the Auction Agent on behalf of any Existing Owner or Potential Owner.

Section 3.03 Determination of SAVRS Rate.

A. Not later than 9:30 a.m., New York City time, on each Auction Date, the Auction Agent shall advise the Broker-Dealers and the City by telephone of the All Hold Rate, the Maximum SAVRS Rate and the Reference Rate.

B. Promptly after the Submission Deadline on each Auction Date, the Auction Agent shall assemble all Orders submitted or deemed submitted to it by the Broker-Dealers (each such Order as submitted or deemed submitted by a Broker-Dealer being hereinafter referred to as a "Submitted Hold Order," a "Submitted Bid" or a "Submitted Sell Order," as the case may be, and collectively as a "Submitted Order") and shall determine (i) the Available Bonds, (ii) whether there are Sufficient Clearing Bids, and (iii) the Auction Rate.

C. Promptly after the Auction Agent has made the determinations pursuant to subsection B above the Auction Agent shall advise the City and the Broker-Dealers by telephone (promptly confirmed in writing), telex or facsimile transmission of the Auction Rate for the next succeeding Auction Period and the Auction Agent shall promptly notify the Securities Depository of such Auction Rate.

D. In the event the Auction Agent fails to calculate or, for any reason, fails to timely provide the Auction Rate for any Auction Period, (i) if the preceding Auction

Period was a period of 35 days or less, the new Auction Period shall be the same as the preceding Auction Period and the SAVRS Rate for the new Auction Period shall be the same as the SAVRS Rate for the preceding Auction Period, and (ii) if the preceding Auction Period was a period of greater than 35 days, the preceding Auction Period shall be extended to the seventh day following the day that would have been the last day of such Auction Period had it not been extended (or if such seventh day is not followed by a Business Day then to the next succeeding day which is followed by a Business Day) and the SAVRS Rate in effect for the preceding Auction Period will continue in effect for the Auction Period as so extended. In the event an Auction Period is extended as set forth in clause (ii) of the preceding sentence, an Auction shall be held on the last Business Day of the Auction Period as so extended to take effect for an Auction Period beginning on the Business Day immediately following the last day of the Auction Period as extended which Auction Period will end on the date it would otherwise have ended on had the prior Auction Period not been extended. Notwithstanding the foregoing, no SAVRS Rate shall be extended for more than 35 days. If at the end of 35 days the Auction Agent fails to calculate or provide the Auction Rate, the SAVRS Rate shall be the Maximum SAVRS Rate.

E. In the event the Auction Procedures are suspended due to the failure to pay principal of, premium or interest on any Bond, the SAVRS Rate for the next succeeding Auction Period shall be the Default Rate.

F. In the event of a failed conversion from a the SAVRS Mode to another Mode or in the event of a failure to change the length of the current Auction Period due to the lack of Sufficient Clearing Bids at the Auction on the Auction Date for the first new Auction Period, the SAVRS Rate for the next Auction Period shall be the Maximum SAVRS Rate and the Auction Period shall be a seven-day Auction Period.

G. If the Bonds are not rated or if the Bonds are no longer maintained in book-entry-only form by the Securities Depository then the SAVRS Rate shall be the Maximum SAVRS Rate.

Section 3.04 Allocation of Bonds.

A. In the event of Sufficient Clearing Bids, subject to the further provisions of subsections C and D below, Submitted Orders shall be accepted or rejected as follows in the following order of priority:

(1) the Submitted Hold Order of each Existing Owner shall be accepted, thus requiring each such Existing Owner to continue to hold the Bonds that are the subject of such Submitted Hold Order;

(2) the Submitted Sell Order of each Existing Owner shall be accepted and the Submitted Bid of each Existing Owner specifying any rate that is higher than the Winning Bid Rate shall be rejected, thus requiring each such Existing Owner to sell the Bonds that are the subject of such Submitted Sell Order or Submitted Bid;

(3) the Submitted Bid of each Existing Owner specifying any rate that is lower than the Winning Bid Rate shall be accepted, thus requiring each such Existing Owner to continue to hold the Bonds that are the subject of such Submitted Bid;

(4) the Submitted Bid of each Potential Owner specifying any rate that is lower than the Winning Bid Rate shall be accepted, thus requiring each such Potential Owner to purchase the Bonds that are the subject of such Submitted Bid;

