

CLOSING MEMORANDUM

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CLOSING SCHEDULE

Thursday, May 29, 2008	1:00 P.M.	Offices of Sidley Austin LLP 555 California Street, Suite 2000 San Francisco, California 94104	Pre-Closing
Friday, May 30, 2008	8:00 A.M.	Offices of Sidley Austin LLP 555 California Street, Suite 2000 San Francisco, California 94104	Closing

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

MEMORANDUM OF LEGAL PAPERS

to be included in transcripts  
relating to the above-mentioned Bonds

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Closing May 30, 2008, 8:00 A.M.

Complete transcripts are to be prepared for distribution to the following parties:

Modesto Public Financing Authority (the "Authority")

\*City of Modesto (the "City" or "C")

Susana Alcala Wood, Esq., City Attorney and General Counsel for the Authority  
(“City Attorney” or “CA”)

\*Sidley Austin LLP (“Special Counsel” or “SC”)

Stradling Yocca Carlson & Rauth, a Professional Corporation (“Disclosure Counsel” or “DC”)

Public Financial Management, Inc. (the “Financial Advisor” or “FA”)

\*The Bank of New York Trust Company, N.A. (the “Trustee” or “T”)

Philip K. Jensen, Esq. (“Trustee’s Counsel” or “TC”)

\*Banc of America Securities LLC (the “Underwriter,” “U,” or the “Remarketing Agent”)

Orrick, Herrington & Sutcliffe LLP (“Underwriter’s Counsel” or “UC”)

Bank of America, N.A. (“Liquidity Facility Provider” or “LFP”)

Kathleen C. Johnson, Attorney at Law (“Liquidity Facility Provider Counsel” or “LFP Counsel”)

Bank of America N.A. (“Swap Provider” or “Swap Counterparty”)

Assured Guaranty Corp. (the “Insurer,” “I,” “2008 Certificate Insurer,” “Insurer’s Counsel” or “IC”)

Winston & Strawn LLP (“Insurer’s Swap Counsel”)

MBIA Insurance Corporation (“2006 Certificate Insurer”)

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\* We will be preparing transcripts on CD-ROM for all parties. In addition to CD-ROM copies, parties indicated above with an asterisk (\*) will be receiving one paper copy of the transcript.

### Pre-closing

The pre-closing will be held on Thursday, May 29, 2008 at 1:00 p.m. (Pacific Daylight Time) at the offices of Sidley Austin LLP, 555 California Street, 20<sup>th</sup> Floor, San Francisco, California 94104 (the "Pre-closing") to confirm that all documents and papers are on hand, in proper form and properly executed.

The parties indicated above will deliver five (5) originals of each of the respective documents so indicated below. The documents will be executed in advance of the Closing (defined below) by the respective parties thereto and delivered no later than the Pre-closing. All of such deliveries will be deemed to have been placed in escrow until final delivery at the Closing has been made.

### Closing

In connection with the delivery of \$47,625,000 City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates"), a closing will be held at the offices of Sidley Austin LLP on Friday, May 30, 2008, at 8:00 a.m.

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

DOCUMENTS AND INSTRUMENTS

The following documents and instruments are to be delivered to the appropriate party or parties at the Closing or prior to delivery of and payment for the Certificates by the Underwriter.

	<u>Index Number</u>
I. <u>BASIC DOCUMENTS</u>	
1. Certified copy of the 1997 TRUST AGREEMENT, dated as of November 1, 1997, by and between the Authority and the Trustee. (SC)	1
2. Executed counterparts of the TRUST AGREEMENT, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Authority and the Trustee. (SC)	2
3. Certified copy of the MASTER INSTALLMENT PURCHASE CONTRACT, dated as of November 1, 1997, by and between the City and the Authority. (SC)	3
4. Certified copy of the 1997 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT, dated as of November 1, 1997, by and between the City and the Authority. (SC)	4
5. Certified copy of the 2006 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT, dated as of November 1, 2006, by and between the City and the Authority, and consented to by the Trustee and Financial Guaranty Insurance Company as 1997 Insurer. (SC)	5
6. Executed counterparts of the 2008 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT (the "2008 Contract"), dated as of May 1, 2008, by and between the City and the Authority. (SC)	6

II. AUTHORIZATION OF THE FINANCING

A. By the Authority

1. Certified copy of Resolution No. 01-2008 of the Commission of the Authority, adopted on May 13, 2008, entitled “A RESOLUTION OF THE MODESTO PUBLIC FINANCING AUTHORITY RELATING TO WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION, SERIES 2008; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A 2008 TRUST AGREEMENT, A 2008 SUPPLEMENTAL CONTRACT, A REMARKETING AGREEMENT, A LIQUIDITY FACILITY AND A PURCHASE CONTRACT; APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH; APPOINTING A TRUSTEE; AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS” (SC) 7

B. By the City

1. Certified copy of Resolution No. 2008-294 of the City Council of the City, adopted May 13, 2008, entitled “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO RELATING TO WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION, SERIES 2008; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A 2008 SUPPLEMENTAL CONTRACT, A LIQUIDITY FACILITY AND A PURCHASE CONTRACT; APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH; AUTHORIZING THE 2008 SWAP AMENDMENTS AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS” (SC) 8

III. DOCUMENTS RELATING TO THE SALE OF THE CERTIFICATES

1. Executed counterparts of the PURCHASE CONTRACT, dated May 30, 2008 (the “Purchase Contract”), by and among the Underwriter, the City and the Authority. (UC) 9
2. PRELIMINARY OFFICIAL STATEMENT, dated May 23, 2008, together with 15c2-12 Certificates of the City and the Authority. (DC) 10
3. OFFICIAL STATEMENT, dated May 29, 2008. (DC) 11

