

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT**, dated as of May 1, 2004 (herein, together with any amendments or supplements hereto, called the "Agreement"), entered into by and between the City of Taylor, Texas (the "City") and The Bank of New York Trust Company, N.A., as escrow agent (together with any successor in such capacity, the "Escrow Agent"),

### W I T N E S S E T H:

**WHEREAS**, the City has heretofore issued its (i) Combination Tax and Revenue Refunding Bonds, Series 1993 currently outstanding in the aggregate principal amount of \$3,665,000 and maturing on August 15 of the years 2004 through 2010 (the "Series 1993 Bonds"), (ii) Combination Tax and Revenue Certificates of Obligation, Series 1993 currently outstanding in the aggregate principal amount of \$255,000 and maturing on August 15 of the years 2004 through 2010 (the "Series 1993 Certificates of Obligation"), and (iii) Combination Tax and Revenue Certificates of Obligation, Series 1994 currently outstanding in the aggregate principal amount of \$305,000 and maturing on August 15 of the years 2004 through 2009 (the "Series 1994 Certificates of Obligation", and collectively, with the Series 1993 Bonds and the Series 1993 Certificates of Obligation, the "Refunded Obligations"); and

**WHEREAS**, the City has determined to use proceeds from the sale of its water treatment plant to provide amounts sufficient to provide for the payment of the redemption price of the Refunded Obligations on the respective redemption dates set forth in the notices of redemption provided to the owners of the Refunded Obligations (each such date is referred to herein as the "Redemption Date"); and

**WHEREAS**, upon the sale of its water treatment plant, the City shall deposit a portion of the proceeds of such sale to the credit of the Escrow Fund created pursuant to this Agreement; and

**WHEREAS**, such proceeds may be invested in Escrowed Securities as hereafter defined; and

**NOW THEREFORE**, in consideration of the mutual undertakings, promises and agreements herein contained, the sufficiency of which are hereby acknowledged, and in order to secure the full and timely payment of principal of and the interest on the Refunded Obligations, the City and the Escrow Agent mutually undertake, promise, and agree for themselves and their respective representatives and successors, as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATIONS

**Section 1.01. Definitions.** Unless the context clearly indicates otherwise, the following terms shall have the meanings assigned to them below when they are used in this Agreement:

**"Escrow Fund"** means the fund created by this Agreement to be administered by the Escrow Agent pursuant to the provisions of this Agreement.

**"Escrowed Securities"** means the direct noncallable, not prepayable United States Treasury Obligations and obligations the due and timely payment of which is unconditionally guaranteed by the United States of America or cash held in the Escrow Fund.

**"Paying Agent"** means respectively, The Bank of New York Trust Company, N.A. or JPMorgan Chase Bank acting in their respective capacity as paying agent for the applicable Refunded Obligations.

**"Redemption Price"** means (i) \$ \_\_\_\_\_ with respect to all of the Refunded Obligations and (ii) \$ \_\_\_\_\_ with respect to the Series 1993 Bonds, \$ \_\_\_\_\_ with respect to the Series 1993 Certificates of Obligation, and \$ \_\_\_\_\_ with respect to the Series 1994 Certificates of Obligation; with each such amount being the amount necessary to redeem the respective Refunded Obligations on the respective Redemption Date.

**Section 1.02. Other Definitions.** The terms "Agreement," "City," "Escrow Agent," "Refunded Obligations," "Redemption Date," "Series 1993 Bonds," "Series 1993 Certificates of Obligation," and "Series 1994 Certificates of Obligation" when they are used in this Agreement, shall have the meanings assigned to them in the preamble to this Agreement.

**Section 1.03. Interpretations.** The titles and headings of the articles and sections of this Agreement have been inserted for convenience and reference only and are not to be considered a part hereof and shall not in any way modify or restrict the terms hereof. This Agreement and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to achieve the intended purpose of providing for the refunding of the Refunded Obligations in accordance with applicable law.

## ARTICLE II

### DEPOSIT OF FUNDS

**Section 2.01. Deposits in the Escrow Fund.** Concurrently with the sale of its water treatment plant, the City shall deposit, or cause to be deposited, with the Escrow Agent, for deposit in the Escrow Fund, the Redemption Price for all of the Refunded Obligations from the proceeds of

such sale, and the Escrow Agent shall, upon the receipt thereof, acknowledge such receipt to the City in writing.