(5) the Submitted Bid of each Existing Owner specifying a rate that is equal to the Winning Bid Rate shall be accepted, thus requiring each such Existing Owner to continue to hold the Bonds that are the subject of such Submitted Bid, but only up to and including the principal amount of Bonds obtained by multiplying (A) the aggregate principal amount of Outstanding Bonds which are not the subject of Submitted Hold Orders described in paragraph (1) above or of Submitted Bids described in paragraphs (3) or (4) above by (B) a fraction the numerator of which shall be the principal amount of Outstanding Bonds held by such Existing Owner subject to such Submitted Bid and the denominator of which shall be the aggregate principal amount of Outstanding Bonds subject to such Submitted Bids made by all such Existing Owners that specified a rate equal to the Winning Bid Rate, and the remainder, if any, of such Submitted Bid shall be rejected, thus requiring each such Existing Owner to sell any excess amount of Bonds;

(6) the Submitted Bid of each Potential Owner specifying a rate that is equal to the Winning Bid Rate shall be accepted, thus requiring each such Potential Owner to purchase the Bonds that are the subject of such Submitted Bid, but only in an amount equal to the principal amount of Bonds obtained by multiplying (A) the aggregate principal amount of Outstanding Bonds which are not the subject of Submitted Hold Orders described in paragraph (1) above or of Submitted Bids described in paragraphs (3), (4) or (5) above by (B) a fraction the numerator of which shall be the principal amount of Outstanding Bonds subject to such Submitted Bid and the denominator of which shall be the sum of the aggregate principal amount of Outstanding Bonds subject to such Submitted Bids made by all such Potential Owners that specified a rate equal to the Winning Bid Rate, and the remainder of such Submitted Bid shall be rejected; and

(7) the Submitted Bid of each Potential Owner specifying any rate that is higher than the Winning Bid Rate shall be rejected.

B. In the event there are not Sufficient Clearing Bids, subject to the further provisions of subsections C and D below, Submitted Orders shall be accepted or rejected as follows in the following order of priority:

(1) the Submitted Hold Order of each Existing Owner shall be accepted, thus requiring each such Existing Owner to continue to hold the Bonds that are the subject of such Submitted Hold Order;

(2) the Submitted Bid of each Existing Owner specifying any rate that is not higher than the Maximum SAVRS Rate shall be accepted, thus requiring each such Existing Owner to continue to hold the Bonds that are the subject of such Submitted Bid;

(3) the Submitted Bid of each Potential Owner specifying any rate that is not higher than the Maximum SAVRS Rate shall be accepted, thus requiring each such Potential Owner to purchase the Bonds that are the subject of such Submitted Bid;

(4) the Submitted Sell Orders of each Existing Owner shall be accepted as Submitted Sell Orders and the Submitted Bids of each Existing Owner specifying any rate that is higher than the Maximum SAVRS Rate shall be deemed to be and shall be accepted as Submitted Sell Orders, in both cases only up to and including the principal amount of Bonds obtained by multiplying (A) the aggregate principal amount of Bonds subject to Submitted Bids described in paragraph (3) of this subsection B by (B) a fraction the numerator of which shall be the principal amount of Outstanding Bonds held by such Existing Owner subject to such Submitted Sell Order or such Submitted Bid deemed to be a Submitted Sell Order and the denominator of which shall be the principal amount of Outstanding Bonds subject to all such Submitted Sell Orders and such Submitted Bids deemed to be Submitted Sell Orders, and the remainder of each such Submitted Sell Order or Submitted Bid shall be deemed to be and shall be accepted as a Hold Order and each such Existing Owner shall be required to continue to hold such excess amount of Bonds; and

(5) the Submitted Bid of each Potential Owner specifying any rate that is higher than the Maximum SAVRS Rate shall be rejected.

C. If, as a result of the procedures described in subsection A or B above, any Existing Owner or Potential Owner would be required to purchase or sell an aggregate principal amount of Bonds which is not an integral multiple of \$25,000 on any Auction Date, the Auction Agent shall by lot, in such manner as it shall determine in its sole discretion, round up or down the principal amount of Bonds to be purchased or sold by any Existing Owner or Potential Owner on such Auction Date so that the aggregate principal amount of Bonds purchased or sold by each Existing Owner or Potential Owner on such Auction Date shall be an integral multiple of \$25,000, even if such allocation results in one or more of such Existing Owners or Potential Owners not purchasing or selling any Bonds on such Auction Date.