	<u>Index Number</u>
4. Copy of the Insured RATING LETTERS for the Certificates from Moody's Investors Service, Inc. and Standard & Poor's Rating Services, together with Underlying Rating Letters. (U)	12
5. RECEIPT FOR CERTIFICATES, executed by the Underwriter. (SC)	13
6. California Debt and Investment Advisory Commission (i) REPORT OF PROPOSED DEBT ISSUANCE; (ii) ACKNOWLEDGEMENT; and (iii) REPORT OF FINAL SALE. (SC)	14
 IV. <u>CLOSING DOCUMENTS</u>	
A. <u>Documents Relating to the Authority</u>	
1. CLOSING CERTIFICATE OF THE AUTHORITY, together with Resolution No. 97-1 of the Authority, adopted on October 21, 1997, attached as Exhibit A. (SC)	15
2. WRITTEN REQUEST OF THE AUTHORITY TO THE TRUSTEE AND TRUSTEE CERTIFICATE OF DELIVERY AND PAYMENT pursuant to Section 2.12 of the Trust Agreement. (SC)	16
3. COSTS OF ISSUANCE REQUISITION of the Authority. (SC)	17
4. CERTIFICATE REGARDING JOINT EXERCISE OF POWERS AGREEMENT, together with Exhibits. (SC)	18
B. <u>Documents Relating to the City</u>	
1. CLOSING CERTIFICATE OF THE CITY, together with Resolution No. 97-596 of the City, adopted on October 21, 1997, attached as Exhibit A. (SC)	19
2. TAX CERTIFICATE, together with Exhibits thereto. (SC)	20
3. Internal Revenue Service FORM 8038-G. (SC)	21
4. Copy of BLANKET ISSUER LETTER OF REPRESENTATIONS to The Depository Trust Company. (SC)	22
5. SPECIMEN CERTIFICATES. (SC)	23
C. <u>Documents Relating to the Trustee</u>	
1. CERTIFICATE OF THE TRUSTEE. (SC)	24

	<u>Index Number</u>
<b>D. <u>Documents Relating to the Remarketing Agent</u></b>	
1. Executed Counterparts of the REMARKETING AND INTEREST SERVICES AGREEMENT, dated as of May 1, 2008, between the Authority and the Remarketing Agent. (UC)	25
2. CERTIFICATE OF THE REMARKETING AGENT. (DC)	26
<b>E. <u>Documents Relating to the Liquidity Facility</u></b>	
1. STANDBY CERTIFICATE PURCHASE AGREEMENT, dated as of May 1, 2008 (the “Standby Purchase Agreement”), among the Authority, the City and the Liquidity Facility Provider. (LFP Counsel)	27
2. CUSTODIAN AGREEMENT, dated as of May 1, 2008, among the Liquidity Facility Provider, the City and the Trustee, as custodian. (LFP Counsel)	28
3. CERTIFICATE OF THE LIQUIDITY FACILITY PROVIDER REGARDING THE OFFICIAL STATEMENT, pursuant to Section 8(f)(13) of the Purchase Contract. (DC)	29
4. CERTIFICATE OF THE LIQUIDITY FACILITY PROVIDER, pursuant to Section 8(f)(20) of the Purchase Contract. (SC)	30
<b>F. <u>Documents Relating to the Insurer</u></b>	
1. Specimen FINANCIAL GUARANTY INSURANCE POLICY. (I)	31
2. Specimen RESERVE FUND FINANCIAL GUARANTY INSURANCE POLICY. (I)	32
3. REIMBURSEMENT AGREEMENT (RESERVE FUND SURETY), dated as of May 1, 2008, by and among the City, the Trustee and the Insurer. (SC)	33
4. CERTIFICATE OF THE INSURER Regarding the Official Statement. (I)	34
<b>G. <u>Documents Relating to the Refunding</u></b>	
1. SUFFICIENCY CERTIFICATE OF THE FINANCIAL ADVISOR. (SC)	35

	<u>Index Number</u>
2. (i) CONDITIONAL NOTICE OF FULL PREPAYMENT, dated April 30, 2008, and (ii) NOTICE AND INSTRUCTIONS TO DISSEMINATION AGENT, dated May 30, 2008. (SC)	36
 V. <u>DOCUMENTS RELATING TO THE INTEREST RATE SWAP</u>	
1. Executed counterparts of the International Swap Dealers Association, Inc. MASTER AGREEMENT (Local Currency—Single Jurisdiction) (the “Swap Agreement”), dated as of May 29, 2008, by and between the Swap Provider and the City. (Swap Provider and SC)	37
2. Executed counterparts of the U.S. MUNICIPAL COUNTERPARTY SCHEDULE (the “Schedule”) to the International Swap Dealers Association, Inc. Master Agreement, dated as of May 29, 2008, by and between the Swap Provider and the City. (Swap Provider and SC)	38
3. Executed counterparts of the International Swap Dealers Association, Inc. CREDIT SUPPORT ANNEX to the Schedule to the International Swap Dealers Association, Inc. Master Agreement, dated as of May 29, 2008, by and between the Swap Provider and the City. (Swap Provider and SC)	39
4. Certified copy of the CONFIRMATION (Ref. #4812575) of the Swap Provider (the “Confirmation”), dated September 27, 2006, together with CONFIRMATION TERMINATION, dated May 29, 2008. (Swap Provider and SC)	40
5. Executed counterparts of the CONFIRMATION (Ref. #50972649) of the Swap Provider (the “Confirmation”), dated May 29, 2008. (Swap Provider and SC)	41
6. SWAP PROVIDER CERTIFICATE, as to incumbency and signatures of certain officers of the Swap Provider. (Swap Provider)	42
7. Specimen POLICY OF INTEREST RATE SWAP INSURANCE. (I)	43
8. Opinion of Special Counsel REGARDING INTEREST RATE SWAP, as required by the Swap Agreement. (SC)	44
9. OPINION OF COUNSEL TO BANK OF AMERICA, N.A., addressed to the City and Insurer, as required by the Swap Agreement. (Swap Provider Counsel)	45

