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ORDINANCE NUMBER 84-O-02

AN ORDINANCE authorizing and providing for the issue of not to exceed \$2,600,000 Water Revenue Refunding Bonds, Series 2002, of the City of Evanston, Cook County, Illinois, for the purpose of defraying the cost of refunding outstanding Water Revenue Bonds of said City, prescribing all the details of said bonds, and providing for the collection, segregation and distribution of the revenue of the waterworks system of said City.

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Adopted by the City Council on the  
4<sup>th</sup> day of September 2002.

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**ORDINANCE NO. 84-O-02**

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**PREAMBLES**

**WHEREAS**

A. The City of Evanston, Cook County, Illinois (the "City"), has a population in excess of 25,000 as determined by the last official census and, accordingly, pursuant to the provisions of the 1970 Constitution of the State of Illinois and particularly Article VII, Section 6(a) thereof, the City is a home rule unit and as such may exercise any power or perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt.

B. The City has heretofore issued the following outstanding and validly subsisting and unpaid water revenue bonds:

**WATER REVENUE BONDS, SERIES 1992  
DATED JULY 1, 1992**

|                                                       |              |
|-------------------------------------------------------|--------------|
| Original Principal Amount:                            | \$3,600,000  |
| Originally Due Serially on<br>January 1 in the Years: | 1995 to 2012 |
| Amount Remaining Outstanding:                         | \$2,440,000  |
| Amount To Be Refunded:                                | All          |

**REMAINING OUTSTANDING BONDS AND BONDS TO  
BE REFUNDED DUE AND DESCRIBED AS FOLLOWS:**

| JANUARY 1<br>OF THE YEAR | AMOUNT (\$) | RATE OF<br>INTEREST (%) | AMOUNT TO BE<br>REFUNDED |
|--------------------------|-------------|-------------------------|--------------------------|
| 2003                     | 185,000     | 5.50                    | All                      |
| 2004                     | 195,000     | 5.50                    | All                      |
| 2005                     | 205,000     | 5.50                    | All                      |
| 2006                     | 220,000     | 5.50                    | All                      |
| 2007                     | 230,000     | 5.50                    | All                      |
| 2008                     | 245,000     | 5.50                    | All                      |
| 2009                     | 265,000     | 5.50                    | All                      |
| 2010                     | 280,000     | 5.50                    | All                      |
| 2011                     | 300,000     | 5.50                    | All                      |
| 2012                     | 315,000     | 5.50                    | All                      |
| TOTAL                    | 2,440,000   |                         |                          |

which bonds (the "*Prior Bonds*") are currently subject to redemption prior to maturity at the option of the City, on any date at the redemption price of par and accrued interest.

C. Interest rates are currently more favorable in the market for tax-exempt municipal bonds than they were at the time the Prior Bonds were issued, and it is possible to refund the Prior Bonds to achieve a net aggregate dollar and present value savings.

D. Pursuant to the home rule powers of the City and the provisions of Division 129 of Article 11 of the Illinois Municipal Code, as amended (collectively, such constitutional grant of power and such Code being the "*Act*" as more particularly defined below), and other applicable law, the City has been and is authorized to issue water revenue bonds for waterworks system purposes, including the proposed refunding as described (the "*Refunding*") of the Prior Bonds.

E. The City Council (the "*City Council*") of the City has issued water revenue bonds, as follows:

| NAME AND SERIES                  | ORIGINAL AMOUNT (\$) | PURSUANT TO ORDINANCE | CURRENTLY OUTSTANDING (\$) |
|----------------------------------|----------------------|-----------------------|----------------------------|
| Water Revenue Bonds, Series 1992 | 3,600,000            | 39-O-92               | 2,440,000                  |
| Water Revenue Bonds, Series 1997 | 8,775,000            | 112-O-97              | 3,095,000                  |
| Water Revenue Bonds, Series 1999 | 3,500,000            | 5-0-99                | 2,935,000                  |
| TOTAL                            |                      |                       | 8,470,000                  |

all which said currently outstanding bonds aggregate the principal amount of \$8,470,000 (such bonds being the "*Currently Outstanding Bonds*"); and

F. Pursuant to the provisions of the ordinances (the "*Currently Outstanding Bond Ordinances*") adopted by the City Council authorizing the Currently Outstanding Bonds, no additional bonds shall be issued to share ratably and equally in the income derived from the operation of the System ("*Parity Bonds*" as defined below) unless the revenues for the fiscal year then next preceding were sufficient to comply with the specific restrictions set forth in the Currently Outstanding Bond Ordinances; and the City Council has caused an audit of the earnings of the System to be made for the last preceding fiscal year and does hereby determine that such earnings comply with the covenants and restrictions provided for in and by each of the Currently Outstanding Bond Ordinances and, further, that such earnings were sufficient to permit the issuance of the proposed additional water revenue bonds for the Refunding as Parity Bonds as authorized by the provisions of this Ordinance.

G. The City Council does hereby determine that it is advisable and in the best interests of the City to borrow not to exceed \$2,600,000 at this time pursuant to the Act as hereinafter defined for the purpose of paying the costs of the Refunding and, in evidence of such borrowing, issue its water revenue bonds in the principal amount of not to exceed such amount.

NOW THEREFORE Be It Ordained by the City Council of the City of Evanston, Cook County, Illinois, in the exercise of its home rule powers, as follows:

*Section 1. Definitions.* Words and terms used in this Ordinance shall have the meanings given them, unless the context or use clearly indicates another or different meaning is intended. Words and terms defined in the singular may be used in the plural and vice-versa. Reference to any gender shall be deemed to include the other and also inanimate persons such as corporations, where applicable.

A. The following words and terms are as defined in the preambles hereto.

City

City Council

Currently Outstanding Bonds

Currently Outstanding Bond Ordinances

Prior Bonds

Refunding

B. The following words and terms are defined as set forth.

“*Act*” means the Illinois Municipal Code, as supplemented and amended, and the home rule powers of the City under Section 6 of Article VII of the Illinois Constitution of 1970; and in the event of conflict between the provisions of said code and home rule powers, the home rule powers shall be deemed to supersede the provisions of said code.

“*Bond Order*” means the Bond Order as authorized to be executed by the Designated Officials of the City as set forth in Section 17 of this Ordinance and by which the final terms of the Bonds will be established.

“*Bond Register*” means the books of the City kept by the Bond Registrar to evidence the registration and transfer of the Bonds.

“*Bond Registrar*” means American National Bank and Trust Company of Chicago, Chicago, Illinois, a bank having trust powers, or a successor thereto or a successor designated as and bond registrar hereunder.

“*Bond Year*” for a series of bonds means a twelve-month period beginning the day after principal of Outstanding Bonds of any series are annually to become due (such day of the year being the *initial date*) and ending on the day preceding the next initial date; *e.g.*, for bonds with principal due on January 1 of various years, the Bond Year would be January 2 of a given year through January 1 of the next year.

“*Bonds*” means the not to exceed \$2,600,000 Water Revenue Refunding Bonds, Series 2002, authorized to be issued by this Ordinance.

“*Book Entry Form*” means the form of the Bonds as fully registered and available in physical form only to the Depository.

“*Code*” means the Internal Revenue Code of 1986.

“*Defeasance Obligations*” means (i) noncallable direct full faith and credit obligations of the United States of America (“*Directs*”), (ii) certificates of participation in a trust comprised exclusively of Directs or cash, which certificates are noncallable and nonredeemable, (iii) obligations the complete and timely payment of which is fully guaranteed by the United States of America, which obligations are noncallable and nonredeemable.

“*Depository*” means The Depository Trust Company, a New York limited trust company, its successors, or a successor depository qualified to clear securities under applicable state and federal laws.

“*Designated Officials*” means the City Manager and Finance Director of the City, acting together.



*"Escrow Agent"* means American National Bank and Trust Company of Chicago, Chicago, Illinois, a bank having trust powers, or a successor thereto or a successor designated as Escrow Agent hereunder.

*"Escrow Agreement"* means the agreement by and between the City and the Escrow Agent as authorized in Section 18 hereof and set forth as *Exhibit B*.

*"Fiscal Year"* means a twelve-month period beginning March 1 of a given year and ending on the last day of February of the following year, or such other fiscal year as the City may select.

*"Maximum Annual Debt Service"* means an amount of money equal to the highest future principal and interest requirement of all Outstanding Bonds required to be deposited into the Bond and Interest Account continued and maintained by this Ordinance in any Fiscal Year, including and subsequent to the Fiscal Year in which the computation is made; *and, provided*, that any Outstanding Bonds required to be redeemed pursuant to mandatory redemption from said Bond and Interest Account shall be treated as falling due on the date required to be redeemed (except in the case of failure to make any such mandatory redemption) and not on the stated maturity date of such Outstanding Bonds.

*"Net Revenues"* means Revenues minus Operation and Maintenance Costs.

*"Operation and Maintenance Costs"* means all costs of operating, maintaining and routine repair of the System, including wages, salaries, costs of materials and supplies, taxes, power, fuel, insurance, purchase of water or sewage treatment services (including all payments by the City pursuant to long term contracts for such services to the extent provided in such contracts); but excluding debt service, depreciation, or any reserve requirements; and otherwise determined in accordance with generally accepted

accounting principles for municipal enterprise funds. Money in this account shall not be used to pay the costs of extraordinary or unusual repairs and maintenance, capital expenditures, or to provide for any transfer in lieu of corporate taxes, or general supervision or administrative charges by the City.

*"Ordinance"* means this Ordinance, numbered 84-O-02, and passed by the City Council on the 9th day of September 2002.

*"Outstanding Bonds"* means Currently Outstanding Bonds, Bonds and Parity Bonds which are outstanding and unpaid; *provided, however*, such term shall not include, for purposes of this Ordinance, any such Currently Outstanding Bonds which shall cease to be "Outstanding Bonds" under the applicable Currently Outstanding Bond Ordinance or any such Bonds or Parity Bonds (i) which have matured and for which moneys are on deposit with proper paying agents, or are otherwise properly available, sufficient to pay all principal thereof and interest thereon, or (ii) the provision for payment of which has been made by the City by the deposit in an irrevocable trust or escrow of funds, which may be invested in Defeasance Obligations, the principal of and interest on which will be sufficient, with any funds left uninvested, to pay at maturity or as called for redemption all the principal of and interest on such Currently Outstanding Bonds, Bonds or Parity Bonds.

*"Parity Bonds"* means a bond or bonds or any other obligation to be issued subsequent in time to the Bonds and which will share ratably and equally in the earnings of the System with the Currently Outstanding Bonds and the Outstanding Bonds.

*"Purchaser"* means Legg Mason Wood Walker, Incorporated, Chicago, Illinois, as the purchaser and underwriter of the Bonds.

*"Record Date"* means the 15th day of the month preceding any regular or other interest payment date occurring on the first day of any month and 15 days preceding any interest payment date occasioned by the redemption of Bonds on other than the first day of a month.

*"Revenues"* means all gross revenues or income from whatever source derived from the System, including (i) investment income; (ii) connection, permit and inspection fees and the like; (iii) penalties and delinquency charges; (iv) capital development, reimbursement, or recovery charges and the like; (v) annexation or pre-annexation charges insofar as designated by the City Council as paid for System connection or service; but excluding expressly (a) non-recurring income from the sale of property of the System; (b) governmental or other grants; (c) advances or grants made from the City; and as otherwise determined in accordance with generally accepted accounting principles for municipal enterprise funds.

*"System"* refers to all property, real, personal or otherwise owned or to be owned by the City or under the control of the City, and used for waterworks purposes, and any and all further extensions, improvements and additions to the System.

*"Tax-exempt"* means, with respect to the Bonds, the status of interest paid and received thereon as not includible in the gross income of the owners thereof under the Code for federal income tax purposes except to the extent that such interest will be taken into account in computing an adjustment used in determining the alternative minimum tax for certain corporations.

*"Water Fund"* means the *"Water Revenue Fund of the City of Evanston."*

C. Definitions also appear in the preambles hereto or in specific sections, as appear below. The table of contents preceding and headings in this Ordinance are for the convenience of the reader and are not a part of this Ordinance.

*Section 2. Incorporation of Preambles.* The City Council hereby finds that the recitals contained in the preambles to this Ordinance are true and correct and does incorporate them into this Ordinance by this reference.

*Section 3. Determination To Issue Bonds.* It is necessary and in the best interests of the City to issue the Bonds to provide for the Refunding to achieve a net debt service savings; and it is hereby found and determined that such issuance is for a proper public purpose, is in the public interest, and is authorized by the Act and the Currently Outstanding Bond Ordinances.

*Section 4. Determination of Useful Life.* The City Council does hereby determine the period of usefulness of the System to be not less than 40 years from the date of the Bonds.

*Section 5. Bond Details.* There shall be issued and sold the Bonds in the aggregate principal amount of not to exceed \$2,600,000. The Bonds shall each be designated "*Water Revenue Refunding Bond, Series 2002*"; be dated as of September 15, 2002, or such other date, not earlier than September 1, 2002, and not later than the date of issuance, as may be stated in the Bond Order (the "*Dated Date*"); and shall also bear the date of authentication thereof. The Bonds shall be fully registered and in Book Entry Form, shall be in denominations of \$5,000 or integral multiples thereof (but no single Bond shall represent principal maturing on more than one date), and shall be numbered consecutively in such fashion as shall be determined by the Bond Registrar. The Bonds shall mature serially on January 1 of the years from 2003 or 2004 and up to and including the year 2012 (subject to the right of prior redemption) as shall be set forth in the Bond Order, and in such principal amounts as shall be set forth in the Bond Order; *provided, however*, that the *sum* of the principal of and interest on the Bonds during any Bond

Year shall not exceed the *sum* of the principal of and interest on the Prior Bonds during such Bond Year by an amount in excess of \$5,000. Each Bond shall bear interest, at a rate not to exceed 6.00% per annum, from the later of its Dated Date as herein provided or from the most recent interest payment date to which interest has been paid or duly provided for, until the principal amount of such Bond is paid or duly provided for, such interest (computed upon the basis of a 360-day year of twelve 30-day months) being payable on January 1 and July 1 of each year, commencing on January 1, 2003, or July 1, 2003, as provided in the Bond Order. Interest on each Bond shall be paid by check or draft of the Bond Registrar, payable upon presentation thereof in lawful money of the United States of America, to the person in whose name such Bond is registered at the close of business on the applicable Record Date, and mailed to the registered owner of the Bond as shown in the Bond Registrar or at such other address furnished in writing by such Registered Owner, or in immediately available funds as may be agreed with the Depository for so long as the Depository is the registered owner as of a given Record Date. The principal of or redemption price due on the Bonds shall be payable in lawful money of the United States of America upon presentation thereof at the principal office of the Bond Registrar maintained for the purpose located in the City of Chicago, Illinois, or at successor Bond Registrar and locality.