D. If, as a result of the procedures described in subsection A above, any Potential Owner would be required to purchase less than \$25,000 in principal amount of Bonds on any Auction Date, the Auction Agent shall by lot, in such manner as it shall determine in its sole discretion, allocate Bonds for purchase among Potential Owners so that the principal amount of SAVRS purchased on such Auction Date by any Potential Owner shall be an integral multiple of \$25,000, even if such allocation results in one or more of such Potential Owners not purchasing Bonds on such Auction Date.

Section 3.05 Notice of SAVRS Rate.

A. On each Auction Date, the Auction Agent shall notify by telephone or other telecommunication device or in writing each Broker-Dealer that participated in the Auction held on such Auction Date of the following:

(1) the SAVRS Rate determined on such Auction Date for the succeeding Auction Period;

(2) whether Sufficient Clearing Bids existed for the determination of the Winning Bid Rate;

(3) if such Broker-Dealer submitted a Bid or a Sell Order on behalf of an Existing Owner, whether such Bid or Sell Order was accepted or rejected and the principal amount of Bonds, if any, to be sold by such Existing Owner,

(4) if such Broker-Dealer submitted a Bid on behalf of a Potential Owner, whether such Bid was accepted or rejected and the principal amount of Bonds, if any, to be purchased by such Potential Owner;

(5) if the aggregate principal amount of the Bonds to be sold by all Existing Owners on whose behalf such Broker-Dealer submitted Bids or Sell Orders is different from the aggregate principal amount of Bonds to be purchased by all Potential Owners on whose behalf such Broker-Dealer submitted a Bid, the name or names of one or more Broker-Dealers (and the Agent Member, if any, of each such other Broker-Dealer) and the principal amount of Bonds to be (A) purchased from one or more Existing Owners on whose behalf such other Broker-Dealers submitted Bids or Sell Orders or (B) sold to one or more Potential Owners on whose behalf such Broker-Dealer submitted Bids; and

(6) the immediately succeeding Auction Date.

B. On each Auction Date, each Broker-Dealer that submitted an Order on behalf of any Existing Owner or Potential Owner shall: (i) advise each Existing Owner and Potential Owner on whose behalf such Broker-Dealer submitted an Order as to (A) the SAVRS Rate determined on such Auction Date, (B) whether any Bid or Sell Order submitted on behalf of each such Owner was accepted or rejected and (C) the immediately succeeding Auction Date; (ii) instruct each Potential Owner on whose behalf such Broker-Dealer submitted a Bid that was accepted, in whole or in part, to instruct such Existing Owner's Agent Member to pay to such Broker-Dealer (or its Agent Member) through the Securities Depository the amount necessary to purchase the principal amount of Bonds to be purchased pursuant to such Bid (including, with respect to the Bonds in a daily Auction Period, accrued interest if the purchase date is not an Interest Payment Date for such Bond) against receipt of such Bonds; and (iii) instruct each Existing Owner on whose behalf such Broker-Dealer submitted a Sell Order that was accepted or a Bid that was rejected in whole or in part, to instruct such Existing Owner's Agent Member to deliver to such Broker-Dealer (or its Agent Member) through

the Securities Depository the principal amount of Bonds to be sold pursuant to such Bid or Sell Order against payment therefor.

Section 3.06 Reference Rate.

A. The Reference Rate on any Auction Date with respect to the Bonds in any Auction Period of less than 180 days shall be the greater of LIBOR or the Thirty-Day "AA" Composite Commercial Paper Rate on such date. The Reference Rate with respect to the Bonds in any Auction Period of 180 days or more shall be the greater of LIBOR or the rate on United States Treasury Securities having a maturity which most closely approximates the length of the Auction Period, as last published in *The Wall Street Journal*. If either rate is unavailable, the Reference Rate shall be an index or rate agreed to by all Broker-Dealers and consented to by the City.