**Section 2.02. Investments.** The funds on deposit in the Escrow Fund may be invested in Escrowed Securities, which become due at such time and in such amount in order to pay the Redemption Price of the respective Refunded Obligations on the respective Redemption Dates. Such investment shall be made at the written direction of the City.

### **ARTICLE III**

#### **CREATION AND OPERATION OF ESCROW FUND**

**Section 3.01. Escrow Fund.** The Escrow Agent has created on its books a special trust fund and irrevocable escrow to be known as the City of Taylor, Texas, Refunded Obligations Escrow Fund (the "Escrow Fund"). The Escrow Agent hereby agrees that upon receipt thereof it will deposit to the credit of the Escrow Fund the moneys described in Section 2.01 hereof. Such deposit, all proceeds therefrom, and all cash balances from time to time on deposit therein (a) shall be the property of the Escrow Fund, (b) shall be applied only in strict conformity with the terms and conditions of this Agreement, and (c) are hereby irrevocably pledged to the payment of the principal of and interest on the Refunded Obligations, which payment shall be made by timely transfers of such amounts at such times as are provided for in Section 3.02 hereof. When the final transfers have been made for the payment of the Redemption Price of all of the Refunded Obligations on the last Redemption Date, any balance then remaining in the Escrow Fund shall be transferred to the City, and the Escrow Agent shall thereupon be discharged from any further duties hereunder.

**Section 3.02. Payment of Principal and Interest.** The Escrow Agent is hereby irrevocably instructed to transfer from the cash balances from time to time on deposit in the Escrow Fund, the amounts required to pay the Redemption Price of the respective Refunded Obligations due on the respective Redemption Dates. Escrow Agent shall upon each such disbursement notify the City in writing.

**Section 3.03. Sufficiency of Escrow Fund.** The City represents that the amount on deposit in the Escrow Fund will be sufficient to provide moneys for transfer to the Paying Agent at the times and in the amounts required to pay the respective Redemption Price on the respective Redemption Date. If, for any reason, at any time, the cash balances on deposit or scheduled to be on deposit in the Escrow Fund shall be insufficient to transfer the amounts required to make the payments set forth in Section 3.02 hereof, the City shall timely deposit in the Escrow Fund additional funds in the amounts required to make such payments. Notice of any such insufficiency shall be given promptly as hereinafter provided, but the Escrow Agent shall not in any manner be responsible for any insufficiency of funds in the Escrow Fund or the City's failure to make additional deposits thereto. Any payment by the City pursuant to this Section 3.03 shall not be held to limit the City in its exercise of its rights hereunder.

**Section 3.04. Trust Fund.** The Escrow Agent shall hold at all times the Escrow Fund, the Escrowed Securities and all other assets of the Escrow Fund, wholly segregated from all other funds and securities on deposit with the Escrow Agent; it shall never allow the Escrowed Securities or any other assets of the Escrow Fund to be commingled with any other funds or securities of the Escrow Agent; and it shall hold and dispose of the assets of the Escrow Fund only as set forth herein. The Escrowed Securities and other assets of the Escrow Fund shall always be maintained by the Escrow Agent as trust funds for the benefit of the owners of the Refunded Obligations; and a special account thereof shall at all times be maintained on the books of the Escrow Agent. The owners of the Refunded Obligations shall be entitled to the same preferred claim and first lien upon the Escrowed Securities, the proceeds thereof, and all other assets of the Escrow Fund to which they are entitled as owners of the Refunded Obligations. The amounts received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the City, and the Escrow Agent shall have no right to title with respect thereto except as a constructive trustee and Escrow Agent under the terms of this Agreement. The amounts received by the Escrow Agent under this Agreement shall not be subject to warrants, drafts or checks drawn by the City or, except to the extent expressly herein provided, by the Paying Agent.

**Section 3.05. Security for Cash Balances.** Cash balances from time to time on deposit in the Escrow Fund shall, to the extent not insured by the Federal Deposit Insurance Corporation or its successor, be continuously collateralized by a pledge of direct obligations of, or obligations unconditionally guaranteed by, the United States of America, having a market value at least equal to such cash balances.