*Section 6. Book Entry Provisions.* The Bonds shall be initially issued in the form of a separate single fully registered Bond for each of the maturities of the Bonds. Upon initial issuance, the ownership of each such Bond shall be registered in the Bond Register in the name of the Depository or a designee or nominee of the Depository (such depository or nominee being the "*Book Entry Owner*"). Except as otherwise expressly provided, all of the outstanding Bonds from time to time shall be registered in the Bond Register in the name of the Book Entry Owner (and accordingly in Book Entry Form as such term is used in this Ordinance). Any City officer,

as representative of the City, is hereby authorized, empowered, and directed to execute and deliver or utilize a previously executed and delivered Letter of Representations or Blanket Letter of Representations (either being the "*Letter of Representations*") substantially in the form common in the industry, or with such changes therein as the officer executing the Letter of Representations on behalf of the City shall approve, his or her execution thereof to constitute conclusive evidence of approval of such changes, as shall be necessary to effectuate Book Entry Form. Without limiting the generality of the authority given with respect to entering into such Letter of Representations, it may contain provisions relating to (a) payment procedures, (b) transfers of the Bonds or of beneficial interests therein, (c) redemption notices and procedures unique to the Depository, (d) additional notices or communications, and (e) amendment from time to time to conform with changing customs and practices with respect to securities industry transfer and payment practices. With respect to Bonds registered in the Bond Register in the name of the Book Entry Owner, none of the City, its Finance Director, or the Bond Registrar and Paying Agent shall have any responsibility or obligation to any broker-dealer, bank, or other financial institution for which the Depository holds Bonds from time to time as securities depository (each such broker-dealer, bank, or other financial institution being referred to herein as a "*Depository Participant*") or to any person on behalf of whom such a Depository Participant holds an interest in the Bonds. Without limiting the meaning of the immediately preceding sentence, the City, its Finance Director, and the Bond Registrar and Paying Agent shall have no responsibility or obligation with respect to (a) the accuracy of the records of the Depository, the Book Entry Owner, or any Depository Participant with respect to any ownership interest in the Bonds, (b) the delivery to any Depository Participant or any other person, other than a registered owner of a Bond as shown in the Bond Register or as otherwise expressly provided in the Letter of Representations, of any notice with respect to the Bonds, including any

notice of redemption, or (c) the payment to any Depository Participant or any other person, other than a registered owner of a Bond as shown in the Bond Register, of any amount with respect to principal of or interest on the Bonds. No person other than a registered owner of a Bond as shown in the Bond Register shall receive a Bond certificate with respect to any Bond. In the event that (a) the City determines that the Depository is incapable of discharging its responsibilities described herein and in the Letter of Representations, (b) the agreement among the City, the Bond Registrar, and the Depository evidenced by the Letter of Representations shall be terminated for any reason, or (c) the City determines that it is in the best interests of the City or of the beneficial owners of the Bonds either that they be able to obtain certificated Bonds or that another depository is preferable, the City shall notify the Depository and the Depository shall notify the Depository Participants of the availability of Bond certificates, and the Bonds shall no longer be restricted to being registered in the Bond Register in the name of the Book Entry Owner. Alternatively, at such time, the City may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a system accommodating Book Entry Form, as may be acceptable to the City, or such depository's agent or designee, but if the City does not select such alternate book entry system, then the Bonds shall be registered in whatever name or names registered owners of Bonds transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

*Section 7. Execution; Authentication.* The Bonds shall be executed on behalf of the City by the manual or duly authorized facsimile signature of its Mayor and attested by the manual or duly authorized facsimile signature of its City Clerk, as they may determine, and shall have impressed or imprinted thereon the corporate seal or facsimile thereof of the City. In case any such officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all

purposes, the same as if such officer had remained in office until delivery. All Bonds shall have thereon a certificate of authentication, substantially in the form hereinafter set forth, duly executed by the Bond Registrar as authenticating agent of the City and showing the date of authentication. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Bond Registrar by manual signature, and such certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

*Section 8. Redemption.* The Bonds may be subject to redemption prior to maturity at the option of the City, from any available funds, in whole or in part on any date as provided in the Bond Order, and if in part, in such order of maturities as shall be selected by the City, and if less than an entire maturity, in integral multiples of \$5,000, selected by lot by the Bond Registrar as hereinafter provided, at the redemption price (expressed as a percentage of the principal amount being redeemed) of not to exceed 103% of par plus accrued interest to the date fixed for redemption, as provided in the Bond Order. Notwithstanding any other provision of this Ordinance, the Bond Order may provide for any portion or all of the Bonds to be non-callable. In the event the Bonds shall be so subject to redemption, the Bonds subject to redemption shall be identified, notice given, and paid and redeemed pursuant to the procedures as follows.

A. *Notice to Registrar.* The City shall, at least 45 days prior to a redemption date (unless a shorter time period shall be satisfactory to the Bond Registrar), notify the



Bond Registrar of such redemption date and of the maturities and principal amounts of Bonds to be redeemed.

*B. Selection of Bonds within a Maturity.* For purposes of any redemption of less than all of the Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot by the Bond Registrar for the Bonds of such maturity by such method of lottery as the Bond Registrar shall deem fair and appropriate; *provided*, that such lottery shall provide for the selection for redemption of Bonds or portions thereof so that any \$5,000 Bond or \$5,000 portion of a Bond shall be as likely to be called for redemption as any other such \$5,000 Bond or \$5,000 portion. The Bond Registrar shall make such selection upon the earlier of the irrevocable receipt of funds sufficient to pay the redemption price of the Bonds to be redeemed or the time of the giving of official notice of redemption.

*C. Official Notice of Redemption.* The Bond Registrar shall promptly notify the City and the Paying Agent in writing of the Bonds or portions of Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed. Unless waived by the registered owner of Bonds to be redeemed, official notice of any such redemption shall be given by the Bond Registrar on behalf of the City by mailing the redemption notice by first class U.S. mail not less than 30 days and not more than 60 days prior to the date fixed for redemption to each registered owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar. All official notices of redemption shall include the name of the Bonds and at least the information as follows:

- (1) the redemption date;
- (2) the redemption price;
- (3) if less than all of the outstanding Bonds of a particular maturity are to be redeemed, the identification (and, in the case of partial redemption of Bonds within such maturity, the respective principal amounts) of the Bonds to be redeemed;
- (4) a statement that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after said date; and
- (5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Paying Agent maintained for that purpose.

*D. Conditional Redemption.* Unless moneys sufficient to pay the redemption price of the Bonds to be redeemed shall have been received by the Paying Agent prior to the giving of such notice of redemption, such notice may, at the option of the City, state that said redemption shall be conditional upon the receipt of such moneys by the Paying Agent on or prior to the date fixed for redemption. If such moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds, and the Bond Registrar shall give notice, in the same manner in which the notice of redemption was given, that such moneys were not so received and that such Bonds will not be redeemed.

*E. Bonds Shall Become Due.* Subject to the stated condition in paragraph D immediately preceding, official notice of redemption having been given as described, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due

and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the redemption price. The procedure for the payment of interest due as part of the redemption price shall be as herein provided for payment of interest otherwise due.

*F. Insufficiency in Notice Not Affecting Other Bonds; Failure to Receive Notice; Waiver.* Neither the failure to mail such redemption notice, nor any defect in any notice so mailed, to any particular registered owner of a Bond, shall affect the sufficiency of such notice with respect to other registered owners. Notice having been properly given, failure of a registered owner of a Bond to receive such notice shall not be deemed to invalidate, limit or delay the effect of the notice or redemption action described in the notice. Such notice may be waived in writing by a registered owner of a Bond entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by registered owners shall be filed with the Bond Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In lieu of the foregoing official notice, so long as the Bonds are held in Book Entry Form, notice may be given as provided in the Letter of Representations, and the giving of such notice shall constitute a waiver by the Depository and the Book Entry Owner, as registered owner, of the foregoing notice.

*G. New Bond in Amount Not Redeemed.* Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered owner a new Bond or Bonds of like tenor, of authorized denominations, of the same maturity, and bearing the same rate of interest in the amount of the unpaid principal.

*H. Effect of Nonpayment upon Redemption.* If any Bond or portion of Bond called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the redemption date at the rate borne by the Bond or portion of Bond so called for redemption.

*I. Bonds to be Cancelled; Payment to Identify Bonds.* All Bonds which have been redeemed shall be cancelled and destroyed by the Bond Registrar and shall not be reissued. Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

*J. Additional Notice.* The City agrees to provide such additional notice of redemption as it may deem advisable at such time as it determines to redeem Bonds, taking into account any requirements or guidance of the Securities and Exchange Commission, the Municipal Securities Rulemaking Board, the Government Accounting Standards Board, or any other federal or state agency having jurisdiction or authority in such matters; *provided, however,* that such additional notice shall be (1) advisory in nature, (2) solely in the discretion of the City, (3) not be a condition precedent of a valid redemption or a part of the Bond contract, and (4) any failure or defect in such notice shall not delay or invalidate the redemption of Bonds for which proper official notice shall have been given. Reference is also made to the provisions of the Continuing Disclosure Undertaking of the City with respect to the Bonds, which may contain other provisions relating to notice of redemption of Bonds.

*Section 9. Amendment.* The rights and obligations of the City and of the registered owners of Outstanding Bonds may from time to time be modified or amended by a supplemental

ordinance adopted by the City Council with the written consent of the holders and registered owners of not less than two-thirds of the principal amount of all Outstanding Bonds (excluding any of said bonds owned by or under the control of the City); *provided*, that no such modification or amendment shall extend or change the maturity of or date of redemption prior to maturity, or reduce the interest rate on, or permit the creation of a preference or priority of any Outstanding Bond or Outstanding Bonds over any other Outstanding Bond or Outstanding Bonds, or otherwise alter or impair the obligation of the City to pay the principal of, interest on or redemption price of any of the Outstanding Bonds at the time, place, rate, and in the currency provided therein, or alter or impair the obligations of the City with respect to the Tax-exempt status, the registration, transfer, exchange or notice of redemption of Bonds, without the express consent of the holders and registered owners of all the Outstanding Bonds affected; nor shall any such modification or amendment reduce the percentage of the holders and registered owners of Outstanding Bonds required for the written consent of such modification or amendment without the consent of the holders and owners of all of the Outstanding Bonds.

Ownership of Bonds for purposes of consent by the registered owners thereof shall be conclusively proved by the Bond Register. In obtaining or receiving the consents of registered owners, the City may establish reasonable rules of procedure including, without limitation, rules relating to (i) a record date to fix the registered owners who are entitled to vote, (ii) solicitation of proxies and (iii) a meeting of the registered owners for the taking of actions. The registered owners of Bonds may vote their Bond interest in fractional shares. In the event that Bonds are registered in the name or names of nominees or depositories, consent of such owners by proxy in accordance with the applicable customs of the securities industry or rules of the Securities Exchange Commission, Municipal Securities Rulemaking Board or other association or agency having jurisdiction shall be sufficient.

*Section 10. Registration of Bonds; Persons Treated as Owners.* The City shall cause books (the Bond Register) for the registration and for the transfer of the Bonds as provided in this Ordinance to be kept at the principal office of the Bond Registrar maintained for the purpose, which is hereby constituted and appointed the registrar of the City for the Bonds. The City is authorized to prepare, and the Bond Registrar or such other agent as the City may designate shall keep custody of, multiple Bond blanks executed by the City for use in the transfer and exchange of Bonds. Subject to the provisions of this Ordinance relating to the Bonds in Book Entry Form, any Bond may be transferred or exchanged, but only in the manner, subject to the limitations, and upon payment of the charges as set forth in this Ordinance. Upon surrender for transfer or exchange of any Bond at the principal office of the Bond Registrar maintained for the purpose, duly endorsed by or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Bond Registrar and duly executed by the registered owner or an attorney for such owner duly authorized in writing, the City shall execute and the Bond Registrar shall authenticate, date and deliver in the name of the transferee or transferees or, in the case of an exchange, the registered owner, a new fully registered Bond or Bonds of like tenor, of the same maturity, bearing the same interest rate, of authorized denominations, for a like aggregate principal amount. The Bond Registrar shall not be required to transfer or exchange any Bond during the period from the close of business on the Record Date for an interest payment to the opening of business on such interest payment date or during the period of 15 days preceding the giving of notice of redemption of Bonds or to transfer or exchange any Bond all or a portion of which has been called for redemption. The execution by the City of any fully registered Bond shall constitute full and due authorization of such Bond, and the Bond Registrar shall thereby be authorized to authenticate, date and deliver such Bond; *provided, however,* the principal amount of Bonds of each maturity authenticated by the Bond Registrar shall not at any one time exceed

the authorized principal amount of Bonds for such maturity less the amount of such Bonds which have been paid. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal or redemption price of or interest on any Bond shall be made only to or upon the order of the registered owner thereof or said owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. No service charge shall be made for any transfer or exchange of Bonds, but the City or the Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds except in the case of the issuance of a Bond or Bonds for the unredeemed portion of a Bond surrendered for redemption.

*Section 11. Form of Bond.* The Bonds shall be in substantially the form hereinafter set forth; *provided, however,* that if the text of the Bonds is to be printed in its entirety on the front side of the Bonds, then the second paragraph on the front side and the legend "See Reverse Side for Additional Provisions" shall be omitted and the text of paragraphs set forth for the reverse side shall be inserted immediately after the first paragraph.

[Form of Bond - Front Side]

REGISTERED  
NO. \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA

STATE OF ILLINOIS

THE COUNTY OF COOK

CITY OF EVANSTON

WATER REVENUE REFUNDING BOND, SERIES 2002

See Reverse Side for  
Additional Provisions

Interest  
Rate:

Maturity  
Date:

Dated  
Date: September 15, 2002

CUSIP \_\_\_\_\_

Registered Owner:

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS that the City of Evanston, Cook County, Illinois, a municipality, home rule unit and political subdivision of the State of Illinois (the "City") hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, solely from the Water Revenue Fund of the City as hereinafter provided and not otherwise, on the Maturity Date identified above (subject to right of prior redemption), the Principal Amount identified above and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on such Principal Amount from the later of the Dated Date of this Bond identified above or from the most recent interest payment date to which interest has been paid or duly provided for at the Interest Rate per annum identified above, such interest to be payable on July 1, 2003, and semiannually thereafter on January 1 and July 1 of each year until said Principal Amount is paid



or duly provided for. Payment of interest shall be made to the Registered Owner hereof as shown on the registration books of the City maintained by American National Bank and Trust Company of Chicago, in the City of Chicago, Illinois, as paying agent and bond registrar (the "*Bond Registrar*"), at the close of business on the applicable record date (the "*Record Date*"). The Record Date shall be the 15th day of the month preceding any regular interest payment date or a redemption on the first day of any month and the 15th day preceding any other interest payment date which may be occasioned by a redemption of Bonds on a day other than the first day of any month. Interest shall be paid by check or draft of the Bond Registrar, payable upon presentation in lawful money of the United States of America, mailed to the address of such Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Bond Registrar, or as otherwise agreed by the City and the Bond Registrar and a qualified securities clearing corporation as depository, or nominee, for so long as this Bond shall be in Book Entry Form as provided for same.