"Thirty-Day 'AA' Composite Commercial Paper Rate" on any date of determination, means the interest equivalent of the Thirty-Day rate on commercial paper placed on behalf of non financial issuers whose corporate bonds are rated AA by S&P, or the equivalent of such rating by S&P, as made available on a discount basis or otherwise by (A) the Federal Reserve Bank of New York for the Business Day immediately preceding such date of determination, or (B) if the Federal Reserve Bank of New York does not make available any such rate, then the arithmetic average of such rates, as quoted on a discount basis or otherwise, by Lehman Commercial Paper Inc., Goldman, Sachs & Co. and Merrill Lynch, Pierce, Fenner & Smith Incorporated or, in lieu of any thereof, their respective affiliates or successors which are commercial paper dealers (the "Commercial Paper Dealers"), to the Auction Agent before the close of business on the Business Day immediately preceding such date of determination.

For purposes of the definitions of Thirty-Day "AA" Composite Commercial Paper Rate, the "interest equivalent" means the equivalent yield on a 360-day basis of a discount-basis security to an interest-bearing security. If any Commercial Paper Dealer does not quote a commercial paper rate required to determine the Thirty-Day "AA" Composite Commercial Paper Rate, the Thirty-Day "AA" Composite Commercial Paper Rate shall be determined on the basis of the quotation or quotations furnished by the remaining Commercial Paper Dealer or Commercial Paper Dealers and any substitute commercial paper dealer not included within the definition of Commercial Paper Dealer above, which may be _____ or _____ or their respective affiliates or successors which are commercial paper dealers (a "Substitute Commercial Paper Dealer") selected by the City (who shall be under no liability for such selection) to provide such commercial paper rate or rates not being supplied by any Commercial Paper Dealer or Commercial Paper Dealers, as the case may be, or if the City does not select any such Substitute Commercial Paper Dealer or Substitute Commercial Paper Dealers, by the remaining Commercial Paper Dealer or Commercial Paper Dealers.

B. If for any reason on any Auction Date the Reference Rate shall not be determined as hereinabove provided in this Section, the Reference Rate shall be the Reference Rate for the Auction Period ending on such Auction Date.

C. The determination of the Reference Rate as provided herein shall be conclusive and binding upon the City, the Broker-Dealers, the Auction Agent and the Owners of the Bonds.

Section 3.07 Miscellaneous Provisions Regarding Auctions.

A. In this Appendix A, each reference to the purchase, sale or holding of Bonds shall refer to beneficial interests in Series 2005 Bonds, unless the context clearly requires otherwise.

B. During a SAVRS Rate Period, the provisions of this Appendix A, including without limitation the definitions of All Hold Rate, Default Rate, Interest Payment Date, Maximum SAVRS Rate, Reference Rate, Applicable Percentage and SAVRS Rate, may be amended pursuant to the Ordinance and this Appendix A by obtaining the consent of the owners of all Outstanding Bonds bearing interest at a SAVRS Rate as follows: If on the first Auction Date occurring at least 20 days after the date on which the Paying Agent/Registrar mailed notice of such proposed amendment to the registered owners of the Outstanding Bonds as required by the Ordinance, (i) the SAVRS Rate which is determined on such date is the Winning Bid Rate and (ii) there is delivered to the City an opinion of Bond Counsel to the effect that such amendment shall not adversely affect the validity of the Bonds or any exemption from federal income tax to which the interest on the Bonds would otherwise be entitled, the proposed amendment shall be deemed to have been consented to by the owners of all affected Outstanding Bonds bearing interest at a SAVRS Rate.

C. During a SAVRS Rate Period, so long as the ownership of the Bonds is maintained in book-entry form by the Securities Depository, an Existing Owner or a beneficial owner may sell, transfer or otherwise dispose of a Bond only pursuant to a Bid or Sell Order in accordance with the Auction Procedures or to or through a Broker-Dealer, provided that (i) in the case of all transfers other than pursuant to Auctions such Existing Owner or its Broker-Dealer or its Agent Member advises the Auction Agent of such transfer and (ii) a sale, transfer or other disposition of Bonds from a customer of a Broker-Dealer who is listed on the records of that Broker-Dealer as the holder of such Bonds to that Broker-Dealer or another customer of that Broker-Dealer shall not be deemed to be a sale, transfer or other disposition for purposes of this paragraph if such Broker-Dealer remains the Existing Owner of the Bonds so sold, transferred or disposed of immediately after such sale, transfer or disposition.