	<u>Index Number</u>
10. OPINION OF THE CITY ATTORNEY, addressed to Bank of America, N.A., as required by the Swap Agreement. (City Attorney)	46
11. OPINION OF COUNSEL TO THE INSURER, as required by the Swap Agreement. (IC)	47
<b>VI. <u>LEGAL OPINIONS</u></b>	
1. FINAL OPINION OF SPECIAL COUNSEL, pursuant to Section 8(f)(5) of the Purchase Contract. (SC)	48
2. SUPPLEMENTAL OPINION OF SPECIAL COUNSEL, pursuant to Section 8(f)(6) of the Purchase Contract. (SC)	49
3. OPINION OF SPECIAL COUNSEL REGARDING 2008 Contract. (SC)	50
4. RELIANCE LETTER OF SPECIAL COUNSEL, pursuant to Section 8(f)(5) of the Purchase Contract. (SC)	51
5. OPINION OF DISCLOSURE COUNSEL, together with Reliance Letter addressed to the City, pursuant to Section 8(f)(12) of the Purchase Contract. (DC)	52
6. OPINION OF AUTHORITY COUNSEL, pursuant to Section 8(f)(8) of the Purchase Contract. (CA)	53
7. OPINION OF CITY ATTORNEY, pursuant to Section 8(f)(7) of the Purchase Contract. (CA)	54
8. OPINION OF TRUSTEE'S COUNSEL, pursuant to Section 8(f)(14) of the Purchase Contract. (TC)	55
9. OPINIONS OF COUNSEL TO THE LIQUIDITY FACILITY PROVIDER, pursuant to Section 8(f)(13) of the Purchase Contract. (LFP Counsel)	56
10. OPINION OF COUNSEL TO THE INSURER, pursuant to Section 8(f)(3) of the Purchase Contract. (IC)	57
<b>VII. <u>MISCELLANEOUS</u></b>	
1. DISTRIBUTION LIST. (SC)	58
2. CLOSING MEMORANDUM and PRICING INFORMATION. (BC)	59

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE REGARDING MASTER CONTRACT, 1997 CONTRACT,  
2006 CONTRACT, 2008 CONTRACT AND 1997 TRUST AGREEMENT

I, Stephanie Lopez, hereby certify that I am the Secretary of the Commission of the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority organized under the laws of the State of California, and the City Clerk of the City of Modesto (the "City"), a charter city and municipal corporation duly organized under the Constitution and the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the Authority and the City.

I hereby further certify that there is attached hereto full, true and correct copies of the following documents:

1. Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), by and between the City and the Authority;
2. 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Contract"), by and between the City and the Authority;
3. 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006 (the "2006 Contract"), by and between the City and the Authority, and consented to by The Bank of New York Trust Company, N.A, as trustee (the "Trustee") and Financial Guaranty Insurance Company as 1997 Insurer;
4. 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Contract"), by and between the City and the Authority; and
5. 1997 Trust Agreement, dated November 1, 1997 (the "1997 Trust Agreement"), by and between the Authority and the Trustee.

I hereby further certify that, except as such Master Contract has been amended or modified by the 1997 Contract, the 2006 Contract and the 2008 Contract, being delivered on the date hereof, and that said Master Contract, 1997 Contract, 2006 Contract, 2008 Contract and the 1997 Trust Agreement have not otherwise been amended or modified since the date of their respective execution, and are now in full force and effect.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By: Stephanie Lopez  
Stephanie Lopez  
Secretary

CITY OF MODESTO

By: Stephanie Lopez  
Stephanie Lopez  
City Clerk

TRUST AGREEMENT

between the

MODESTO PUBLIC FINANCING AUTHORITY

and

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A.,

as Trustee

Dated as of November 1, 1997

Relating to

\$25,585,000  
REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
(1997 WATER UTILITY SYSTEM REFINANCING PROJECT)  
EVIDENCING AND REPRESENTING PROPORTIONATE  
INTERESTS OF THE OWNERS THEREOF  
IN 1997 PAYMENTS TO BE MADE BY THE CITY OF MODESTO

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TABLE OF CONTENTS

Section Page

ARTICLE I

DEFINITIONS; EQUAL SECURITY

1.01. Definitions .....	2
1.02. Equal Security .....	11

ARTICLE II

THE CERTIFICATES

2.01. Conditions and Terms of Certificates .....	12
2.02. Terms of the Certificates .....	12
2.03. Prepayment of Certificates .....	14
2.04. Form of Certificates .....	16
2.05. Execution of Certificates .....	16
2.06. Transfer and Payment of Certificates .....	16
2.07. Exchange of Certificates .....	17
2.08. Certificate Registration Books .....	17
2.09. Mutilated, Destroyed, Stolen or Lost Certificates .....	17
2.10. Temporary Certificates .....	18
2.11. Use of Book-Entry System for Certificates .....	18
2.12. Procedure for the Delivery of Certificates .....	19

ARTICLE III

1997 PAYMENTS

3.01. 1997 Payments Held in Trust .....	20
3.02. Deposit of 1997 Payments .....	20
3.03. Establishment and Maintenance of Accounts for Use of Money in the Debt Service Fund .....	20
3.04. Parity Reserve Fund .....	22
3.05. Deposit and Investments of Money in Accounts and Funds .....	23
3.06. Assignment to Trustee; Enforcement of Obligations .....	23

ARTICLE IV

COVENANTS OF THE AUTHORITY AND THE TRUSTEE

4.01. Compliance with Trust Agreement .....	24
4.02. Observance of Laws and Regulations .....	24
4.03. Tax Covenants .....	24
4.04. Accounting Records and Reports .....	25
4.05. Prosecution and Defense of Suits .....	25
4.06. Amendments to Contract .....	26
4.07. Recording and Filing .....	26
4.08. Further Assurances .....	26

ARTICLE V

THE TRUSTEE

5.01. The Trustee .....	27
5.02. Liability of Trustee .....	27
5.03. Compensation and Indemnification of Trustee .....	29

ARTICLE VI

AMENDMENT OF THE TRUST AGREEMENT

6.01. Amendment of the Trust Agreement .....	30
6.02. Disqualified Certificates .....	31
6.03. Endorsement or Replacement of Certificates After Amendment .....	31
6.04. Amendment by Mutual Consent .....	31

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES OF OWNERS

7.01. Events of Default; Acceleration; Waiver of Default .....	32
7.02. Other Remedies of the Trustee .....	32
7.03. Non-Waiver .....	32
7.04. Remedies Not Exclusive .....	33
7.05. No Liability by the City to the Owners .....	33
7.06. No Liability by the Trustee to the Owners .....	33

Section

Page

ARTICLE VIII

DEFEASANCE

8.01. Discharge of Trust Agreement . . . . .	33
8.02. Deposit of Money or Securities with Trustee . . . . .	34
8.03. Unclaimed Money . . . . .	34