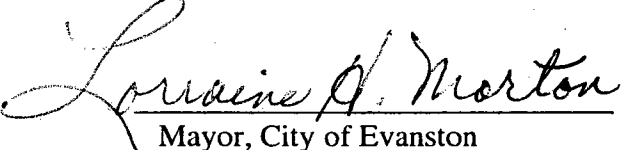
Reference is hereby made to the further provisions of this Bond set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as if set forth at this place.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the issuance of this Bond have been done and have happened and have been performed in regular and due form of law and that provision has been made for depositing into the Water Fund the entire Revenues received from the operation of the System to be applied in the manner as set forth in the Ordinance; and the City hereby covenants and agrees that it will fix and maintain rates for the use and service of the System and collect and account for the Revenues derived therefrom sufficient at all times to pay Operation and Maintenance Costs, to promptly pay principal of and interest on all bonds issued by the City which are payable solely

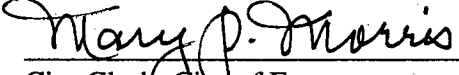
from the Revenues of the System, and to provide an adequate depreciation fund, and to comply with all the covenants of and to maintain the accounts created by the Ordinance. The City further covenants that in each Fiscal Year the Net Revenues shall be adequate to produce an amount sufficient to provide not less than 125% of the principal and interest requirements of all Outstanding Bonds for such Fiscal Year.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Bond Registrar.

IN WITNESS WHEREOF the City of Evanston, Cook County, Illinois, by its City Council, has caused this Bond to be executed with the manual or duly authorized facsimile signature of its Mayor and attested by the manual or duly authorized facsimile signature of its City Clerk and its corporate seal or a facsimile thereof to be impressed or reproduced hereon, all as appearing hereon and as of the Dated Date identified above.

  
\_\_\_\_\_  
Mayor, City of Evanston  
Cook County, Illinois

ATTEST:

  
\_\_\_\_\_  
City Clerk, City of Evanston  
Cook County, Illinois

[SEAL]

Bond Registrar and Paying Agent:

American National Bank and Trust  
Company of Chicago  
Chicago, Illinois

[Form of Certificate of Authentication]

**CERTIFICATE OF AUTHENTICATION**

Date of Authentication: \_\_\_\_\_, \_\_\_\_\_

This Bond is one of the Bonds described in the within-mentioned Ordinance and is one of the Water Revenue Refunding Bonds, Series 2002, of the City of Evanston, Cook County, Illinois.

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American National Bank and Trust  
Company of Chicago, as Bond  
Registrar

[Form of Bond - Reverse Side]

**CITY OF EVANSTON, COOK COUNTY, ILLINOIS  
WATER REVENUE REFUNDING BOND, SERIES 2002**

This bond and the bonds of the series of which it forms a part ("*Bond*" and "*Bonds*" respectively) are of an authorized issue of \_\_\_\_\_ Million \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_) of like Dated Date and tenor except as to maturity, privilege of redemption and rate of interest. The Bonds are payable solely from the Revenues derived from the operation of the waterworks system of the City (the "*System*") after payment of Operation and Maintenance Costs, and not otherwise, and are issued under authority of the provisions of Division 129 of Article 11 of the Illinois Municipal Code, as supplemented and amended, and as further supplemented and, where necessary, superseded, by the powers of the City as a home rule unit under the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 (such code and powers being the "*Act*"), for the purpose of improving the System and providing for a certain refunding of water revenue bonds previously issued and payable from revenues of the System, all as more fully described in Ordinance Number 84-O-02, passed by the City Council

of the City on the \_\_\_\_ day of September 2002 (the "*Ordinance*"), to which reference is hereby expressly made for further definitions and terms and to all the provisions of which the holder and registered owner by the acceptance of this Bond assents. THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

This Bond is subject to provisions relating to amendment; registration, transfer and exchange; redemption and notice and procedure for redemption; and such other terms and provisions relating to security and payment as are set forth in the Ordinance.

Under the Act and the Ordinance, the Revenues from the operation of the System shall be deposited into the Water Fund, which shall be used only and is hereby pledged for paying Operation and Maintenance Costs, paying the principal of and interest on all bonds of the City that are payable by their terms only from the Revenues of the System, providing an adequate depreciation fund, and in making all payments required to maintain the accounts established under the terms of the Ordinance. Parity Bonds may be issued pursuant to the terms of the Ordinance. Outstanding Bonds issued and authenticated pursuant to the Ordinance are coequal as to the lien on the Revenues of the System for their payment and share ratably, without any preference, priority, or distinction, the one over the other, as to the source or method of payment and security of the Outstanding Bonds.

The City and the Bond Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof, premium, if any, hereon and interest due hereon and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

[Form of Assignment]

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

[Empty rectangular box for identifying number]

[Here insert identifying number such as TID, SSN, or other]

\_\_\_\_\_

(Name and Address of Assignee)

the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_

\_\_\_\_\_

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

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

*Section 12. Bonds Limited Obligations.* The Bonds shall be payable solely from the Net Revenues as derived from the operation of the System, and shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation.

*Section 13. Fiscal Year and Deposit of Revenues.* Upon the issuance of any of the Bonds, the entire System, for the purpose of this Ordinance and while any of the Bonds remain Outstanding Bonds, shall be operated on a Fiscal Year basis. All of the Revenues shall be set aside as collected and be deposited into an account separate and apart from all other City accounts and heretofore designated, accounted for and defined herein as the "Water Fund." The

Water Fund shall constitute a trust fund for the sole purpose of carrying out the covenants, terms and conditions of this Ordinance.

*Section 14. Accounts and Flow of Funds.* The functions and obligations of the Water Fund shall be continued and maintained by the maintenance in the Water Fund of separate special accounts (the "Accounts") designated severally the "*Operation and Maintenance Account*"; "*Bond and Interest Account*"; "*Bond Reserve Account*"; "*Depreciation, Improvement and Extension Account*"; and "*Surplus Revenue Account.*" There shall be set aside on a given day of each month as selected by the chief financial officer of the City, without any further official action or direction, all moneys held in the Water Fund of the City, in accordance with the following priorities:

A. *Operation and Maintenance Account.* There shall first be credited to the Operation and Maintenance Account an amount sufficient to pay the reasonable Operation and Maintenance Costs of the System for the current monthly period. In determining the amount to be so credited, costs which are payable on a basis less frequently than monthly shall be accrued. Money in the Operation and Maintenance Account shall be used to pay Operation and Maintenance Costs. Money in this account shall not be used to pay the costs of extraordinary or unusual repairs and maintenance, capital expenditures, or to provide for any transfer in lieu of corporate taxes, or general supervision or administrative charges by the City.

B. *Bond and Interest Account.* There next shall be credited to the Bond and Interest Account and held, in cash and investments, a fractional amount of the interest becoming due on the next succeeding interest payment date on Outstanding Bonds and also a fractional amount of the principal becoming due or subject to mandatory redemption on the next succeeding principal maturity or mandatory redemption date of

Outstanding Bonds until there shall have been accumulated and held, in cash and investments, in the Bond and Interest Account in or before the month preceding such maturity date of interest or maturity or mandatory redemption date of principal, an amount sufficient to pay such principal or interest, or both. In computing the fractional amount to be set aside each month in the Bond and Interest Account, the fraction shall be so computed that a sufficient amount will be set aside in said Account and will be available for the prompt payment of such principal of and interest on all Outstanding Bonds and shall be not less than 1/6th of the interest becoming due on the next succeeding interest payment date and not less than 1/12th of the principal becoming due or subject to mandatory redemption on the next succeeding principal payment or mandatory redemption date on all Outstanding Bonds until there is sufficient money in said Account to pay such principal or interest, or both. In the event different series of Outstanding Bonds have different Bond Years, the requirement of depositing 1/6th of interest and 1/12th of principal as stated above shall be applied separately with respect to each such series. Credits to the Bond and Interest Account may be suspended in any Fiscal Year at such time as there shall be a sufficient sum, held in cash and investments, in said Account to meet principal and interest requirements in said Account for the balance of such Fiscal Year, but such credits shall again be resumed at the beginning of the next Fiscal Year. All moneys in said Account ("*Bond Moneys*") shall be used only for the purpose of paying interest on and principal of Outstanding Bonds as follows:

- (1) Bond Moneys shall be applied to the payment of interest when due and principal or redemption price when due at maturity or as redeemed pursuant to mandatory redemption from the Bond and Interest Account, or

(2) On or before 45 days preceding any mandatory redemption date, Bond Moneys up to the amount of the redemption requirement on such mandatory redemption date plus interest due on related Term Bonds on such date may be applied (a) to the purchase of Term Bonds of the maturity for which such mandatory redemption requirement was established at prices (including commissions and charges, if any) not exceeding par and accrued interest to such mandatory redemption date or (2) to the redemption of such Bonds, without premium, pursuant to optional redemption provisions applicable thereto. Upon the purchase or redemption of Term Bonds of any maturity pursuant to this paragraph (2), an amount equal to the principal amount of such Bonds or applicable portion thereof so purchased or redeemed shall be deducted from such mandatory redemption requirement thereafter to become due on such Bonds and any excess over the amount of such requirement shall be deducted from the future requirement for such Bonds as the City shall determine.

C. *Bond Reserve Account.* At the time of the delivery of any Bonds, there shall be on deposit to the credit of the Bond Reserve Account an amount equal to Maximum Annual Debt Service. The Bond Reserve Account shall be maintained in said amount. In the event of a withdrawal from the Bond Reserve Account resulting in the amount on deposit to the credit thereof being less than the required amount, the City covenants to replenish the Bond Reserve Account to the required amount at the rate of \$25,000 per month. In the event Parity Bonds are issued, the City will accumulate to the credit of the Bond Reserve Account the amount of Maximum Annual Debt Service at the rate of the greater of (1) \$25,000 per month or (2) such amount per month such that in not less than 60 months after delivery and with credits each month in the amount of not less than



1/60th of the difference between Maximum Annual Debt Service on all Outstanding Bonds and the amount on deposit to the credit of this Account at the time of such delivery. Amounts to the credit of the Bond Reserve Account shall be used to pay principal of or interest on the Outstanding Bonds at any time when there are insufficient funds available in the Bond and Interest Account to pay the same and shall be transferred to said Account for said purpose.

D. *Depreciation, Improvement and Extension Account.* There next shall be credited to the Depreciation, Improvement and Extension Account the sum of \$5,100 per month, or such greater amount as may be designated from time to time by the City Council. The moneys in the Depreciation, Improvement and Extension Account shall be used (1) to provide an adequate allowance for depreciation as shall be determined from time to time by the City Council in its sole discretion, (2) to pay the cost of extraordinary maintenance, necessary repairs and replacements, or contingencies, or for improvements, repairs or replacements to the System required by any agency of the State of Illinois or the United States Government, in order that the System may at all times be able to render efficient service, (3) if not so needed, for improvements or extensions of the System, and (4) at any time required, for the payment of principal of or interest on any Outstanding Bonds when there are no other funds available for that purpose in order to prevent a default and shall be transferred to the Bond and Interest Account for such purpose. At any time as moneys on deposit to the credit of the Depreciation, Improvement and Extension Account exceed the sum of \$400,000, amounts in excess thereof may be transferred to any other account within the Water Fund of the City at the discretion of the City Council.

All proceeds received from the disposition of any property of the System shall be credited to Depreciation, Improvement and Extension Account.

E. *Surplus Revenue Account.* All revenues remaining in the Water Fund, after all credits have been made to the respective accounts hereinabove provided for, shall be credited to the Surplus Revenue Account, and the amount so credited shall be held and used for the following purposes:

1. For making up any deficiency necessary to credit accounts enumerated in paragraphs (A) to (D), inclusive, with the required amounts therefor for each month as hereinabove provided.

2. For paying principal of and interest on any junior lien water revenue bonds (subordinate issue).

3. For transfer to any other account of the fund, or at the discretion of the City Council for any lawful corporate purpose, including, but not limited to, any extraordinary costs of operation and maintenance of the System not otherwise provided for, or any authorized payments in lieu of taxes, general supervision and administrative charges by the City.

4. For any lawful corporate purpose, in the discretion of the City Council.

*Section 15. General Covenants.* The City covenants and agrees with the holders and registered owners of the Outstanding Bonds as follows:

A. *Investments.* Until such time as the Bonds, together with Parity Bonds to be issued in the future, shall constitute not less than 2/3 of all Outstanding Bonds, the provisions for consent to amendment under the Currently Outstanding Bond Ordinances shall be deemed to have been met and the money to the credit of the Water Fund prior to the monthly accounting and to the credit of the Operation and Maintenance Account may be invested pursuant to any authorization granted to municipal corporations by Illinois

statute or court decision.; and the money to the credit of the Bond and Interest Account, the Bond Reserve Account, the Depreciation, Improvement and Extension Account, and the Surplus Revenue Account may be invested from time to time in (a) direct full faith and credit obligations of the United States of America, whether bonds, notes, bills or otherwise called (collectively referred to herein as "*Directs*"); (b) certificates of participation in a trust or trust receipts from a trust comprised solely of *Directs*; (c) shares in a money market or mutual fund comprised more than 95% at all times of *Directs* or agreements to repurchase such obligations; (d) obligations unconditionally guaranteed as to both principal and interest by the United States Government, (e) obligations which are tax-exempt under Section 103(a) of the Code but are not private activity bonds under Section 141(a) of the Code, if rated at the time of purchase "AA" or better by a nationally recognized ratings service for municipal bonds; (f) the Public Treasurers' Investment Pool of the State of Illinois; (g) certificates of deposit or time deposits of any bank, as defined by the Illinois Banking Act, *provided* such bank is insured by the Federal Deposit Insurance Corporation or a successor corporation to the Federal Deposit Insurance Corporation, and *provided further* that the principal of such deposits in excess of the insured amount is secured by a pledge of obligations as described in clauses (a), (b) or (c) above in the full principal amount of such excess. Such investments must also be legal and proper investments for the City. Such investments may be sold from time to time as funds may be needed for the purpose for which the Accounts have been created. To the extent moneys in the Accounts are held uninvested and on deposit in demand accounts, such amounts shall be added to the amount invested pursuant to clause (g) above, and the sum so derived subject to the limitations as set forth therein.