Section 3.08 Changes in Auction Period or Auction Date.

A. Changes in Auction Period.

(1) During any SAVRS Rate Period, the City may, from time to time on any Interest Payment Date, change the length of the Auction Period with respect to all of the Bonds among daily, seven-days, 28-days, 35-days, six months and a Special Rate Period in order to accommodate economic and financial factors that may affect or be relevant to the length of the Auction Period and the

interest rate borne by such Bonds. The City shall initiate the change in the length of the Auction Period by giving written notice to the Notice Parties and the Securities Depository that the Auction Period shall change if the conditions described herein are satisfied and the proposed effective date of the change, at least 10 Business Days prior to the Auction Date for such Auction Period.

(2) Any such changed Auction Period shall be for a period of one day, seven-days, 28- days, 35-days, six months or a Special Rate Period and shall be for all of the Bonds in a SAVRS Rate Period.

(3) The change in the length of the Auction Period shall not be allowed unless Sufficient Clearing Bids existed at both the Auction before the date on which the notice of the proposed change was given as provided in this subsection (a) and the Auction immediately preceding the proposed change.

(4) The change in length of the Auction Period shall take effect only if (A) the Auction Agent receives, by 11:00 a.m., New York City time, on the Business Day before the Auction Date for the first such Auction Period, a certificate from the City consenting to the change in the length of the Auction Period specified in such certificate and (B) Sufficient Clearing Bids exist at the Auction on the Auction Date for such first Auction Period. For purposes of the Auction for such first Auction Period only, each Existing Owner shall be deemed to have submitted Sell Orders with respect to all of its Bonds except to the extent such Existing Owner submits an Order with respect to such Bonds. If the condition referred to in (A) above is not met, the Auction Rate for the next Auction Period shall be determined pursuant to the Auction Procedures and the Auction Period shall be the Auction Period determined without reference to the proposed change. If the condition referred to in (A) is met but the condition referred to in (B) above is not met, the Auction Rate for the next Auction Period shall be the Maximum SAVRS Rate, and the Auction Period shall be a seven-day Auction Period.

B. Changes in Auction Date. During any SAVRS Rate Period, the Auction Agent, with the written consent of the City, may specify an earlier Auction Date (but in no event more than five Business Days earlier) than the Auction Date that would otherwise be determined in accordance with the definition of "Auction Date" in order to conform with then current market practice with respect to similar securities or to accommodate economic and financial factors that may affect or be relevant to the day of the week constituting an Auction Date and the interest rate borne on the Bonds. The Auction Agent shall provide notice of its determination to specify an earlier Auction Date for an Auction Period by means of a written notice delivered at least 30 days prior to the proposed changed Auction Date to the Notice Parties.

Section 3.09 Auction Agent.

A. The Auction Agent shall be appointed by the City at the written direction of the City, to perform the functions specified herein. The Auction Agent shall designate

its Principal Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument, delivered to the City, the Liquidity Provider, if any, and each Broker-Dealer which shall set forth such procedural and other matters relating to the implementation of the Auction Procedures as shall be satisfactory to the City.

B. Subject to any applicable governmental restrictions, the Auction Agent may be or become the owner of or trade in the Bonds with the same rights as if such entity were not the Auction Agent.

C. The Auction Agent shall be (a) a bank or trust company organized under the laws of the United States or any state or territory thereof having a combined capital stock, surplus and undivided profits of at least \$30,000,000, or (b) a member of NASD having a capitalization of at least \$30,000,000 and, in either case, authorized by law to perform all the duties imposed upon it by this Appendix A and a member of or a participant in, the Securities Depository. The Auction Agent may at any time resign and be discharged of the duties and obligations created by this Appendix A by giving at least ninety (90) days notice to the Notice Parties. The Auction Agent may be removed at any time by the City by written notice, delivered to the Notice Parties. Upon any such resignation or removal, the City shall appoint a successor Auction Agent meeting the requirements of this section. In the event of the resignation or removal of the Auction Agent, the Auction Agent shall pay over, assign and deliver any moneys and Bonds held by it in such capacity to its successor. The Auction Agent shall continue to perform its duties until its successor has been appointed by the City. In the event that the Auction Agent has not been compensated for its services, the Auction Agent may resign by giving thirty (30) days notice to the City and the Credit Provider even if a successor Auction Agent has not been appointed.