ARTICLE IX

MISCELLANEOUS

9.01. Benefits of this Trust Agreement Limited to Parties . . . . .	35
9.02. Successor Is Deemed Included In All References To Predecessor . . . . .	35
9.03. Execution of Documents by Owners . . . . .	35
9.04. Waiver of Personal Liability . . . . .	36
9.05. Content of Certificates . . . . .	36
9.06. Accounts and Funds; Business Days . . . . .	36
9.07. Notices . . . . .	36
9.08. CUSIP Numbers . . . . .	37
9.09. Article and Section Headings and References . . . . .	37
9.10. Partial Invalidity . . . . .	38
9.11. Execution in Several Counterparts . . . . .	38
9.12. Payment Under the 1997 Certificate Insurance Policy . . . . .	38
9.13. Additional . . . . .	40
9.14. California Law . . . . .	41
Execution . . . . .	42
Exhibit A: Form of Certificate of Participation . . . . .	A-1
Exhibit B: Reserve Fund Surety Guidelines . . . . .	B-1

## TRUST AGREEMENT

THIS TRUST AGREEMENT, dated as of November 1, 1997 (the "Trust Agreement"), by and between the MODESTO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), and STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America (the "Trustee");

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

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under and pursuant to the Joint Exercise of Powers Act (being Sections 6500 et seq. of the Government Code of the State of California) (the "Act") and a Joint Exercise of Powers Agreement (the "JPA Agreement"), dated as of December 1, 1989, by and between the City of Modesto (the "City") and the Industrial Development Authority of the City of Modesto; and

WHEREAS, the Act and the Agreement authorize and empower the Authority to assist the City in acquiring and financing and refinancing certain additions, betterments, extensions and improvements to the water utility system of the City; and

WHEREAS, the Authority and the City have entered into a Master Installment Purchase Contract, executed and entered into as of the date hereof, as supplemented by the 1997 Supplemental Installment Purchase Contract, executed and entered into as of the date hereof (collectively, the "Contract"), under and pursuant to which the Authority has agreed to assist the City by refinancing certain additions, betterments, extensions and improvements to the water utility system of the City (the "1997 Project" as defined therein); and

WHEREAS, the City has determined that the consummation of the transactions contemplated in the Contract is necessary and proper for City purposes and is for the common benefit of the City as a whole; and

WHEREAS, the Authority is empowered pursuant to the aforementioned laws of the State to assist the City in financing the cost of acquisition and construction of the 1997 Project; and

WHEREAS, the City is obligated to make certain payments to the Authority under the Contract (the "1997 Payments"); and

WHEREAS, all rights to receive the 1997 Payments have been assigned by the Authority to the Trustee pursuant to this Trust Agreement; and

WHEREAS, in consideration of such assignment and the execution and entering into of the Trust Agreement, the Trustee has agreed to execute and deliver certificates of participation

(the "Certificates") in an aggregate principal amount equal to the aggregate principal amount of such 1997 Payments, each representing a proportionate interest in such 1997 Payments; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Trust Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the execution and delivery of this Trust Agreement have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein, and for other valuable consideration, the parties hereto do hereby covenant and agree, as follows:

## ARTICLE I

### DEFINITIONS; EQUAL SECURITY

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any Supplemental Trust Agreement and of any certificate, opinion, request or other document herein or therein mentioned have the meanings herein specified:

#### Authority

The term "Authority" means the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State.

#### Business Day

The term "Business Day" means any day (other than a Saturday or a Sunday) on which banks in New York, New York are open for business and on which the Trustee is open for business at its corporate trust office in Los Angeles, California.

#### Certificate of the Authority

The term "Certificate of the Authority" means an instrument in writing signed by the Auditor and Treasurer of the Authority or by any other officer of the Authority duly authorized by the Authority for that purpose.

#### Certificate Payment Date

The term "Certificate Payment Date" means, with respect to any Certificate, the Certificate Payment Date designated therein, which is the October 1 on which or, in the case of Certificates subject to mandatory sinking fund prepayment by which, the principal component of the final 1997 Payment evidenced and represented thereby shall become due and payable.

### Certificates

The term "Certificates" means all refunding revenue certificates of participation evidencing and representing proportionate interests of the owners thereof in the 1997 Payments to be made by the City executed and delivered in accordance with Article II hereof.

### City

The term "City" means the City of Modesto, a charter city and municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State.

### Code

The term "Code" means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code shall be deemed to be a reference to any successor to any such section.

### Contract

The term "Contract" means that certain Master Installment Purchase Contract, dated as of November 1, 1997, by and between the City and the Authority, as supplemented by the 1997 Supplemental Contract and as otherwise amended or supplemented from time to time.

### Corporate Trust Office

The term "Corporate Trust Office" means the corporate trust office of the Trustee at 725 South Figueroa Street, Suite 3100, Los Angeles, California 90017, or such other office designated by the Trustee from time to time.

### Costs of Issuance

The term "Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the City or the Authority and related to the authorization, execution and delivery of the Contract, the Trust Agreement and the sale of the Certificates, including, but not limited to, costs of preparation and reproduction of documents, costs of rating agencies and costs to provide information required by rating agencies, filing and recording fees, initial fees and charges of the Trustee and its counsel, legal fees and charges, fees and disbursements of consultants and professionals, fees and expenses of the underwriter, fees and charges for preparation, execution and safekeeping of the Certificates, fees of the Authority and any other cost, charge or fee in connection with the original execution and delivery of the Certificates.

### Costs of Issuance Fund

The term "Costs of Issuance Fund" means the fund by that name established pursuant to Section 2.12 hereof.

Debt Service Fund

The term "Debt Service Fund" means the fund by that name established pursuant to Section 3.02.

Debt Service Reserve Fund Policy Agreement

The term "Debt Service Reserve Fund Policy Agreement" means the Debt Service Reserve Fund Policy Agreement, dated the date hereof, by and among the Authority, the City and the 1997 Certificate Insurer, and any authorized and executed amendments thereto.

Escrow Agreement

The term "Escrow Agreement" means that certain Escrow Agreement, dated as of November 1, 1997, by and among the City, the Authority and the Escrow Agent.