At such time as the Bonds, together with Parity Bonds to be issued in the future, shall constitute not less than  $2/3$  of all Outstanding Bonds, the provisions for consent to amendment under the Currently Outstanding Bond Ordinance shall be deemed to have been met and the moneys to the credit of the Water Fund and all of the Accounts of the Water Fund may be invested pursuant to any authorization granted to municipal corporations by Illinois statute or court decision and in accordance with the City's then current investment policy.

Investments in the Accounts shall mature or be subject to redemption at the option of the holder thereof prior to the time when needed. After making provision for the payment of any amount of excess arbitrage profits, as provided in the Code, attributable to investment earnings or profits to the Rebate Fund for the appropriate issue or issues of Outstanding Bonds, all earnings or profit, on any funds so invested in the Bond and Interest Account shall be retained therein. After making provision for the payment of any amount of excess arbitrage profits, as provided in the Code, attributable to investment earnings or profits to the Rebate Fund for the appropriate issue or issues of Outstanding Bonds, all earnings or profit, on any funds so invested in the Bond Reserve Account shall be credited upon receipt to the Bond and Interest Account. The City may take credit for such earnings or profits (not transferred to the Rebate Fund) in any monthly accounting for the Bond and Interest Account in any Fiscal Year. All interest or profit earned on any funds so invested in other Accounts shall be credited to the Water Fund. Moneys in any of said accounts shall be invested by the City, if necessary, in investments restricted as to yield, which investments may be in United States Treasury Obligations—State and Local Government Series, if available, and to such end the Finance Director shall refer to any investment restrictions covenanted by the City or any officer thereof as part of the

transcript of proceedings for the issuance of the Bonds, and to appropriate opinions of counsel.

*B. Accounts Excesses.* Any amounts to the credit of the Accounts in excess of the then current requirements therefor may be transferred by the City Council to such other Account or Accounts of the Water Fund as they may in their sole discretion designate.

*C. Maintain System.* The City will maintain the System in good repair and working order, will operate the same efficiently and faithfully, and will punctually perform all duties with respect thereto required by the Constitution and laws of the State of Illinois and the United States.

*D. Rates.* The City will establish and maintain at all times reasonable fees, charges and rates for all users of the service of the System, and provide for the collection thereof and for the segregation and application of the Revenues in the manner provided by this Ordinance, and sufficient at all times to pay the reasonable Operation and Maintenance Costs, to pay the principal of and interest on all revenue bonds of the City which by their terms are payable from the Revenues, and to provide for the creation and maintenance of the respective accounts as provided in Section 14 of this Ordinance, and from time to time make all needful and proper repairs, replacements, additions and betterments thereto, so that the System may at all times be operated properly and advantageously, and when any equipment or facility shall have been worn out, destroyed or otherwise is insufficient for proper use, it shall be promptly replaced or repaired so that the value and efficiency of the System shall be at all times fully maintained. The City covenants that the City will establish and maintain fees, charges and rates that will be adequate to produce Net Revenues in an amount not less than 125% of the principal and

interest requirements for all Outstanding Bonds for the then current Fiscal Year. In the event that the Bond Year for any series of Outstanding Bonds does not end on the first day of the Fiscal Year, then, for purposes of calculation hereunder, the requirement for any Fiscal Year shall be deemed to be the greater of the requirement of the two Bond Years occurring in part in such Fiscal Year.

Charges for service rendered the City shall be made against said City, and payment for the same from the corporate funds shall be made monthly into the Water Fund, as Revenues, in the same manner as other Revenues are required to be deposited. No free service of the System shall be furnished to any person, firm, organization or corporation, public or private, and to the extent permitted by law it is expressly herein covenanted and agreed that the City will not grant a franchise for the operation of any other or competing waterworks system within the City, and that the Bonds herein authorized to be executed shall constitute legally enforceable liens on the Revenues.

*E. Rules.* The City will establish such rules and regulations for the control and operation of the System necessary for the efficient and economical operation thereof, and rates and charges shall be fixed and revised from time to time as may be necessary to produce funds sufficient for all purposes herein provided.

*F. Accounting.* The City will make and keep proper books and accounts (separate and apart from all other records and accounts of said City), in which complete entries shall be made of all transactions relating to the System, and hereby covenants that within 210 days following the close of each Fiscal Year it will cause the books and accounts of the System to be audited annually by independent certified public accountants showing the receipts and disbursements on account of the System. Each such audit, in addition to whatever matters may be thought proper by the accountants to

be included therein, shall, without limiting the generality of the foregoing, include the following:

1. A statement in detail of the income and expenditures of the system for such Fiscal Year, and including credits to the various accounts provided herein.
2. A balance sheet as of the end of such Fiscal Year.
3. The accountant's comment regarding the manner in which the City has carried out the accounting requirements of this ordinance, and the accountant's recommendations for any changes or improvements in the operation of the System.
4. A list of all insurance policies in force at the end of the Fiscal Year, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer, and the expiration date of the policy.
5. The number of metered water customers and the number of unmetered water customers at the end of the year, and the quantity of water pumped and billed.

All expenses incurred in the making of the audit required by this section shall be regarded and paid as an Operation and Maintenance Cost. In addition, statements of revenues and expenditures of the System shall be furnished to the City Council at least quarterly during each Fiscal Year.

*G. No Sale, etc.* The City will not sell, lease, loan, mortgage, or in any manner dispose of or encumber the System (subject to the reserved right of the City to issue additional obligations as provided in Section 16 of this Ordinance); *provided, however*, that this covenant shall not prevent said City from disposing of any property which in the judgment of the City Council is no longer useful or profitable in the operation of the

System. The proceeds from the sale of any property shall be credited to the Depreciation, Improvement and Extension Account.

*H. Contract; Enforcement.* The provisions of this Ordinance shall constitute a contract between the City and the holders and registered owners of the Bonds, and after the issuance of the Bonds, no changes, additions or alterations of any kind shall be made hereto, except as hereinabove provided for amendments hereto. Any holder or registered owner of a Bond or Bonds issued hereunder may proceed by civil action, mandamus, or other proceeding to enforce or compel performance by the officials of said City of all duties required by law, the Act and this Ordinance, including the making and collecting of sufficient charges and rates for the water services supplied by the System and the application of the income and revenue therefrom.

*I. Insurance.* The City will carry insurance on the System of the kinds and in the amounts which are usually carried by private parties operating similar properties, covering such risks as shall be recommended by a competent insurance consultant employed by the City for the purpose of making such recommendations. Alternatively the City shall self-insure or provide insurance by means of a self-insurance pool with other units of local government, *provided* that either private insurance is not available at a reasonable cost or the City or the pool shall have assets or shall have created a self-insurance reserve fund in an amount as shall be determined by a competent insurance consultant to be not unreasonable in view of the risks insured. All moneys received for property loss under such insurance policies or from the self-insurance reserve fund or pool shall be deposited to the credit of the Depreciation, Improvement and Extension Account and used in making good the loss or damage in respect of which they were paid, either by repairing the property damaged or making replacement of the property



destroyed, and provision for making good such loss or damage shall be made within 270 days from the date of the loss. The proceeds derived from any and all policies for workers' compensation or public liability or from the self-insurance reserve fund or pool for such purposes shall be paid into the Operation and Maintenance Account and used in paying the claims on account of which they were received or shall be used to reimburse any account from which the claim was previously paid. The payment of premiums, regular payments to a pool and regular accumulations for a reserve fund required under the provisions of this covenant shall be considered an Operation and Maintenance Cost.

*Section 16. Parity Bonds.* It is hereby covenanted and agreed that, while any of the Bonds issued hereunder are Outstanding Bonds, the City will not issue any other bonds or obligations of any kind or nature having a pledge on the Revenues which is prior to the lien on the Revenues of the Bonds. No obligations or bonds of any kind shall be issued which are payable from the Revenues except upon compliance with one of the options (A) through (D) set out below.

A. Parity Bonds may be issued for the purpose of paying the cost of repairs, replacements, renewals, improvements and extensions to the System or for refunding Outstanding Bonds upon compliance with the following conditions:

1. The amounts required to be credited monthly to the respective accounts described in subsections (A) through (D), inclusive, of Section 14 of this Ordinance must have been credited in full up to the date of the authorization of such Parity Bonds by the City Council.

2. The Net Revenues of the System as shown by the most recently available audit of an independent certified public accountant, which audit shall be for either the most recent Fiscal Year or the preceding Fiscal Year if (a) the most

recent Fiscal Year has ended within 210 days of the date of issuance of the proposed Parity Bonds and (b) the audit for the most recent Fiscal Year is not yet available, or the Adjusted Net Revenues of the System for such year (as defined herein) must equal not less than 130% of Maximum Annual Debt Service for all Outstanding Bonds as computed immediately after the issuance of the proposed Parity Bonds; but only for those Fiscal Years in which the Outstanding Bonds immediately prior to any such issuance will continue to be Outstanding Bonds as provided herein.

3. In the event there shall have been a change in the rates of the System from the rates in effect for the immediately preceding Fiscal Year, which change is in effect at the time of the issuance of any such Parity Bonds, then the Net Revenues as provided in this subparagraph (2) shall be adjusted to reflect the Net Revenues of the System for the immediately preceding Fiscal Year as they would have been had said then existing rates been in effect during all of said year (the "*Adjusted Net Revenues*"). Any such Adjusted Net Revenues shall be evidenced by the certificate of a certified public accountant or an independent consulting engineer employed for that purpose, which certificate shall be approved by the City Council prior to the issuance of the Parity Bonds and filed with the City Clerk upon its approval.

B. Parity Bonds may be issued to refund Outstanding Bonds if, upon the issuance of such Parity Bonds, the amount of the principal and interest requirement for Outstanding Bonds for each Fiscal Year for which Outstanding Bonds immediately prior to such issuance will continue to be Outstanding Bonds as provided herein after the

issuance of such Parity Bonds will not be greater than such requirement for each such Fiscal Year calculated immediately prior to the issuance of such Parity Bonds.

C. Parity Bonds may be issued to refund Outstanding Bonds in order to avoid or remedy default in the payment of principal of or interest on such Outstanding Bonds; *provided* they are issued to avoid such default not earlier than three months prior to the due date of such principal or interest.

D. Bonds or other obligations may be issued payable from the Revenues subordinate to the Outstanding Bonds. Such subordinate bonds shall be payable from or out of the Surplus Revenue Account or may be made payable from such other fund or account as may be provided therefor, upon the transfer of moneys from the Surplus Revenue Account to such other fund or account.

E. Parity Bonds may be issued payable on such payment dates as the City shall determine. In the event that the Bond Year for any series of Outstanding Bonds does not end on the first day of the Fiscal Year, then, for purposes of calculation hereunder, the requirement for any Fiscal Year shall be deemed to be the greater of the requirement of the two Bond Years occurring in part in such Fiscal Year.

*Section 17. Sale of Bonds; Bond Order.* The Designated Officials are hereby authorized to proceed, without any further authorization or direction whatsoever from the City Council, to sell and deliver the Bonds upon the terms as prescribed in this Section, pursuant to the Bond Order. The Bonds shall be sold and delivered to the Purchaser at the price of not less than 97% of the par value of the principal amount thereof, plus accrued interest to the date of delivery. Such sale shall be made upon the advice (in the form of a written certificate or report) of the Purchaser that the net interest cost rate on the Bonds, calculated in accordance with customary market practice, does not exceed 6.00% and that the terms of the Bonds are fair and

reasonable in view of current conditions in the bond markets. The Purchaser's certificate or report (as hereinabove described) must also set forth that the Refunding will provide a present value debt service savings to the City resulting from the issuance of Bonds in not less than 2% of the par value of the Prior Bonds. Nothing in this Section shall require the Designated Officials to sell any of the Bonds if in their judgment, aided by the Purchaser, the conditions in the bond markets shall have deteriorated from the time of adoption thereof or the sale of the Bonds shall for some other reason not be deemed advisable, but the Designated Officials shall have the authority to sell the Bonds in any event so long as the limitations set forth in this Ordinance and the conditions of this Section shall have been met. Upon the sale of the Bonds, the Designated Officials and any other officers of the City as shall be appropriate, shall be and are hereby authorized and directed to approve or execute, or both, such documents of sale of the Bonds as may be necessary, including, without limitation, the Bond Order, Preliminary Official Statement, Official Statement, Bond Purchase Contract (as hereinafter defined), and closing documents. The City Council, by its Aldermen voting hereon, finds and determines that no person holding any office of the City either by election or appointment, is in any manner financially interested either directly, in his or her own name, or indirectly in the name of any other person, association, trust or corporation in said Contract with the Purchaser for the purchase of the Bonds. The distribution of the Preliminary Official Statement relating to the Bonds is hereby in all respects authorized and approved, and the proposed use by the Purchaser of an Official Statement (in substantially the form of the Preliminary Official Statement but with appropriate variations to reflect the final terms of the Bonds) is hereby approved. A bond purchase contract for the sale of the Bonds to the Purchasers (the "*Bond Purchase Contract*"), substantially in the form attached hereto as *Exhibit A*, is hereby in all respects authorized and approved. Upon the sale of the Bonds, the Designated Officials shall prepare the Bond Order, to be substantially in the form of

*Exhibit B* attached hereto, which shall include the pertinent details of sale as provided herein, and such shall be entered into the records of the City and made available to all City Council members at the next public meeting thereof. The authority granted in this Ordinance to the Designated Officers to sell Bonds as provided herein shall expire on December 31, 2002.

*Section 18. Application of Proceeds; Call of the Prior Bonds.* The proceeds derived from the sale of the Bonds shall be used as follows:

A. Accrued interest shall be credited to the Bond and Interest Account.

B. The amount necessary from the proceeds of the Bonds shall be used to pay costs of issuance of the Bonds and shall be deposited into a separate fund to be designated the "*Expense Fund*." Any disbursements from such fund shall be made from time to time as necessary. Any excess in said fund shall be deposited into the Bond and Interest Account within six months from the date of issuance of the Bonds.

C. The amount necessary from the proceeds of the Bonds, together with such money in the Bond and Interest Account allocable to the Prior Bonds as may be advisable for the purpose, shall be used to provide for the Refunding, and the payment of such expenses as may be designated, pursuant to the provisions of an Escrow Agreement with the Escrow Agent as is designated, all in accordance with the provisions of the Escrow Agreement, substantially in the form attached hereto as *Exhibit B* to this Ordinance, made a part hereof by this reference, and hereby approved; the officers appearing signatory to such Escrow Agreement are hereby authorized and directed to execute same, their execution to constitute conclusive proof of action in accordance with this Ordinance, and approval of all completions or revisions necessary or appropriate to effect the Refunding. The Prior Bonds shall be called for redemption as provided in the Escrow Agreement.