## ARTICLE IV

### **RECORDS AND REPORTS**

**Section 4.01. Records.** The Escrow Agent will keep books of record and account in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocations and application of the money and Escrowed Securities deposited to the Escrow Fund and all proceeds thereof, and such books shall be available for inspection at reasonable hours and under reasonable conditions by the City and the owners of the Refunded Obligations.

**Section 4.02. Reports.** Escrow Agent shall prepare report at final disbursement of all escrowed funds with copies of all applicable redemption documentation and forward to the City.

## ARTICLE V

### **CONCERNING THE PAYING AGENTS AND ESCROW AGENT**

**Section 5.01. Representations.** The Escrow Agent hereby represents that it has all necessary power and authority to enter into this Agreement and undertake the obligations and responsibilities imposed upon it herein, and that it will carry out all of its obligations hereunder.

**Section 5.02. Limitation on Liability.** The liability of the Escrow Agent to transfer funds for the payment of the Redemption Price of the Refunded Obligations shall be limited to the proceeds of the Escrowed Securities and the cash balances from time to time on deposit in the Escrow Fund. Notwithstanding any provision contained herein to the contrary, neither the Escrow Agent shall not have any liability whatsoever for the insufficiency of funds from time to time in the Escrow Fund or any failure of the Escrowed Securities to make timely payment thereon, except for the obligation to notify the City promptly of any such occurrence.

The recitals herein and in the proceedings authorizing the sale of the City's water treatment plant shall be taken as the statements of the City and shall not be considered as made by, or imposing any obligation or liability upon, the Escrow Agent. The Escrow Agent is not a party to the proceedings authorizing the sale of the City's water treatment plant and is not responsible for nor bound by any of the provisions thereof (except as a place of payment and paying agent and/or a paying agent/registrant therefor). In its capacity as Escrow Agent, it is agreed that the Escrow Agent need look only to the terms and provisions of this Agreement.

The Escrow Agent makes no representations as to the value, conditions or sufficiency of the Escrow Fund, or any part thereof, or as to the title of the City thereto, or as to the security afforded thereby or hereby, and the Escrow Agent shall not incur any liability or responsibility in respect to any of such matters.

It is the intention of the parties hereto that the Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

The Escrow Agent shall not be liable for any action taken or neglected to be taken by it in good faith in any exercise of reasonable care and believed by it to be within the discretion or power conferred upon it by this Agreement, nor shall the Escrow Agent be responsible for the consequences of any error of judgment; and the Escrow Agent shall not be answerable except for its own negligent action, neglect or default, nor for any loss unless the same shall have been through its negligence or want of good faith.

The Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the City with respect to arrangements or contracts with others, with the Escrow Agent's sole duty hereunder being to safeguard the Escrow Fund, to dispose of and deliver the same in accordance with this Agreement. If, however, the Escrow Agent is called upon by the terms of this Agreement to determine the occurrence of any event or contingency, the Escrow Agent shall be obligated, in making such determination, only to exercise reasonable care and diligence, and in event of error in making such determination the Escrow Agent shall be liable only for its own misconduct or its negligence. In determining the occurrence of any such event or contingency the Escrow Agent may request from the City or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or

contingency and in this connection may make inquiries of, and consult with, among others, the City at any time.

**Section 5.03. Compensation.** (a) Concurrently with the sale of the City's water treatment plant, there has been paid to the Escrow Agent, as a fee for performing the services hereunder and for all expenses incurred or to be incurred by the Escrow Agent in the administration of this Agreement, the amount of \$400, the sufficiency of which is hereby acknowledged by the Escrow Agent. In the event that the Escrow Agent is requested to perform any extraordinary services hereunder, the City hereby agrees to pay reasonable fees to the Escrow Agent for such extraordinary services and to reimburse the Escrow Agent for all expenses incurred by the Escrow Agent in performing such extraordinary services. The Escrow Agent hereby agrees that in no event shall it ever assert any claim or lien against the Escrow Fund for any fees for its services, whether regular or extraordinary, as Escrow Agent, or in any other capacity, or for reimbursement for any of its expenses.

(b) Prior to the sale of the City's water treatment plant, the City has paid to The Bank of New York Trust Company, N.A., acting in its capacity as Paying Agent for the Series 1993 Bonds and the Series 1993 Certificates of Obligation, the sum of \$\_\_\_, the sufficiency of which is hereby acknowledged by such Paying Agent for all future paying agency services with respect to the Series 1993 Bonds and the Series 1993 Certificates of Obligation; and the Paying Agent warrants that such sum is sufficient for such purpose.