Escrow Agent

The term "Escrow Agent" means State Street Bank and Trust Company of California, N.A., as escrow agent under the Escrow Agreement.

Event of Default

The term "Event of Default" means an event described in Section 7.01 hereof.

Fiscal Year

The term "Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the Authority as its Fiscal Year.

Independent Certified Public Accountant

The term "Independent Certified Public Accountant" means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State, appointed and paid by the Authority, and who, or each of whom --

- (1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the Authority;
- (2) does not have a substantial financial interest, direct or indirect, in the operations of the Authority; and
- (3) is not connected with the Authority as a member, officer or employee of the Authority, but who may be regularly retained to audit the accounting records of and make reports thereon to the Authority.

### Information Services

The term "Information Services" means Financial Information, Incorporated's "Daily Called Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services, "Called Bond Service," 55 Broad Street, 28th Floor, New York, New York 10004; Moody's Investors Service's "Municipal and Government," 5250 77 Center Drive, Suite 150, Charlotte, NC 28217, Attention: Called Bond Department; and Standard & Poor's Corporation's "Called Bond Record," 25 Broadway, 3rd Floor, New York, New York 10004; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called bonds as the Authority may designate in a Certificate of the Authority delivered to the Trustee.

### Interest Account

The term "Interest Account" means the account within the Debt Service Fund by that name established pursuant to Section 3.03.

### Interest Payment Date

The term "Interest Payment Date" means April 1 and October 1 of each year, commencing April 1, 1998.

### Moody's

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

### 1997 Certificate Insurance Policy

The term "1997 Certificate Insurance Policy" means the municipal bond new issue insurance policy issued by the 1997 Certificate Insurer that guarantees payment of principal and interest evidenced and represented by the Certificates.

### 1997 Certificate Insurer

The term "1997 Certificate Insurer" means Financial Guaranty Insurance Company, a New York stock insurance company, or any successor thereto.

### 1997 Certificate Reserve Policy

The term "1997 Certificate Reserve Policy" means the Municipal Bond Debt Service Reserve Fund Policy issued by the Certificate Insurer, which policy shall terminate on the earlier of the prepayment or the scheduled final maturity of the Certificates.

### 1997 Payments

The term "1997 Payments" means the installment payments of interest, principal, and prepayment premium, if any, payable by the City under and pursuant to the 1997 Supplemental Contract.

### 1997 Project

The term "1997 Project" means the improvements to the Water Utility System described in Exhibit B to the 1997 Supplemental Contract.

### 1997 Supplemental Contract

The term "1997 Supplemental Contract" means that certain 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997, by and between the City and the Authority.

### 1992 Certificates

The term "1992 Certificates" means the \$25,065,000 Certificates of Participation (1992 Water System Improvement Project).

### Opinion of Counsel

The term "Opinion of Counsel" means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, retained by the Authority.

### Outstanding

The term "Outstanding," when used as of any particular time with reference to Certificates, means (subject to the provisions of Section 6.02) all Certificates except

- (1) Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;
- (2) Certificates paid or deemed to have been paid within the meaning of Section 8.01; and
- (3) Certificates in lieu of or in substitution for which other Certificates shall have been executed and delivered by the Trustee pursuant hereto.

### Owner

The term "Owner" means any person who shall be the registered owner of any Outstanding Certificate.

### Parity Reserve Fund

The term "Parity Reserve Fund" means the fund by that name established pursuant to Section 3.04.

### Permitted Investments

The term "Permitted Investments" means any of the following obligations if and to the extent that they are permissible investments of funds of the City as stated in its current investment policy (copies of which the Authority shall cause the City to provide on a current basis to the Trustee) and to the extent then permitted by law:

- (1) Federal Securities;
- (2) Obligations issued by the Resolution Funding Corporation and the Student Loan Marketing Association, or obligations, participations, or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Government National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal);
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or any of its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System and which are drawn on any bank the short-term obligations of which are rated in the highest letter and numerical rating category as provided by Moody's and by S&P; provided, that purchases of eligible bankers acceptances may not exceed 270 days' maturity;
- (4) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating category as provided by Moody's and by S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of \$500,000,000 and that have an "A1" or higher rating for the issuer's unsecured debentures, other than commercial paper, as provided by Moody's and by S&P; provided, that purchases of eligible commercial paper may not exceed 180 days' maturity nor represent more than 10% of the outstanding commercial paper of an issuing corporation;
- (5) Non-negotiable certificates of deposit issued by a state or national bank (including the Trustee or any of its affiliates) that have maturities of not more than 365 days or deposit accounts with a state or national bank and that are fully insured by the Federal Deposit Insurance Corporation or the short term obligations of which state or national bank are rated no lower than "A1" by Moody's and "A+" by S&P;

(6) Any repurchase agreement of any securities enumerated in subdivisions (1) and (2) with any state or national bank (including the Trustee or any of its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than "A1" by Moody's and "A+" by S&P or whose commercial paper is rated no lower than "P-1" by Moody's and no lower than "A-1" by S&P; (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; provided, that (a) the term of such repurchase agreement is less than one (1) year or due on demand; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the market value of the collateral (as determined at least once in every 14 days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody's and to S&P; (d) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; and (e) the repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with "retail customers" which falls under the jurisdiction of the Securities Investors Protection Corporation; provided, that: (a) the market value of the collateral (as determined at least once in every 14 days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody's and to S&P; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the Trustee has a perfected first priority security interest in the collateral; (d) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (e) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;

(7) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State or any local agencies therein which are rated in the highest short-term rating category or within one of the three highest long-term rating categories by Moody's and by S&P (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);

(8) For amounts less than \$100,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof, and of which an aggregate total of \$100,000 is not exceeded in any one financial institution;

(9) Investments in units of a money-market fund portfolio that is rated in the highest letter and numerical rating category by Moody's and by S&P (including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services) and that is composed of obligations guaranteed by the full faith and credit of the United States of America or repurchase agreements collateralized by such obligations;

(10) A guaranteed investment contract with a financial institution or insurance company (or guaranteed by a financial institution or insurance company) which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated within the two highest rating categories of any Rating Agency;

(11) Obligations approved in writing by Moody's and by S&P;

(12) The Local Agency Investment Fund or similar pooled fund operated by or on behalf of the State and which is authorized to accept investments by or on behalf of the Authority of the moneys held by the Trustee in any of the accounts or bonds established pursuant hereto to the extent deposits and withdrawals may be made by the Trustee directly; and

(13) The California Asset Management Program (CAMP) to the extent deposits and withdrawals may be made by the Trustee directly.