D. The remaining proceeds of the Bonds shall be deposited into the Bond and Interest Account and be applied to the payment of the first interest due upon the Bonds.

*Section 19. Continuing Disclosure.* The Mayor or the City Clerk of the City is hereby authorized, empowered and directed to execute and deliver the Continuing Disclosure Undertaking (the "*Continuing Disclosure Undertaking*") substantially in the form attached hereto as *Exhibit C* to this Ordinance, made a part hereof by this reference, and hereby approved; the officer signatory to such Continuing Disclosure Undertaking being hereby authorized and directed to execute same, his or her execution to constitute conclusive proof of action in accordance with this Ordinance, and approval of all completions or revisions necessary or appropriate to such undertaking. When the Continuing Disclosure Undertaking is executed and delivered on behalf of the City as herein provided, the Continuing Disclosure Undertaking will be binding upon the City and the officers, employees and agents of the City, and the officers, employees and agents of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Continuing Disclosure Undertaking as executed. Notwithstanding any other provision of this Ordinance, the sole remedies for failure to comply with the Continuing Disclosure Undertaking shall be the ability of the beneficial owner of any Bond to seek mandamus or specific performance by court order, to cause the City to comply with its obligations under the Continuing Disclosure Undertaking.

*Section 20. Tax-exempt Bonds.* The purpose of this Section is to set forth various facts regarding the Bonds and to establish the expectations of the City as to future events regarding the Bonds and the use of Bond proceeds. The certifications, covenants, and representations contained herein are made on behalf of the City for the benefit of the owners from time to time of the Bonds. The City hereby covenants that it will not take any action, omit to take any action,

or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Bonds) if taking, permitting, or omitting to take such action would cause any of the Bonds to be an arbitrage bond or a private activity bond within the meaning of the Code or would otherwise cause the interest on the Bonds to be included in the gross income of the recipients thereof for federal income tax purposes.

*Section 20.101. Definitions.* In addition to such other words and terms used and defined in this Ordinance, the following words and terms used in this Section shall have the following meanings.

*"Affiliated Person"* means any Person that (a) at any time during the six months prior to the execution and delivery of the Bonds, (i) has more than five percent of the voting power of the governing body of the City in the aggregate vested in its directors, officers, owners, and employees or, (ii) has more than five percent of the voting power of its governing body in the aggregate vested in directors, officers, board members or employees of the City or (b) during the one-year period beginning six months prior to the execution and delivery of the Bonds, (i) the composition of the governing body of which is modified or established to reflect (directly or indirectly) representation of the interests of the City (or for which an agreement, understanding, or arrangement relating to such a modification or establishment during that one-year period) or (ii) the composition of the governing body of the City is modified or established to reflect (directly or indirectly) representation of the interests of such Person (or for which an agreement, understanding, or arrangement relating to such a modification or establishment during that one-year period).

*"Bond Counsel"* means Chapman and Cutler or any other nationally recognized firm of attorneys experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds.

*"Bond Reserve Account"* means the Bond Reserve Account as defined in this Ordinance.

*"Bond and Interest Account"* means the Bond and Interest Account as defined in this Ordinance.

*"Capital Expenditures"* means costs of a type that would be properly chargeable to a capital account under the Code (or would be so chargeable with a proper election) under federal income tax principles if the City were treated as a corporation subject to federal income taxation, taking into account the definition of Placed-in-Service set forth herein.

"Closing" means the first date on which the City shall receive the purchase price for the Bonds.

"Code" means the Internal Revenue Code of 1986.

"Commingled Fund" means any fund or account containing both Gross Proceeds and an amount in excess of \$25,000 that are not Gross Proceeds if the amounts in the fund or account are invested and accounted for, collectively, without regard to the source of funds deposited in the fund or account; *provided, however*, that an open-ended regulated investment company under Section 851 of the Code is not a Commingled Fund.

"Control" means the possession, directly or indirectly through others, of either of the following discretionary and non-ministerial rights or powers over another entity:

(a) to approve and to remove without cause a controlling portion of the governing body of a Controlled Entity; or

(b) to require the use of funds or assets of a Controlled Entity for any purpose.

"Controlled Entity" means any entity or one of a group of entities that is subject to Control by a Controlling Entity or group of Controlling Entities.

"Controlling Entity" means any entity or one of a group of entities directly or indirectly having Control of any entities or group of entities.

"Controlled Group" means a group of entities directly or indirectly subject to Control by the same entity or group of entities, including the entity that has the Control of the other entities.

"Costs of Issuance" means the costs of issuing the Bonds, including underwriter's discount and legal fees, but not including any fees, as may be applicable, for the Credit Facility described in Section 20.507 hereof.

"Credit Facility" means the Municipal Bond Insurance Policy, if any, issued by a Credit Facility Provider.

"Credit Facility Provider" means a municipal bond insurance issuing company, as may be applicable, providing a Credit Facility.

"De minimis Amount of Original Issue Discount or Premium" means with respect to an obligation (a) any original issue discount or premium that does not exceed two percent of the stated redemption price at maturity of the Bonds plus (b) any original issue premium that is attributable exclusively to reasonable underwriter's compensation.

"Escrow Agent" means Escrow Agent named in this Ordinance.



*"Escrow Agreement"* means the Escrow Agreement as defined and approved in this Ordinance.

*"Escrow Fund"* means the fund established pursuant to the Escrow Agreement.

*"External Commingled Fund"* means a Commingled Fund in which the City and all members of the same Controlled Group as the City own, in the aggregate, not more than ten percent of the beneficial interests.

*"GIC"* means (a) any investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate and (b) any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

*"Government Securities"* means the obligations to be held under the Escrow Agreement.

*"Gross Proceeds"* means amounts in the funds listed in Section 20.301 hereof except for the Other System Accounts.

*"Net Sale Proceeds"* means amounts actually or constructively received from the sale of the Bonds reduced by any such amounts that are deposited in a reasonably required reserve or replacement fund for the Bonds.

*"Other System Accounts"* means certain other accounts of the Water Fund hereunder in which money may be available to pay the Bonds, and consist of the Depreciation, Improvement and Extension Account and the Surplus Revenue Account.

*"Person"* means any entity with standing to be sued or to sue, including any natural person, corporation, body politic, governmental unit, agency, authority, partnership, trust, estate, association, company or group of any of the above.

*"Placed-in-Service"* means the date on which, based on all facts and circumstances (a) a facility has reached a degree of completion that would permit its operation at substantially its design level and (b) the facility is, in fact, in operation at such level.

*"Prior Bond and Interest Account"* means the Bond and Interest Account, which was maintained with respect to the Prior Bonds for the payment of current debt service on the Prior Bonds.

*"Prior Bond Proceeds"* means amounts actually or constructively received from the sale of the Prior Bonds and all other amounts properly treated as gross proceeds of the Prior Bonds under the Regulations, including (a) amounts used to pay underwriters' discount or compensation and accrued interest, other than accrued interest for a period not greater than one year before the Prior Bonds were issued but only if it is to be paid within one year after the Prior Bonds were issued and (b) amounts derived from the sale

of any right that is part of the terms of a Prior Bond or is otherwise associated with a Prior Bond (e.g., a redemption right).

*"Prior Bonds"* for purposes of this Section only are defined to mean the entire issue of Water Revenue Bonds, Series 1992.

*"Prior Project"* means the facilities financed, directly or indirectly, with the proceeds of the Prior Bonds.

*"Private Business Use"* means any use of the System including the Prior Project by any Person other than a state or local government unit, including as a result of (i) ownership, (ii) actual or beneficial use pursuant to a lease or a management, service, incentive payment, research or output contract or (iii) any other similar arrangement, agreement or understanding, whether written or oral, except for use of the Project or the Prior Project on the same basis as the general public. Private Business Use includes any formal or informal arrangement with any person other than a state or local governmental unit that conveys special legal entitlements to any portion of the System or the Prior Project that is available for use by the general public or that conveys to any person other than a state or local governmental unit any special economic benefit with respect to any portion of the System or the Prior Project that is not available for use by the general public.

*"Qualified Administrative Costs of Investments"* means (a) reasonable, direct administrative costs (other than carrying costs) such as separately stated brokerage or selling commissions (other than a broker's commission paid on behalf of either the City or the provider of a GIC to the extent such commission exceeds the lesser of a reasonable amount or the present value of annual payments equal to 0.05 percent of the weighted average amount reasonably expected to be invested each year of the term of the GIC (for this purpose, present value is computed using the yield on the GIC)), but not legal and accounting fees, recordkeeping, custody and similar costs; or (b) all reasonable administrative costs, direct or indirect, incurred by a publicly offered regulated investment company or an External Commingled Fund.

*"Qualified Tax Exempt Obligations"* means (a) any obligation described in Section 103(a) of the Code, the interest on which is excludable from gross income of the owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; (b) an interest in a regulated investment company to the extent that at least ninety-five percent of the income to the holder of the interest is interest which is excludable from gross income under Section 103 of the Code of any owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; and (c) certificates of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 C.F.R. part 344.

*"Rebate Fund"* means the fund, if any, identified and defined in Section 20.402 herein.

*"Rebate Provisions"* means the rebate requirements contained in Section 148(f) of the Code and in the Regulations.

*"Refunded Bonds"* means those certain Prior Bonds being refunded by the Bonds.

*"Regulations"* means United States Treasury Regulations dealing with the tax-exempt bond provisions of the Code.

*"Reimbursed Expenditures"* means amounts, if any, used from Sale Proceeds or investment earnings thereon to reimburse the City for an expenditure paid prior to Closing.

*"Sale Proceeds"* means amounts actually or constructively received from the sale of the Bonds, including (a) amounts used to pay underwriter's discount or compensation and accrued interest, other than accrued interest for a period not greater than one year before Closing but only if it is to be paid within one year after Closing and (b) amounts derived from the sale of any right that is part of the terms of a Bond or is otherwise associated with a Bond (e.g., a redemption right).

*"Supplemental Tax Certificates"* means one or more certificates or agreements given in connection with the delivery of the Bonds, including information in certificates or agreements not limited to or expressly stated as responsive to tax exemption of the Bonds.

*"System"* means the System as otherwise defined in this Ordinance.

*"Transferred Proceeds"* means amounts actually or constructively received from the sale of the Prior Bonds, plus investment earnings thereon, which have not been spent prior to the date principal on the Refunded Bonds is discharged by the Bonds to the extent allocated to the Bonds under the Regulations.

*"Verifier"* means firm of accountants or other recognized professionals which shall provide a report for the City on the Refunding.

*"Yield"* means that discount rate which when used in computing the present value of all payments of principal and interest paid and to be paid on an obligation (using semiannual compounding on the basis of a 360-day year) produces an amount equal to the obligation's purchase price (or in the case of the Bonds, the issue price as established in Section 20.501), including accrued interest.

*"Yield Reduction Payment"* means a rebate payment or any other amount paid to the United States in the same manner as rebate amounts are required to be paid or at such

other time or in such manner as the Internal Revenue Service may prescribe that will be treated as a reduction in Yield of an investment under the Regulations.

*Section 20.201. Purpose of the Bonds.* The Bonds are being issued solely and exclusively, except as provided in Section 20.203, to refund in advance of maturity the Refunded Bonds in a manner consistent with the revenue needs of the City.

*Section 20.202. Reimbursement.* None of the Sale Proceeds or investment earnings thereon will be used for Reimbursed Expenditures.

*Section 20.203. Working Capital.* All Sale Proceeds and investment earnings thereon will be used, directly or indirectly, to pay principal of, interest on and redemption premium on (if any) the Refunded Bonds, other than the following:

- (a) Costs of Issuance and Qualified Administrative Costs of Investments;
- (b) payments of rebate or Yield Reduction Payments made to the United States under the Regulations[.] [; and]
- (c) fees for a qualified guarantee within the meaning of Regulations Section 1.148-4(f); and
- (d) principal of or interest on the Bonds paid from investment earnings on the Bond Reserve Account that are deposited in the Bond and Interest Account.

No Gross Proceeds may be spent for non-capital purposes pursuant to Section 20.203 hereof if the expenditure merely substitutes Gross Proceeds for other amounts that would have been used to make expenditures in a manner that gives rise to Replacement Proceeds.

*Section 20.204. Consequences of Contrary Expenditure.* The City acknowledges that if Sale Proceeds and investment earnings thereon are spent for non-Capital Expenditures other than as indicated by Sections 20.201 and 20.203 hereof, a like amount of then available funds of the City will be treated as unspent Sale Proceeds.

*Section 20.205. Investment of Bond Proceeds.* No portion of the Bonds is being issued solely for the purpose of investing a portion of Sale Proceeds or investment earnings thereon at a Yield higher than the Yield on the Bonds.

*Section 20.206. No Grants.* None of the Sale Proceeds or investment earnings thereon will be used to make grants to any person.

*Section 20.207. Hedges.* Neither the City nor any member of the same Controlled Group as the City has entered into or expects to enter into any hedge (*e.g.*, an interest rate swap, interest rate cap, futures contract, forward contract or an option) with respect to the Bonds or the Prior Bonds. The City acknowledges that any such hedge could affect, among other things, the calculation of Bond Yield under the Regulations. The Internal Revenue Service could

recalculate Bond Yield if the failure to account for the hedge fails to clearly reflect the economic substance of the transaction.

*Section 20.208. Abusive Transactions.* Neither the City nor any member of the same Controlled Group as the City has employed or shall employ a device or has entered into or shall enter into any arrangements or understandings in connection with the issuance of the Bonds or the refunding of the Refunded Bonds, or in connection with any transaction or series of transactions related to the issuance of the Bonds or the refunding of the Refunded Bonds, to obtain a material financial advantage based on arbitrage. Neither the City nor any member of the same Controlled Group as the City will realize any material financial advantage based on arbitrage in connection with the issuance of the Bonds or the refunding of any of the Refunded Bonds, or in connection with any transaction or series of transactions related to the issuance of the Bonds or the refunding of the Refunded Bonds. In particular, neither the City nor any member of the same Controlled Group as the City will receive a rebate or credit resulting from any payments having been made in connection with the issuance of the Bonds or the refunding of the Refunded Bonds.

*Section 20.209. Internal Revenue Service Audits.* The City represents that the Internal Revenue Service has not contacted the City regarding the Prior Bonds or any other obligations issued by or on behalf of the City. To the best of the knowledge of the City, no such obligations of the City are currently under examination by the Internal Revenue Service.