(c) Prior to the sale of the City's water treatment plant, the City has paid to JPMorgan Chase Bank, the Paying Agent for the Series 1994 Certificates of Obligation, the sum of \$250, the sufficiency of which is hereby acknowledged by such Paying Agent for all future paying agency services with respect to the Series 1994 Certificates of Obligation; and the Paying Agent warrants that such sum is sufficient for such purpose.

**Section 5.04. Successor Escrow Agents.** If at any time the Escrow Agent or its legal successor or successors should become unable, through operation of law or otherwise, to act as escrow agent hereunder, or if its property and affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy or for any other reason, a vacancy shall forthwith exist in the office of Escrow Agent hereunder. In such event the City, by appropriate action, promptly shall appoint an Escrow Agent to fill such vacancy. If no successor Escrow Agent shall have been appointed by the City within 60 calendar days, a successor may be appointed by the owners of a majority in principal amount of the Refunded Obligations then outstanding by an instrument or instruments in writing filed with the City, signed by such owners or by their duly authorized attorneys-in-fact. If, in a proper case, no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this section within three months after a vacancy shall have occurred, the owner of any Refunded Obligation may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Escrow Agent.

Any successor Escrow Agent shall be a corporation organized and doing business under the laws of the United States or the State of Texas or the State of New York, authorized under such laws to exercise corporate trust powers, having its principal office and place of business in the State of Texas or the State of New York, having a combined capital and surplus of at least \$25,000,000 and subject to the supervision or examination by Federal or State authority. Any successor Escrow Agent shall also be authorized to serve as Escrow Agent under the laws of the State of Texas, including Chapter 1207, Texas Government Code, as amended.

Any successor Escrow Agent shall execute, acknowledge and deliver to the City and the Escrow Agent an instrument accepting such appointment hereunder, and the Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent, subject to the terms of this Agreement, all the rights, powers and trusts of the Escrow Agent hereunder. Upon the request of any such successor Escrow Agent, the City shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Escrow Agent all such rights, powers and duties.

## ARTICLE VI

### MISCELLANEOUS

**Section 6.01. Notice.** Any notice, authorization, request, or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid addressed to the City or the Escrow Agent at the address shown on Exhibit "A" attached hereto. The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the date and fact of delivery. Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten (10) calendar days prior notice thereof.

**Section 6.02. Termination of Responsibilities.** Upon the taking of all the actions as described herein by the Escrow Agent, the Escrow Agent shall have no further obligations or responsibilities hereunder to the City, the owners of the Refunded Obligations or to any other person or persons in connection with this Agreement.

**Section 6.03. Binding Agreement.** This Agreement shall be binding upon the City and the Escrow Agent and their respective successors and legal representatives, and shall inure solely to the benefit of the owners of the Refunded Obligations, the City, the Escrow Agent and their respective successors and legal representatives.

**Section 6.04. Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

**Section 6.05. Texas Law Governs.** This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Texas.

**Section 6.06. Time of the Essence.** Time shall be of the essence in the performance of obligations from time to time imposed upon the Escrow Agent by this Agreement.

**Section 6.07. Amendments.** This Agreement shall not be amended except to cure any ambiguity or formal defect or omission in this Agreement. No amendment shall be effective unless the same shall be in writing and signed by the parties hereto. No such amendment shall adversely affect the rights of the holders of the Refunded Obligations.

**EXECUTED** as of the date first written above.

**CITY OF TAYLOR, TEXAS**

By \_\_\_\_\_  
Mayor, City of Taylor

**EXECUTED** as of the date first written above.

**THE BANK OF NEW YORK TRUST  
COMPANY, N.A.**

By: \_\_\_\_\_  
Authorized Signatory

Solely for the purpose of acknowledging the provisions in Section 5.03(c).

**JPMORGAN CHASE BANK**

By: \_\_\_\_\_  
Authorized Signatory

**EXHIBIT "A"**

**ADDRESSES OF THE CITY AND THE ESCROW AGENT**

**City**

City of Taylor  
400 Porter  
Taylor, Texas 76574

**Escrow Agent**

The Bank of New York Trust Company, N.A.  
10161 Centurion Parkway  
Jacksonville, FL 32256