#### Prepayment Account

The term "Prepayment Account" means the account within the Debt Service Fund by that name established pursuant to Section 3.03.

#### Principal Subaccount

The term "Principal Subaccount" means the subaccount by that name established in Section 3.03.

#### Rating Agencies

"Rating Agencies" means Moody's and S&P, and their respective successors or assigns, or any other nationally recognized securities rating agency or agencies rating the Certificates at the request of the City.

#### Record Date

The term "Record Date" means, with respect to an Interest Payment Date, the 15th day of the month immediately preceding such Interest Payment Date.

#### Representation Letter

The term "Representation Letter" means the letter of representation to The Depository Trust Company, New York, New York, from the Authority.

### Reserve Fund Requirement

The term "Reserve Fund Requirement" shall have the meaning ascribed thereto in the Contract.

### Securities Depositories

The term "Securities Depositories" means: The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax-(516) 227-4039 or 4190; Midwest Securities Trust Company, Capital Structures-Call Notification, 440 South LaSalle Street, Chicago, Illinois 60605, Fax-(312) 663-2343; and Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention: Certificate Department, Fax-(215) 496-5058; or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority may designate in a Certificate of the Authority to the Trustee.

### Sinking Fund Payments

The term "Sinking Fund Payments" means the payments required under Section 2.02 to be deposited in the Sinking Fund Subaccount.

### Sinking Fund Subaccount

The term "Sinking Fund Subaccount" means the subaccount by that name established pursuant to Section 3.03.

### S&P

The term "S&P" means Standard & Poor's Ratings Group, a division of The McGraw Hill Company, and its successors or assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then "S&P" shall be deemed to refer to any other nationally recognized municipal securities rating agency selected by the Authority.

### State

The term "State" means the State of California.

### Supplemental Trust Agreement

The term "Supplemental Trust Agreement" means any trust agreement then in full force and effect which has been duly executed and delivered by the Authority and the Trustee amendatory hereof or supplemental hereto; but only if and to the extent that such Supplemental Trust Agreement is specifically authorized hereunder.

### Tax Certificate

The term "Tax Certificate" means the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the Certificates, executed and delivered by the Authority and the City on the date of delivery of the Certificates, including any and all exhibits attached thereto.

### Term Certificates

The term "Term Certificates" means the Certificates with a Certificate Payment Date of October 1, 2017 and October 1, 2022.

### Trust Agreement

The term "Trust Agreement" means this Trust Agreement, dated as of November 1, 1997, between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented by all Supplemental Trust Agreements executed pursuant to the provisions hereof.

### Trustee

The term "Trustee" means State Street Bank and Trust Company of California, N.A., or any other association or corporation which may at any time be substituted in its place as provided in Section 5.01.

### Written Request of the Authority

The term "Written Request of the Authority" means an instrument in writing signed by the Treasurer of the Authority or by any other officer of the Authority duly authorized by the Authority for that purpose.

SECTION 1.02. Equal Security. In consideration of the acceptance of the Certificates by the Owners thereof, this Trust Agreement shall be deemed to be and shall constitute a contract between the Authority and the Owners from time to time of all Certificates authorized, executed, and delivered hereunder and then Outstanding to secure the full and final payment of the interest, principal, and prepayment premiums, if any, evidenced and represented by the Certificates which may from time to time be authorized, executed, issued and delivered hereunder, subject to the agreements, conditions, covenants and provisions contained herein; and all agreements and covenants set forth herein to be performed by or on behalf of the Trustee shall be for the equal and proportionate benefit, protection and security of all Owners without distinction, preference or priority as to security or otherwise of any Certificates over any other Certificates by reason of the number or date thereof or the time of authorization, sale, execution, or delivery thereof or for any cause whatsoever, except as expressly provided herein or therein.

## ARTICLE II

### THE CERTIFICATES

SECTION 2.01. Conditions and Terms of Certificates. The Trustee is hereby authorized and directed to execute and deliver the Certificates in the aggregate principal amount of \$25,585,000, aggregating the principal installments of the 1997 Payments, and each evidencing and representing a proportionate interest in the 1997 Payments.

SECTION 2.02. Terms of the Certificates. The Certificates shall be dated November 1, 1997, shall be executed and delivered only in fully registered form in denominations of \$5,000 or any integral multiple of \$5,000. No Certificate shall represent principal becoming payable in more than one year. The principal represented by the Certificates shall be payable on the dates and in the amounts and bear interest at the rates as set forth in the following schedule:

<u>Certificate Payment Date (October 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
1998	\$ 685,000	4.500%
1999	545,000	4.500
2000	570,000	4.500
2001	600,000	4.500
2002	630,000	4.500
2003	665,000	4.400
2004	700,000	4.500
2005	740,000	5.000
2006	780,000	4.625
2007	815,000	4.700
2008	855,000	4.800
2009	900,000	4.900
2010	945,000	5.000
2011	995,000	5.000
2012	1,050,000	5.000
2017	6,145,000	5.125
2022	7,965,000	5.125

The Certificates shall evidence and represent interest payable in lawful money of the United States of America at the rates (based on a 360-day year of twelve 30-day months) set forth above, payable on April 1, 1998, and semiannually thereafter on April 1 and October 1 in each year to the respective Certificate Payment Date or prepayment prior thereto. The Certificates shall evidence and represent interest from the Interest Payment Date next preceding the date of execution thereof, unless such date of execution is after a Record Date and on or before the following Interest Payment Date, in which event they shall evidence and represent interest from such Interest Payment Date, or unless such date of execution is on or before the first Record Date, in which event such Certificate shall evidence and represent interest from

November 1, 1997; provided, that if at the time of execution of any Outstanding Certificate interest is then in default, such Certificate shall evidence and represent interest from the Interest Payment Date to which interest has previously been paid or made available for payment on the Outstanding Certificates. Payment of interest evidenced and represented by the Certificates shall be made to the person whose name appears in the Certificate registration books kept by the Trustee pursuant to Section 2.08 as the registered owner thereof as of the close of business on the Record Date for an Interest Payment Date, whether or not such day is a Business Day, and shall be paid by check mailed on such Interest Payment Date by first-class mail to such registered owner at the address as it appears in such books; provided, that upon the written request of any Owner of \$1,000,000 or more in aggregate principal amount of Certificates received by the Trustee prior to the applicable Record Date (which such request shall remain in effect until rescinded in writing by such Owner) interest shall be paid by wire transfer in immediately available funds to an account designated by the Owner in the United States.