*Section 20.301. Use of Proceeds.* (a) The use of the Sale Proceeds and investment earnings thereon and the funds held under this Ordinance at the time of Closing will be contained in a Supplemental Tax Certificate. No Sale Proceeds will be used to prepay for services or goods to be received over a period of years prior to the date such services or goods are to be received, except for the payment, if any, to a Credit Facility Provider. No Sale Proceeds or any investment earnings thereon will be used to pay for or otherwise acquire goods or services from an Affiliated Person.

(b) Only the following funds and accounts will be funded at Closing: Bond and Interest Account, Escrow Fund, and Expense Fund.. There are no other funds or accounts created under the Ordinance other than the Rebate Fund if it is created as provided for in Section 20.402.

(c) Principal of and interest on the Bonds will be paid from the Bond and Interest Account.

(d) Costs of Issuance incurred in connection with the Bonds will be paid from the Expense Fund. Any moneys remaining in the Expense Fund after the payment of all Costs of Issuance shall be transferred to the Bond and Interest Account within six months of Closing.

(e) The Bond Reserve Account has been established in the amount of Maximum Annual Debt Service on the Bonds and all other Outstanding Bonds as provided in this Ordinance. The purposes of the Other System Accounts are as hereinabove set forth.

*Section 20.302. Purpose of Bond and Interest Account.* The Bond and Interest Account, except for any amount of capitalized interest therein, will be used primarily to achieve a proper matching of revenues and earnings with principal and interest payments on the Outstanding Bonds in each bond year. It is expected that the Bond and Interest Account will be depleted at least once a year, except for a reasonable carry over amount not to exceed the greater of (a) the earnings on the investment of moneys in the Bond and Interest Account for the immediately preceding bond year or (b) 1/12th of the principal and interest payments on the Outstanding Bonds for the immediately preceding bond year.

*Section 20.303. Purpose of Bond Reserve Account.* The City represents that the Bond Reserve Account is required in connection with the issuance of the Bonds, based on the representations of the Purchaser and the certificate of the Credit Facility Provider, if applicable. The City has no reason to believe that such representations are untrue or incorrect.

*Section 20.304. Purpose of Other System Accounts.* The Other System Accounts will not contain any Sale Proceeds or investment earnings thereon. No amounts in any such accounts are expected to be used to pay debt service on the Bonds. Because amounts in such accounts are available for uses other than the payment of debt service on the Bonds, there are no assurances that such amounts would be available to pay principal or interest on the Bonds or the obligations under the Credit Facility or any other credit enhancement or liquidity device with respect to the Bonds, even if the City encounters financial difficulties in the Water Fund.

*Section 20.305. The Prior Bonds.* (a) The Prior Bonds were issued on July 29, 1992, by the City pursuant to that certain ordinance, numbered 39-O-2 of the City. The Prior Bonds were issued for the purpose of (i) financing the construction of certain System capital improvements and (ii) paying certain costs of issuance with respect to the Prior Bonds. As of the date three years after the Prior Bonds were issued all Prior Bond Proceeds, including investment earnings thereon, were completely spent.

(b) As of the date hereof, no Prior Bond Proceeds or money or property of any kind (including cash) is on deposit in any fund or account, regardless of where held or the source thereof, with respect to the Prior Bonds or any credit enhancement or liquidity device relating to the foregoing, or is otherwise restricted to pay the City's obligations other than as may be expressly shown in a Supplemental Tax Certificate.

(c) The Bond and Interest Account as maintained in connection with the issuance of the Prior Bonds was used primarily to achieve a proper matching of revenues and earnings with principal and interest payments on the Prior Bonds and other Outstanding Bonds in each bond year. The Bond and Interest Account was depleted at least once a year, except for a reasonable carry over amount not to exceed the greater of (i) the earnings on the investment of moneys in such account for the immediately preceding bond year or (ii) one-twelfth (1/12th) of the principal and interest payments on the Outstanding Bonds then payable.

(d) None of the Other System Accounts for the Prior Bonds contained any Prior Bond Proceeds. Such accounts were not used to pay debt service on the Prior Bonds. Because amounts in such accounts were available for uses other than the payment of debt service on the

Prior Bonds, there were no assurances that such amounts would be available to pay principal or interest on the Prior Bonds if the City encountered financial difficulties in the Water Fund.

(e) At the time the Prior Bonds were issued, the City reasonably expected to spend at least 85% of the proceeds (including investment earnings) of the Prior Bonds to be used for non-refunding purposes for such other purposes within three years of the date the Prior Bonds were issued, and such proceeds were so spent. Not more than 50% of the proceeds of the Prior Bonds was invested in investments having a Yield that was substantially guaranteed for four years or more.

(f) The Refunded Bonds will be called for redemption within 90 days after Closing.

(g) The City acknowledges that (i) the final rebate payment with respect to the Prior Bonds will be required to be made sooner than if the refunding had not occurred and (ii) the final rebate is due 60 days after the Prior Bonds are paid in full.

*Section 20.306. The Escrow Fund.* (a) The Escrow Fund will be funded with Sale Proceeds and with a transfer from the Bond and Interest Account.

(b) The uninvested cash and anticipated receipts from the Government Securities on deposit in the Escrow Fund, without regard to any reinvestment thereof, will be sufficient to pay, when due, principal and interest on the Refunded Bonds and to redeem the outstanding principal amount of the Refunded Bonds, all as shall be shown in the verification report of the Verifier (the "Verification Report").

(c) Any moneys remaining on deposit in the Escrow Fund upon the final disbursement of funds sufficient to pay principal and interest of the Refunded Bonds shall be transferred by the Escrow Agent to the Bond and Interest Account to be used to pay interest on the Bonds.

*Section 20.307. No Other Gross Proceeds.* (a) Except as described in the definition of Gross Proceeds, and except for the Credit Facility, after the issuance of the Bonds, neither the City nor any member of the same Controlled Group as the City has or will have any property, including cash, securities or any other property held as a passive vehicle for the production of income or for investment purposes, that constitutes:

(i) Sale Proceeds;

(ii) amounts in any fund or account with respect to the Bonds (other than the Rebate Fund and the Other System Accounts);

(iii) Transferred Proceeds;

(iv) amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the Bonds were not used or to be used for that governmental purpose (the mere availability or preliminary earmarking of such

amounts for a governmental purpose, however, does not itself establish such a sufficient nexus);

(v) amounts in a debt service fund, redemption fund, reserve fund, replacement fund or any similar fund to the extent reasonably expected to be used directly or indirectly to pay principal of or interest on the Bonds or any amounts for which there is provided, directly or indirectly, a reasonable assurance that the amount will be available to pay principal of or interest on the Bonds or the obligations under the Credit Facility or any other credit enhancement or liquidity device with respect to the Bonds, even if the City encounters financial difficulties;

(vi) any amounts held pursuant to any agreement (such as an agreement to maintain certain levels of types of assets) made for the benefit of the owners of the Bonds, the Credit Facility Provider, or any other credit enhancement provider, including any liquidity device or negative pledge (e.g., any amount pledged to pay principal of or interest on an issue held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of owners of the Bonds or a guarantor of the Bonds); or

(vii) amounts actually or constructively received from the investment and reinvestment of the amounts described in (i), (ii) or (iii) above.

(b) No compensating balance, liquidity account, negative pledge of property held for investment purposes required to be maintained at least at a particular level or similar arrangement exists with respect to, in any way, the Bonds, the Credit Facility, or any other credit enhancement or liquidity device related to the Bonds.

(c) The term of the Bonds is not longer than is reasonably necessary for the governmental purposes of the Bonds. The weighted average maturity of the Bonds shall not exceed 120 percent of the average reasonably expected economic life of the Prior Project.

*Section 20.401. Compliance with Rebate Provisions.* The City covenants to take such actions and make, or cause to be made, all calculations, transfers and payments that may be necessary to comply with the Rebate Provisions applicable to the Bonds. The City will make, or cause to be made, rebate payments with respect to the Bonds in accordance with law.

*Section 20.402. Rebate Fund.* The City is authorized hereby to create and establish a special fund to be known as the Rebate Fund authorized herein, which, if created, shall be continuously held, invested, expended and accounted for in accordance with this Ordinance. Moneys in the Rebate Fund shall not be considered moneys held for the benefit of the owners of the Bonds. Except as provided in the Regulations, moneys in the Rebate Fund (including earnings and deposits therein) shall be held in trust for payment to the United States as required by the Rebate Provisions and by the Regulations and as contemplated under the provisions of this Ordinance.



*Section 20.403. Records.* The City agrees to keep and retain or cause to be kept and retained until six years (three years for the records required by Section 20.404(c)) after the Bonds are paid in full adequate records with respect to the investment of all Gross Proceeds and amounts in the Rebate Fund. Such records shall include:

- (a) purchase price;
- (b) purchase date;
- (c) type of investment;
- (d) accrued interest paid;
- (e) interest rate;
- (f) principal amount;
- (g) maturity date;
- (h) interest payment date;
- (i) date of liquidation; and
- (j) receipt upon liquidation.

If any investment becomes Gross Proceeds on a date other than the date such investment is purchased, the records required to be kept shall include the fair market value of such investment on the date it becomes Gross Proceeds. If any investment is retained after the date the last Bond is retired, the records required to be kept shall include the fair market value of such investment on the date the last Bond is retired. Amounts or investments will be segregated whenever necessary to maintain these records.

*Section 20.404. Fair Market Value; Certificates of Deposit and Investment Agreements.* The City will continuously invest all amounts on deposit in the Rebate Fund, together with the amounts, if any, to be transferred to the Rebate Fund, in any investment permitted under this Ordinance. The City shall take into account prudent investment standards and the date on which such moneys may be needed. Except as provided in the next sentence, all amounts that constitute Gross Proceeds and all amounts in the Rebate Fund shall be invested at all times to the greatest extent practicable, and no amounts may be held as cash or be invested in zero yield investments other than obligations of the United States purchased directly from the United States. In the event moneys cannot be invested, other than as provided in this sentence due to the denomination, price or availability of investments, the amounts shall be invested in an interest bearing deposit of a bank with a yield not less than that paid to the general public or held uninvested to the minimum extent necessary. Gross Proceeds and any amounts in the Rebate Fund that are invested in certificates of deposit or in GICs shall be invested only in accordance with the following provisions:

(a) Investments in certificates of deposit of banks or savings and loan associations that have a fixed interest rate, fixed payment schedules and substantial penalties for early withdrawal shall be made only if either (i) the Yield on the certificate of deposit (A) is not less than the Yield on reasonably comparable direct obligations of the United States and (B) is not less than the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public or (ii) the investment is an investment in a GIC and qualifies under paragraph (b) below.

(b) Investments in GICs shall be made only if:

(i) the bid specifications are in writing, include all material terms of the bid and are timely forwarded to potential providers (a term is material if it may directly or indirectly affect the yield on the GIC);

(ii) the terms of the bid specifications are commercially reasonable (a term is commercially reasonable if there is a legitimate business purpose for the term other than to reduce the yield on the GIC);

(iii) all bidders for the GIC have equal opportunity to bid so that, for example, no bidder is given the opportunity to review other bids (a last look) before bidding;

(iv) any agent used to conduct the bidding for the GIC does not bid to provide the GIC;

(v) at least three of the providers solicited for bids for the GIC are reasonably competitive providers of investments of the type purchased (*i.e.*, providers that have established industry reputations as competitive providers of the type of investments being purchased);

(vi) at least three of the entities that submit a bid do not have a financial interest in the Bonds;

(vii) at least one of the entities that provided a bid is a reasonably competitive provider that does not have a financial interest in the Bonds;

(viii) the bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City or any other person (whether or not in connection with the Bonds) and that the bid is not being submitted solely as a courtesy to the City or any other person for purposes of satisfying the federal income tax requirements relating to the bidding for the GIC;

(ix) the determination of the terms of the GIC takes into account the reasonably expected deposit and drawdown schedule for the amounts to be invested;

(x) the highest-yielding GIC for which a qualifying bid is made (determined net of broker's fees) is in fact purchased; and

(xi) the obligor on the GIC certifies the administrative costs that it is paying or expects to pay to third parties in connection with the GIC.

(c) If a GIC is purchased, the City will retain the following records with its bond documents until three years after the Bonds are redeemed in their entirety:

(i) a copy of the GIC;

(ii) the receipt or other record of the amount actually paid for the GIC, including a record of any administrative costs paid, and the certification under paragraph (b)(xi) of this section;

(iii) for each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results; and

(iv) the bid solicitation form and, if the terms of the GIC deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

Moneys to be rebated to the United States shall be invested to mature on or prior to the anticipated rebate payment date. All investments made with Gross Proceeds or amounts in the Rebate Fund shall be bought and sold at fair market value. The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction. Except for investments specifically described in this section and United States Treasury obligations that are purchased directly from the United States Treasury, only investments that are traded on an established securities market, within the meaning of regulations promulgated under Section 1273 of the Code, will be purchased with Gross Proceeds. In general, an "established securities market" includes: (i) property that is listed on a national securities exchange, an interdealer quotation system or certain foreign exchanges; (ii) property that is traded on a Commodities Futures Trading Commission designated board of trade or an interbank market; (iii) property that appears on a quotation medium; and (iv) property for which price quotations are readily available from dealers and brokers. A debt instrument is not treated as traded on an established market solely because it is convertible into property which is so traded. An investment of Gross Proceeds in an External Commingled Fund shall be made only to the extent that such investment is made without an intent to reduce the amount to be rebated to the United States Government or to create a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the rebate or Yield restriction requirements not been relevant to the City. An investment of Gross Proceeds shall be made in a Commingled Fund other than an External Commingled Fund

only if the investments made by such Commingled Fund satisfy the provisions of this Section 20.404. The foregoing provisions of this Section 20.404 satisfy various safe harbors set forth in the Regulations relating to the valuation of certain types of investments. The safe harbor provisions of this Section 20.404 are contained herein for the protection of the City, who has covenanted not to take any action to adversely affect the tax-exempt status of the interest on the Bonds. The City will contact Bond Counsel if it does not wish to comply with the provisions of this Section 20.404 and forego the protection provided by the safe harbors provided herein. Modifications to this Tax Agreement can be made in accordance with Section 20.709 hereof.

*Section 20.405. Arbitrage Elections.* The City hereby waives its right to invest Sale Proceeds of the Bonds and investment earnings thereon in the Escrow Fund in investments with Yields higher than Bond Yield. A schedule of other elections regarding certain matters with respect to arbitrage may be provided in a Supplemental Tax Certificate.