ARTICLE 4

certain agents

Section 4.01 Remarketing Agent.

A. The Remarketing Agent shall remarket Bonds as required by this Appendix, and shall keep such books and records as shall be consistent with prudent industry practice and make such books and records available for inspection by the Notice Parties at all reasonable times. The Remarketing Agent shall act as such under a Remarketing Agreement to be entered into between the City and the Remarketing Agent. The City shall provide written notice to the Notice Parties of the appointment of the Remarketing Agent and of any resignation, removal or replacement of a Remarketing Agent.

B. The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Appendix by giving at least ten (10) days' written notice to the Notice Parties. The Remarketing Agent may suspend its remarketing efforts as set forth in the Remarketing Agreement. The Remarketing Agent may be removed at any time, at the direction of the City, by an instrument filed with the Remarketing Agent,

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

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

Section 4.02 Tender Agent. There shall be a Tender Agent appointed by the City, with, except in the case of the initial Tender Agent, the approval of the Credit Provider and the Liquidity Provider. The Tender Agent shall have the power to act in the purchase of Bonds on any Purchase Date and the payment of the Purchase Price therefor. Such Tender Agent shall at all times be a commercial bank or a trust company having an office or agent in the City and County of New York, New York, organized and doing business under the laws of the United States or of any state with a combined capital and surplus or a minimum capitalization of at least \$50,000,000 and authorized under such laws to perform all the duties imposed by this Appendix on the Tender Agent. If such corporation publishes reports of condition at least annually pursuant to law or the requirements of any authority, then for the purposes of this Section the combined capital and surplus or the capitalization of such corporation shall be deemed to be its combined capital and surplus or its capitalization as set forth in its most recent report of condition so published.

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

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

Any Tender Agent may resign at any time by giving written notice of such resignation to the Notice Parties. The City may terminate the agency of any Tender Agent by giving at least

fifteen (15) days written notice of such termination to such Tender Agent and the other Notice Parties. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Tender Agent shall cease to be eligible under this Section, the City shall promptly appoint a successor Tender Agent acceptable to the Credit Provider and the Liquidity Provider, and shall give written notice of such appointment to the Holders of the Bonds and the Paying Agent/Registrar.

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

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

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

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

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

ARTICLE 5

purchase fund

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

A. Remarketing Proceeds Account. Upon receipt from the Remarketing Agent of the proceeds of remarketing a Bond to Persons other than Excluded Persons on the date such Bond is to be purchased, the Tender Agent shall deposit such proceeds in the Remarketing Proceeds Account for application to the Purchase Price of the remarketed Bond. Notwithstanding the foregoing, upon the receipt of the proceeds of remarketing Liquidity Provider Bonds, the Tender Agent shall immediately pay such

proceeds to the Liquidity Provider to the extent of any amount owing to the Liquidity Provider. Any amounts deposited in the Remarketing Proceeds Account and not needed with respect to the Purchase Price for any Bonds (including undelivered Bonds) shall be immediately returned to the order of the Remarketing Agent.

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

C. Segregation of Funds; Investment. Amounts held in the Liquidity Facility Purchase Account and the Remarketing Proceeds Account by the Tender Agent shall be held uninvested and separate and apart from all other funds and accounts.

ARTICLE 6

rating agency matters

Section 6.01 Maintain Ratings. So long as the Bonds are in any Mode other than Fixed Mode, the City shall use commercially reasonable best efforts to maintain ratings by at least two Rating Agencies.

Section 6.02 Provision of Information to Rating Agencies. The City shall provide each Rating Agency with the following information:

- A. written notice of any change in Paying Agent/Registrar, Tender Agent, Remarketing Agent, Broker-Dealer or Auction Agent;
- B. written notice of any amendment to the Ordinance, this Appendix A, the Liquidity Facility or the Credit Facility;
- C. written notice of the expiration, termination, substitution or extension of any Liquidity Facility or Credit Facility;
- D. written notice of any Mode Change;
- E. written notice of any defeasance, redemption, acceleration or mandatory tender of any Bonds; and
- F. any other information that such Rating Agency may reasonably request in order to maintain a Rating on the Bonds.

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