The principal evidenced and represented by the Certificates shall be payable in lawful money of the United States of America upon the surrender thereof on the respective Certificate Payment Date or on prepayment prior thereto at the Corporate Trust Office of the Trustee.

Sinking Fund Payments are hereby established for the mandatory prepayment and payment of the Certificates with Certificate Payment Dates on October 1, 2017, from scheduled 1997 Payments due on the dates and in the amounts as set forth in the following schedule (except that if any such Certificates have been optionally prepaid pursuant to Section 2.03(b), the amounts of such Sinking Fund Payments shall be reduced as directed by the Authority, or if not so directed, proportionately in \$5,000 increments by the principal amount evidenced and represented by all such Certificates so optionally prepaid), namely:

Date (October 1)	<u>Sinking Fund Payment</u>
2013	\$1,105,000
2014	1,165,000
2015	1,225,000
2016	1,290,000
2017 (maturity)	1,360,000

Sinking Fund Payments are hereby established for the mandatory prepayment and payment of the Certificates with Certificate Payment Dates on October 1, 2022, from scheduled 1997 Payments due on the dates and in the amounts as set forth in the following schedule (except that if any such Certificates have been optionally prepaid pursuant to Section 2.03(b), the amounts of such Sinking Fund Payments shall be reduced as directed by the Authority, or if not so directed, proportionately in \$5,000 increments by the principal amount evidenced and represented by all such Certificates so optionally prepaid), namely:

<u>Date</u> <u>(October 1)</u>	<u>Sinking Fund</u> <u>Payment</u>
2018	\$1,430,000
2019	1,505,000
2020	1,590,000
2021	1,675,000
2022 (maturity)	1,765,000

All such Sinking Fund Payments shall be deposited in a separate subaccount in the Prepayment Account, which subaccount is hereby established and shall be known as the Sinking Fund Subaccount and which subaccount the Authority hereby agrees and covenants to cause to be maintained so long as any Term Certificates are Outstanding. On each Sinking Fund Payment date, the Trustee shall apply the Sinking Fund Payment required on such date to the mandatory prepayment or payment of Term Certificates, upon the notice and in the manner provided in Section 2.03 hereof; provided that, at any time prior to giving notice of such prepayment, the Trustee may apply moneys in the Sinking Fund Subaccount to the purchase of Term Certificates at public or private sale, as and when and at such prices (including brokerage and other charges) as directed in writing by the Authority, except that the purchase price shall not exceed the prepayment price that would be payable for Term Certificates upon prepayment by application of such Sinking Fund Payment. If, during the 12-month period immediately preceding said Sinking Fund Payment date, the Trustee has purchased Term Certificates with moneys in the Sinking Fund Subaccount, or, during said period and prior to giving said notice of prepayment, the City or the Authority has deposited Term Certificates with the Trustee (together with a request of the Authority or the City to apply such Certificates so deposited to the Sinking Fund Payment due on said Sinking Fund Payment date), or Term Certificates were at any time purchased or prepaid by the Trustee from the Prepayment Account and allocable to said Sinking Fund Payment, such Certificates so purchased, deposited, or prepaid shall be applied, to the extent of the full principal amount evidenced and represented thereby, to reduce said Sinking Fund Payment.

**SECTION 2.03. Prepayment of Certificates.**

(a) Mandatory Prepayment. The Certificates with a Certificate Prepayment Date of October 1, 2017 and October 1, 2022, respectively, are subject to mandatory prepayment prior to their respective Certificate Payment Dates, in part by lot, on October 1 of each year on and after October 1, 2013 and October 1, 2018, respectively, in accordance with the schedules set forth in Section 2.02 hereof upon notice as hereinafter provided, from and in the amount of the principal installment of the 1997 Payments due and payable on such dates, at a prepayment price equal to the sum of the principal amount evidenced and represented thereby plus accrued and unpaid interest evidenced and represented thereby to the prepayment date, without a prepayment premium.

(b) Optional Prepayment. The Certificates with a Certificate Payment Date on or after October 1, 2008 are subject to optional prepayment prior to their respective stated Certificate

Payment Dates, upon notice as hereinafter provided, from prepayments of 1997 Payments made by the City pursuant to the Contract, as a whole or in part (for such Certificate Payment Dates as are designated by the Authority to the Trustee at the direction of the City or, if the Authority fails to designate such Certificate Payment Dates, in inverse order of Certificate Payment Date and by lot within a Certificate Payment Date) on any date on or after October 1, 2007, at the following prepayment prices (expressed as percentages of the principal amount of Certificates called for prepayment), plus accrued and unpaid interest to the prepayment date:

<u>Prepayment Period</u> <u>(dates inclusive)</u>	<u>Prepayment</u> <u>Price</u>
October 1, 2007 through September 30, 2008	101 %
October 1, 2008 through September 30, 2009	100.5
October 1, 2009 and thereafter	100

If less than all of the Outstanding Certificates are to be prepaid at any one time, the Authority (at the direction of the City) shall designate the Certificate Payment Dates of the Certificates to be prepaid. If less than all Outstanding Certificates of any particular Certificate Payment Date are to be prepaid at any one time, the Trustee shall select the Certificates of such Certificate Payment Date to be prepaid by lot. For purposes of such selection, Certificates of such Certificate Payment Date shall be deemed to be composed of \$5,000 multiples and any such multiple may be separately prepaid. If the Authority elects to prepay Certificates pursuant to Section 2.03(b), it will notify the Trustee of the prepayment date and the principal amount evidenced and represented by the Certificates of each Certificate Payment Date to be prepaid on such prepayment date at least 45 days prior to such prepayment date; provided, that the Trustee may, at its option, waive any such notice or accept any notice received at a later date.