*Section 20.501. Issue Price.* Prior to Closing, the Purchaser shall certify, in a certificate or other proper instrument, the first offering price at which it sold at least ten percent of each maturity of the Bonds.

*Section 20.502. Yield Limits.* Except as provided in paragraph (a), (b) and (c) below, all Gross Proceeds shall be invested at market prices and at a Yield (after taking into account any Yield Reduction Payments) not in excess of the Yield on the Bonds.

The following may be invested without Yield restriction:

(a) amounts as follows:

(i) amounts on deposit in the Bond and Interest Account (except for capitalized interest) that have not been on deposit under the Ordinance for more than 13 months, so long as the Bond and Interest Account continues to qualify as a bona fide debt service fund as described in Section 20.302 hereof;

(ii) amounts in the Expense Fund prior to the earlier of six months after Closing or the payment of all expenses to be paid from that fund;

(b) further amounts as follows:

(i) an amount not to exceed the lesser of \$100,000 or five percent of the Sale Proceeds;

(ii) amounts invested in Qualified Tax Exempt Obligations (to the extent permitted by law and the Ordinance);

(iii) amounts in the Rebate Fund;

(iv) all amounts other than Sale Proceeds for the first 30 days after they become Gross Proceeds; and

(v) all amounts derived from the investment of Sale Proceeds or investment earnings thereon other than those on deposit in the Escrow Fund for a period of one year from the date received.

(c) The amount on deposit in the Bond Reserve Account that is allocable to the Bonds under the Regulations may be invested without regard to Yield restriction to the extent it does not exceed the dollar amount which is the least of the amounts computed pursuant to (i), (ii), (iii) or (iv) below:

(i) 100% of the maximum annual debt service on the Bonds;

(ii) 125% of the average annual debt service on the Bonds;

(iii) ten percent of the stated principal amount of the Bonds (because the Bonds overall have a De minimis Amount of Original Issue Discount or Premium);

(iv) the amount required to be held in the Bond Reserve Account by the Ordinance, which is the amount required to provide protection to the owner of Bonds if the City should encounter financial difficulties, as certified by the Purchaser in the Certificate of the Purchaser;

(v) the amount required to be held in the Bond Reserve Account by the Ordinance, which is the amount which may be determined by the Credit Facility Provider, if any, as a necessary amount to issue the Credit Facility.

*Section 20.503. Yield Limits on Prior Bonds.* Except for (i) an amount not to exceed the lesser of \$100,000 or five percent of Prior Bond Proceeds and (ii) if any, amounts on deposit in a reasonably required reserve or replacement fund for the Prior Bonds that are not Refunded Bonds or the Bonds, the City acknowledges that all Prior Bond Proceeds must be invested at market prices and at a Yield not in excess of the Yield on the Prior Bonds.

*Section 20.504. Continuing Nature of Yield Limits.* Except as provided in Section 20.709, once moneys are subject to the Yield limits of Section 20.502 or 20.503 hereof, such moneys remain Yield restricted until they cease to be Gross Proceeds.

*Section 20.505. Federal Guarantees.* Except for investments meeting the requirements of Sections 20.502(a) or (c) hereof and except for investments in the Escrow Fund, investments of Gross Proceeds shall not be made in (a) investments constituting obligations of or guaranteed, directly or indirectly, by the United States (except obligations of the United States Treasury or investments in obligations issued pursuant to Section 21B(d)(3) of the Federal Home Loan Bank Act, as amended (*e.g.*, Refcorp Strips)); or (b) federally insured deposits or accounts (as defined in Section 149(b)(4)(B) of the Code). Except as otherwise permitted in this Section and the Regulations, no portion of the payment of principal or interest on the Bonds, the Credit Facility, as may be applicable, or any other credit enhancement or liquidity device relating to the foregoing is or will be guaranteed, directly or indirectly (in whole or in part), by the United States (or any agency or instrumentality thereof) including a lease, incentive payment, research

or output contract or any similar arrangement, agreement or understanding with the United States or any agency or instrumentality thereof. No portion of the Gross Proceeds has been or will be used to make loans the payment of principal or interest with respect to which is or will be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof). Neither this Section nor Section 20.506 applies to any guarantee by the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Student Loan Marketing Association or the Bonneville Power Administration pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of enactment of the Tax Reform Act of 1984.

*Section 20.506. Investments After the Expiration of Temporary Periods, Etc.* Any amounts, other than amounts in the Escrow Fund, that are subject to the yield limitation in Section 20.502 because Sections 20.502(a) or (c) are not applicable and amounts not subject to yield restriction only because they are described in Section 20.502(b) cannot be invested in (i) federally insured deposits or accounts (as defined in Section 149(b)(4)(B) of the Code) or (ii) investments constituting obligations of or guaranteed, directly or indirectly, by the United States (except obligations of the United States Treasury or investments in obligations issued pursuant to Section 21B(d)(3) of the Federal Home Loan Bank Act, as amended (e.g., Refcorp Strips).

*Section 20.507. Treatment of Certain Credit Facility Fees.* Provided appropriate representations, as reviewed by Bond Counsel, are made at Closing, which the City shall review and have no reason to believe to be untrue, and the representations contained in this Ordinance, the fee paid to the Credit Facility Provider with respect to the Credit Facility may be treated as interest in computing Bond Yield. Neither the City nor any member of the same Controlled Group as the City shall be a Related Person as defined in Section 144(a)(3) of the Code to a Credit Facility Provider. The fee paid to any Credit Facility Provider shall not exceed ten percent of the Sale Proceeds. Other than any fee paid to the Credit Facility Provider, neither the Credit Facility Provider, if any, nor any person who is a Related Person to the Credit Facility Provider within the meaning of Section 144(a)(3) of the Code will use any Sale Proceeds or investment earnings thereon. The fee paid for the Credit Facility shall not exceed a reasonable, arm's length charge for the transfer of credit risk. The fee shall not include any payment for any direct or indirect services other than the transfer of credit risk.

*Section 20.508. Escrow Yield.* The Yield on the Government Securities purchased with Sale Proceeds of the Bonds, taking into account any Transferred Proceeds, shall not be greater than the Yield on the Bonds.

*Section 20.601. Payment and Use Tests.* (a) No more than five percent of the Prior Bond Proceeds and the Bonds each considered separately, and investment earnings thereon were used, and will be used, directly or indirectly, in whole or in part, in any Private Business Use. The City acknowledges that, for purposes of the preceding sentence, Gross Proceeds used to pay costs of issuance and other common costs (such as capitalized interest and fees paid for a qualified guarantee or qualified hedge) or invested in a reserve or replacement fund must be ratably allocated among all the purposes for which Gross Proceeds are being used.

(b) The payment of more than five percent of the principal of or the interest on the Bonds or on the Prior Bonds, each considered separately, will not be, directly or indirectly (i) secured by any interest in (A) property used or to be used in any Private Business Use or (B) payments in respect of such property or (ii) on a present value basis, derived from payments (whether or not to the City or a member of the same Controlled Group as the City) in respect of property, or borrowed money, used or to be used in any Private Business Use.

(c) No more than the lesser of \$5,000,000 or five percent of the sum of the Prior Bond Proceeds and investment earnings thereon were used, and no more than the lesser of \$5,000,000 or five percent of the Sale Proceeds of the Bonds and investment earnings thereon will be used, directly or indirectly, to make or finance loans to any persons. The City acknowledges that, for purposes of the preceding sentence, Gross Proceeds used to pay costs of issuance and other common costs (such as capitalized interest and fees paid for a qualified guarantee or qualified hedge) or invested in a reserve or replacement fund must be ratably allocated among all the purposes for which Gross Proceeds are being used.

(d) No user of the Prior Project or the System other than a state or local governmental unit will use more than five percent of the Prior Project, in the aggregate, on any basis other than the same basis as the general public.

(e) No more than the lesser of five percent of the Prior Bonds or \$5,000,000 of the proceeds and investment earnings thereon of the Prior Bonds were used, and no more than the lesser of five percent of the proceeds of the Bonds or \$5,000,000 of the proceeds of the Bonds and investment earnings thereon have been or will be used to provide professional sports facilities. For purposes of this paragraph, the term "*professional sports facilities*" (i) means real property or related improvements used for professional sports exhibitions, games or training, regardless of whether the admission of the public or press is allowed or paid and (ii) includes any use of a facility that generates a direct or indirect monetary benefit (other than reimbursement for out-of-pocket expenses) for a person who uses such facilities for professional sport exhibitions, games or training.

*Section 20.602. IRS Form 8038-G.* The information contained in an Information Return for Tax-Exempt Governmental Obligations, Form 8038-G, shall be prepared as true and complete. The City will file Form 8038-G (and all other required information reporting forms) in a timely manner.

*Section 20.603. Bank Qualification.* Prior to the date hereof in the current year, no obligations that constitute "qualified tax-exempt obligations" for the purposes and within the meaning of Section 265(b)(3) of the Code have been issued by any of the following: (i) the City; (ii) an entity issuing obligations on behalf of the City; and (iii) any member of the same Controlled Group as the City or the same Controlled Group as an entity issuing obligations on behalf of the City.

*Section 20.701. Covenants Remain After Bonds Paid.* The covenants made herein which relate to the tax-exempt status of the Bonds and made for the benefit of the owners of the Bonds

shall remain in force until the date all Bonds have been paid and for a period of six years thereafter.

*Section 20.702. No Common Plan of Financing.* Since a date not less than 30 days prior to action on this Ordinance, neither the City nor any member of the same Controlled Group as the City has sold or delivered any obligations other than the Bonds that are reasonably expected to be paid out of substantially the same source of funds as the Bonds. Neither the City nor any member of the same Controlled Group as the City will sell or deliver within 15 days after the date hereof any obligations other than the Bonds that are reasonably expected to be paid out of substantially the same source of funds as the Bonds.

*Section 20.703. No Sale of the Prior Project.* (a) Other than as provided in the next sentence, neither the Prior Project nor any portion thereof has been, is expected to be, or will be sold or otherwise disposed of, in whole or in part, prior to the earlier of (i) the last date of the reasonably expected economic life to the City of the property (determined on the date of issuance of the Bonds) or (ii) the last maturity date of the Bonds. The City may dispose of personal property in the ordinary course of an established government program prior to the earlier of (i) the last date of the reasonably expected economic life to the City of the property (determined on the date of issuance of the Bonds) or (ii) the last maturity of the Bonds, *provided:* (A) the weighted average maturity of the Bonds financing the personal property is not greater than 120 percent of the reasonably expected actual use of that property for governmental purposes; (B) the City reasonably expects on the issue date that the fair market value of that property on the date of disposition will be not greater than 25 percent of its cost; (C) the property is no longer suitable for its governmental purposes on the date of disposition; and (D) the City deposits amounts received from the disposition in a commingled fund with substantial tax or other governmental revenues and the City reasonably expects to spend the amounts on governmental programs within six months from the date of the commingling.

(b) The City acknowledges that if Bond-financed property is sold or otherwise disposed of in a manner contrary to (a) above, such sale or disposition may constitute a "deliberate action" within the meaning of the Regulations that may require remedial actions to prevent the Bonds from becoming private activity bonds. The City shall promptly contact Bond Counsel if a sale or other disposition of Bond-financed property is considered by the City.

*Section 20.704. Purchase of Bonds by City.* The City will not purchase any of the Bonds except to cancel such Bonds.

*Section 20.705. First Call Date Limitation.* The Bonds shall mature in not more than 10-1/2 years.

*Section 20.706. Registered Form.* The City recognizes that Section 149(a) of the Code requires the Bonds to be issued and to remain in fully registered form in order that interest thereon be exempt from federal income taxation under laws in force at the time the Bonds are delivered. In this connection, the City agrees that it will not take any action to permit the Bonds to be issued in, or converted into, bearer or coupon form.



*Section 20.707. First Amendment.* The City acknowledges and agrees that it will not use, or allow the Project to be used, in a manner that is prohibited by the Establishment of Religion Clause of the First Amendment to the Constitution of the United States of America or by any comparable provisions of the Constitution of the State.

*Section 20.708. Future Events.* The City acknowledges that any changes in facts or expectations from those set forth herein may result in different Yield restrictions or rebate requirements from those set forth herein. The City shall promptly contact Bond Counsel if such changes do occur.

*Section 20.709. Permitted Changes; Opinion of Bond Counsel.* The Yield restrictions contained in Section 20.502 or any other restriction or covenant contained herein need not be observed or may be changed if such nonobservance or change will not result in the loss of any exemption for the purpose of federal income taxation to which interest on the Bonds is otherwise entitled and the City receives an opinion of Bond Counsel to such effect.

*Section 20.710. Excess Proceeds.* Gross Proceeds allocable to the Bonds and investment earnings thereon and all unspent Prior Bond Proceeds as of the date of Closing and investment earnings thereon do not exceed by more than one percent of the Sale Proceeds of the Bonds the amount that will be used for:

- (i) payment of principal, of or interest, or call premium on Refunded Bonds;
- (ii) payment of pre-issuance accrued interest on the Bonds and interest on the Bonds that accrues for a period up to the completion date of any capital project for which the prior issue was issued, plus one year;
- (iii) a reasonably required reserve or replacement fund for the Bonds or investment proceeds of such a fund;
- (iv) payment of cost of issuance of the Bonds;
- (v) payment of administrative costs allocable to repaying the Refunded Bonds, carrying and repaying the Bonds or investments of the Bonds;
- (vi) Prior Bond Proceeds that will be used or maintained for the governmental purpose of the Refunded Bonds;
- (vii) interest on purpose investments;
- (viii) replacement proceeds in a sinking fund for the refunding issue; and
- (ix) costs of the Credit Facility allocable to the Bonds.

*Section 20.711. Expectations.* The City has reviewed the facts, estimates and circumstances presented by the City and other persons in existence on this date. Such facts, estimates and

circumstances, together with the expectations of the City as to future events, are set forth in summary form in this Section. Such facts and estimates are true and are not incomplete in any material respect. On the basis of the facts and estimates contained herein, the City has adopted the expectations contained herein. On the basis of such facts, estimates, circumstances and expectations, it is not expected that Sale Proceeds, investment earnings thereon or any other moneys or property will be used in a manner that will cause the Bonds to be arbitrage bonds within the meaning of the Rebate Provisions and the Regulations. Such expectations are reasonable and there are no other facts, estimates and circumstances that would materially change such expectations.

*Section 21. Pertaining to the Bond Registrar.* If requested by the Bond Registrar, any officer of the City is authorized to execute standard forms of agreements between the City and the Bond Registrar with respect to the obligations and duties of the Bond Registrar under this Ordinance. In addition to the terms of such agreements and subject to modification thereby, the Bond Registrar by acceptance of duties under this Ordinance agrees (a) to act as bond registrar, paying agent, authenticating agent, and transfer agent as provided herein; (b) to maintain a list of Bondholders as set forth herein and to furnish such list to the City upon request, but otherwise to keep such list confidential to the extent permitted by law; (c) to cancel and/or destroy Bonds which have been paid at maturity or upon redemption or submitted for exchange or transfer; (d) to furnish the City at least annually a certificate with respect to Bonds cancelled and/or destroyed; and (e) to furnish the City at least annually an audit confirmation of Bonds paid, Bonds outstanding and payments made with respect to interest on the Bonds. The City covenants with respect to the Bond Registrar, and the Bond Registrar further covenants and agrees as follows: (A) The City shall at all times retain a Bond Registrar with respect to the Bonds; it will maintain at the designated office(s) of such Bond Registrar a place or places where Bonds may be presented for payment, registration, transfer or exchange; and it will require that the Bond Registrar properly maintain the Bond Register and perform the other duties and obligations imposed upon it by this Ordinance in a manner consistent with the standards, customs and practices of the municipal securities industry. (B) The Bond Registrar shall signify its acceptance of the duties and obligations imposed upon it by this Ordinance by executing the certificate of

authentication on any Bond, and by such execution the Bond Registrar shall be deemed to have certified to the City that it has all requisite power to accept and has accepted such duties and obligations not only with respect to the Bond so authenticated but with respect to all the Bonds. Any Bond Registrar shall be the agent of the City and shall not be liable in connection with the performance of its duties except for its own negligence or willful wrongdoing. Any Bond Registrar shall, however, be responsible for any representation in its certificate of authentication on Bonds. (C) The City may remove the Bond Registrar at any time. In case at any time the Bond Registrar shall resign, shall be removed, shall become incapable of acting, or shall be adjudicated a bankrupt or insolvent, or if a receiver, liquidator, or conservator of the Bond Registrar or of the property thereof shall be appointed, or if any public officer shall take charge or control of the Bond Registrar or of the property or affairs thereof, the City covenants and agrees that it will thereupon appoint a successor Bond Registrar. The City shall give notice of any such appointment made by it to each registered owner of any Bond within twenty days after such appointment in the same manner, or as nearly the same as may be practicable, as for a redemption of Bonds. Any Bond Registrar appointed under the provisions of this Section shall be a bank, trust company, or national banking association maintaining a corporate trust office in Illinois, and having capital and surplus and undivided profits in excess of \$50,000,000. The City Clerk of the City is hereby directed to file a certified copy of this Ordinance with the Bond Registrar.

*Section 22. Provisions a Contract.* The provisions of this Ordinance shall constitute a contract between the City and the holders and registered owners of the Outstanding Bonds; and no changes, additions, or alterations of any kind shall be made hereto, except as herein provided, so long as there are any Outstanding Bonds.

*Section 23. Defeasance.* Bonds which are no longer Outstanding Bonds as defined in this Ordinance shall cease to have any lien on or right to receive or be paid from Revenues and shall no longer have the benefits of any covenant for the holders or registered owners of Outstanding Bonds as set forth herein relating to payment or security of payment.

*Section 24. Severability.* If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

*Section 25. Superseder.* All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby superseded.

Section 26. *Publication.* This Ordinance within ten (10) days after its passage by the City Council shall be published once in pamphlet form by authority of the City Council, and shall thereupon be in full force and effect immediately.

PASSED: September 9, 2002.

VOTE

AYES: Engelman, Rainey, Feldman, Newman, Jean-Baptiste,  
Wynne, Bernstein, Kent, Moran

NAYS: None

ABSENT: None

APPROVED: September 10, 2002

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

STATE OF ILLINOIS            )  
                                          ) SS  
COUNTY OF COOK            )

**CERTIFICATE OF ORDINANCE**

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of Evanston, in the County and State aforesaid (the "City"), and as such Clerk I am the keeper of the official journal, records and files of the City Council of the City.

I do further certify that the attached and foregoing is a full, true and correct of copy of an ordinance numbered 84-O-02 and entitled:

AN ORDINANCE authorizing and providing for the issue of not to exceed \$2,600,000 Water Revenue Refunding Bonds, Series 2002, of the City of Evanston, Cook County, Illinois, for the purpose of defraying the cost of refunding outstanding Water Revenue Bonds of said City, prescribing all the details of said bonds, and providing for the collection, segregation and distribution of the revenue of the waterworks system of said City.

as introduced on August 12, 2002, and as adopted by the City Council of the City at its legally convened meeting held on September 9, 2002, and as approved by the Mayor on September 10, 2002, all as appears from the official records of said City, in my care and custody.

IN WITNESS WHEREOF I have hereunto affixed my official signature and the corporate seal of the City this 24<sup>th</sup> day of September 2002.

Mary P. Morris  
City Clerk

[SEAL]

STATE OF ILLINOIS            )  
                                          ) SS  
COUNTY OF COOK            )

**CERTIFICATE OF PUBLICATION IN PAMPHLET FORM**

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of Evanston, Cook County, Illinois (the "City"), and as such official I am the keeper of the official journal of proceedings, books, records, minutes, and files of the City and of the City Council (the "City Council") thereof.

I do further certify that on the 10<sup>th</sup> day of September 2002, there was published in pamphlet form, by authority of the City Council, a true, correct and complete copy of Ordinance Number 84-O-02 of the City providing for the issuance of not to exceed \$2,600,000 Water Revenue Refunding Bonds, Series 2002, of the City and that said ordinance as so published was on said date readily available for public inspection and distribution, in sufficient number to meet the needs of the general public, at my office as City Clerk located in the City.

IN WITNESS WHEREOF I have affixed hereto my official signature and the seal of the City this 24<sup>th</sup> day of September 2002.

Mary D. Pharis  
City Clerk

[SEAL]

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

### BOND ORDER

We, Roger D. Crum and William A. Stafford, do hereby certify that we are, respectively, the City Manager and the Finance Director of the City of Evanston, Cook County, Illinois (the "City"); and as such officers, we have reviewed the books, records, minutes and files of the City, and from such review and based on our authority, we do further certify as follows:

1. On September <sup>9<sup>th</sup></sup>, 2002, the City Council adopted Ordinance Number 84-O-02 of the City entitled:

AN ORDINANCE authorizing and providing for the issue of not to exceed \$2,600,00 Water Revenue Refunding Bonds, Series 2002, of the City of Evanston, Cook County, Illinois, for the purpose of defraying the cost of refunding outstanding Water Revenue Bonds of said City, prescribing all the details of said bonds, and providing for the collection, segregation and distribution of the revenue of the waterworks system of said City.

(the "Bond Ordinance").

2. The Bond Ordinance, in accordance with delegated limits, authorizes us to establish a final maturity and rate schedule for the Bonds (as authorized and defined in the Bond Ordinance).

3. The Bonds have been sold to the Purchaser at a purchase price of \$ \_\_\_\_\_, being not less than 98% of the par value of the Bonds.



4. The final schedule for the Bonds is as follows:

Principal Amount: \$ \_\_\_\_\_

Dated: September 1, 2002.

Due: Serially, on January 1 of the years, in the amounts, and bearing interest at the rates percent per annum as follows:

| YEAR | AMOUNT (\$) | RATE (%) |
|------|-------------|----------|
|------|-------------|----------|

5. Accordingly, the principal of and interest on the Bonds are as follows:


FOR THE FISCAL YEAR

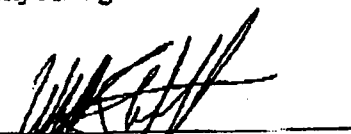
6. The final terms of redemption for the Bonds are as follows:

7. All other terms are as required and provided in the Bond Ordinance.

8. Finally, please be advised that this Bond Order shall be entered into the records of the City and made available to all Aldermen.

IN WITNESS WHEREOF we have hereunto affixed our official signatures this 20th day of September, 2002.

  
\_\_\_\_\_  
Roger D. Crum  
City Manager

  
\_\_\_\_\_  
William A. Stafford  
Finance Director

STATE OF ILLINOIS            )  
                                          ) SS  
COUNTY OF COOK            )

**AVAILABILITY OF BOND ORDER**


I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of Evanston, Cook County, Illinois (the "City"), and as such official I am the keeper of the official journal of proceedings, books, records, minutes and files of the City and of the City Council (the "City Council") thereof.

I do further certify that I made available to all members of the City Council at the regular meeting of the Board held on the 9 day of September 2002, a Bond Order, as such term is defined in Ordinance Number 84-O-02 and entitled:

AN ORDINANCE authorizing and providing for the issue of not to exceed \$2,600,000 Water Revenue Refunding Bonds, Series 2002, of the City of Evanston, Cook County, Illinois, for the purpose of defraying the cost of refunding outstanding Water Revenue Bonds of said City, prescribing all the details of said bonds, and providing for the collection, segregation and distribution of the revenue of the waterworks system of said City.

which Bond Order is responsive to such Ordinance; a true, correct and complete copy of which said Bond Order as provided at said meeting being attached hereto.

IN WITNESS WHEREOF I hereunto affix my official signature and the seal of the City this 24<sup>th</sup> day of September 2002.

  
\_\_\_\_\_  
City Clerk  
City of Evanston  
Cook County, Illinois

[SEAL]

**PURCHASER'S  
CERTIFICATE RE: BOND SALE**

I, the undersigned, do hereby certify that I am an officer of Legg Mason Wood Walker, Incorporated, Chicago, Illinois (the "*Underwriter*"), and as such officer I do further certify as follows:

1. The Underwriter has been designated by the City of Evanston, Cook County, Illinois (the "*City*"), as the underwriter and initial purchaser of \$ \_\_\_\_\_ Water Revenue Refunding Bonds, Series 2002, of the City (the "*Bonds*").

2. The Bonds have been sold to the Underwriter, and the City is to receive \$ \_\_\_\_\_ being \_\_\_\_\_ % of the par value of the principal amount of the Bonds plus accrued interest from the sale of the Bonds.

3. The Bonds were sold to the Purchaser by the City at an arms'-length negotiated sale. In our opinion, the terms of the Bonds are fair and reasonable in view of current conditions in the bond market.

4. The Bond Reserve Account created or maintained in connection with the Bonds is of the size and type that is customarily required in financings of the size and nature of the Bonds. Such a requirement provides the holders of the Bonds some measure of protection and work-out time should the City encounter financial difficulties. The failure to provide for this fund at its current size would materially adversely affect the interest rates or Yields at which the Bonds could be sold.

5. Each of the following conditions to sale of the Bonds has been met:

(a) No interest is greater than 6.00%.

(b) Principal of and interest on the Bonds does not exceed by more than \$5,000 principal of and interest on the Prior Bonds (refunded by the Bonds) in any given year.

(c) No redemption price exceeds 103%.

(d) The Refunding attributable to the Bonds has provided a present value debt service savings to the City of not less than the lesser of 2% of the par value of Prior Bonds to be refunded.

6. The net interest cost of the Bonds, calculated in accordance with customary market practice does not exceed 6%.

IN WITNESS WHEREOF I hereunto affix our name and my signature this \_\_\_\_ day of \_\_\_\_\_ 2002.

LEGG MASON WOOD WALKER, INC.

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

STATE OF ILLINOIS            )  
                                          ) SS  
COUNTY OF COOK            )

**CERTIFICATION OF MINUTES AND ORDINANCE**

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of Evanston, Cook County, Illinois (the "City"), and as such official I am the keeper of the official journal of proceedings, books, records, minutes and files of the City and of the City Council (the "City Council") thereof.

I do further certify that the foregoing is a full, true and complete transcript of that portion of the minutes of the meeting of the City Council held on the 9<sup>th</sup> day of September 2002 insofar as the same relates to the adoption of an ordinance numbered 84-O-02 and entitled:

AN ORDINANCE authorizing and providing for the issue of not to exceed \$2,600,000 Water Revenue Refunding Bonds, Series 2002, of the City of Evanston, Cook County, Illinois, for the purpose of defraying the cost of refunding outstanding Water Revenue Bonds of said City, prescribing all the details of said bonds, and providing for the collection, segregation and distribution of the revenue of the waterworks system of said City.

a true, correct and complete copy of which said ordinance as adopted at said meeting appears in the foregoing transcript of the minutes of said meeting.

I do further certify that the deliberations of the City Council on the adoption of the ordinance were taken openly; that the vote on the adoption of the ordinance was taken openly; that the meeting was held at a specified time and place convenient to the public; that an agenda for the meeting was posted at the location where the meeting was held and at the principal office of the City Council at least 48 hours in advance of the holding of the meeting; that notice of the meeting was duly given to all newspapers, radio or television stations and other news media requesting such notice; and that the meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and the Illinois Municipal Code, as amended, and that the City Council has complied with all of the provisions of the act and code so cited and with all of the procedural rules of the City Council in the adoption of the ordinance.

IN WITNESS WHEREOF I hereunto affix my official signature and the seal of the City this 24<sup>th</sup> day of September 2002.

Mary J. Morris  
City Clerk

[SEAL]

STATE OF ILLINOIS            )  
                                          ) SS  
COUNTY OF COOK            )

**CERTIFICATION OF MINUTES SHOWING INTRODUCTION**

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of Evanston, Cook County, Illinois (the "City"), and as such official I am the keeper of the official journal of proceedings, books, records, minutes and files of the City and of the City Council (the "City Council") thereof.

I do further certify that the foregoing is a full, true and complete transcript of that portion of the minutes of the meeting of the City Council held on the 12<sup>th</sup> day of August 2002 insofar as the same relates to the *introduction* of an ordinance (which subsequently, upon adoption, was numbered 84-O-02) and entitled:

AN ORDINANCE authorizing and providing for the issue of not to exceed \$2,600,000 Water Revenue Refunding Bonds, Series 2002, of the City of Evanston, Cook County, Illinois, for the purpose of defraying the cost of refunding outstanding Water Revenue Bonds of said City, prescribing all the details of said bonds, and providing for the collection, segregation and distribution of the revenue of the waterworks system of said City.

I do further certify that the meeting was held at a specified time and place convenient to the public; that an agenda for the meeting was posted at the location where the meeting was held and at the principal office of the City Council at least 48 hours in advance of the holding of the meeting; that notice of the meeting was duly given to all newspapers, radio or television stations and other news media requesting such notice; and that the meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and the Illinois Municipal Code, as amended, and that the City Council has complied with all of the provisions of the act and code so cited and with all of the procedural rules of the City Council in the introduction of the ordinance.

24<sup>th</sup> IN WITNESS WHEREOF I hereunto affix my official signature and the seal of the City this day of September 2002.

Mary J. Morris  
City Clerk

[SEAL]