Notice of prepayment shall be mailed by the Trustee, not less than 30 nor more than 60 days prior to the prepayment date to (i) the respective Owners of the Certificates designated for prepayment at their addresses appearing on the registration books of the Trustee, (ii) the Securities Depositories and (iii) one or more Information Services. Notice of prepayment to the Securities Depositories and the Information Services shall be given by first-class mail, certified mail, overnight delivery or facsimile transmission. Each notice of prepayment shall state the date of such notice, the prepayment price, the place of prepayment (including the name and appropriate address of the Trustee), the CUSIP number (if any) of the Certificates to be prepaid, and, if less than all of the Certificates maturing on any one Certificate Payment Date are to be prepaid, the distinctive certificate numbers of the Certificates of such Certificate Payment Date to be prepaid and, in the case of Certificates to be prepaid in part only, the respective portions of the principal amount evidenced and represented thereby to be prepaid. Each such notice shall also state that on said date there will become due and payable on each of said Certificates the prepayment price thereof and in the case of a Certificate to be prepaid in part only, the specified portion of the principal amount evidenced and represented thereby to be prepaid, together with accrued and unpaid interest evidenced and represented thereby to the prepayment date, and that from and after such prepayment date interest evidenced and represented thereby shall cease to accrue, and shall require that such Certificates be then surrendered at the address of the Trustee

specified in the prepayment notice. Failure to receive such notice shall not invalidate any of the proceedings taken in connection with such prepayment.

In the event of prepayment of Certificates (other than sinking fund prepayment), the Trustee shall mail a notice of prepayment upon receipt of a Written Request of the Authority but only after the Authority shall file a Certificate of the Authority with the Trustee that on or before the date set for prepayment, the Authority will deposit with or otherwise make available to the Trustee for deposit in the Prepayment Account the money required for payment of the prepayment price, including accrued interest evidenced and represented thereby, of all Certificates then to be called for prepayment (or the Trustee determines that money will be deposited with or otherwise made available to it in sufficient time for such purpose), together with the estimated expense of giving such notice.

If notice of prepayment has been duly given as aforesaid and money for the payment of the prepayment price of the Certificates called for prepayment is held by the Trustee, then on the prepayment date designated in such notice Certificates so called for prepayment shall become due and payable, and from and after the date so designated interest evidenced and represented by such Certificates shall cease to accrue, and the Owners of such Certificates shall have no rights in respect thereof except to receive payment of the prepayment price thereof.

All Certificates prepaid pursuant to the provisions of this section shall be cancelled and destroyed by the Trustee and shall not be redelivered.

SECTION 2.04. Form of Certificates. The Certificates shall be substantially in the form set forth in Exhibit A hereto attached and by this reference herein incorporated.

SECTION 2.05. Execution of Certificates. The Certificates shall be executed by the Trustee by the manual signature of an authorized officer or signatory of the Trustee.

SECTION 2.06. Transfer and Payment of Certificates. Any Certificates may, in accordance with its terms, be transferred in the books required to be kept pursuant to the provisions of Section 2.08 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Certificates at the Corporate Trust Office of the Trustee for cancellation accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Trustee. Whenever any Certificates or Certificates shall be surrendered for transfer, the Trustee shall execute and deliver to the transferee a new Certificate or Certificates of the same Certificate Payment Date evidencing and representing a like aggregate principal amount in authorized denominations. The Trustee shall require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer as a condition precedent to the exercise of such privilege.

The Trustee may deem and treat the registered owner of any Certificates as the absolute owner of such Certificates for the purpose of receiving payment thereof and for all other purposes, whether such Certificates shall be overdue or not, and the Trustee shall not be affected by any notice or knowledge to the contrary; and payment of the interest and principal and prepayment premium, if any, evidenced and represented by such Certificates shall be made only

to such registered owner, which payments shall be valid and effectual to satisfy and discharge liability on such Certificates to the extent of the sum or sums so paid.

The Trustee shall not be required to register the transfer of any Certificate during the period commencing on the date 15 days preceding the selection of Certificates for prepayment and ending on the date of mailing of notice of such prepayment, or any Certificate which has been selected for prepayment in whole or in part, from and after the day of mailing of a notice of prepayment of such Certificates selected for prepayment in whole or in part as provided in Section 2.03.

SECTION 2.07. Exchange of Certificates. Certificates may be exchanged at the Corporate Trust Office of the Trustee for Certificates evidencing and representing a like aggregate principal amount of Certificates of the same Certificate Payment Date of other authorized denominations. The Trustee shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange as a condition precedent to the exercise of such privilege.

The Trustee shall not be required to exchange any Certificate during the 15-day period preceding the selection of Certificates for prepayment, or any Certificate which has been selected for prepayment in whole or in part, from and after the day of mailing of a notice of prepayment of such Certificates selected for prepayment in whole or in part as provided in Section 2.03.

SECTION 2.08. Certificate Registration Books. The Trustee will keep at its Corporate Trust Office sufficient books for the registration and transfer of the Certificates which shall at all times be open to inspection by the Authority during regular business hours with reasonable prior notice, and upon presentation for such purpose the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer the Certificates in such books as hereinabove provided.

SECTION 2.09. Mutilated, Destroyed, Stolen or Lost Certificates. If any Certificate shall become mutilated the Trustee, at the expense of the Owner, shall thereupon execute and deliver a new Certificate of like tenor and amount in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee shall be cancelled and destroyed.

If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory to the Trustee and indemnity satisfactory to the Trustee has been given, the Trustee, at the expense of the Owner, shall thereupon execute and deliver a new Certificate of like tenor in lieu of and in substitution for the Certificate so lost, destroyed or stolen.

The Trustee may require payment of a reasonable sum for each new Certificate delivered under this Section 2.09 and of the expenses which may be incurred by the Authority and the Trustee in the premises. Any Certificate executed and delivered under the provisions of this section in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Certificates secured

by this Trust Agreement. The Trustee shall not be required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate shall be treated as one and the same.

SECTION 2.10. Temporary Certificates. The Certificates executed and delivered under this Trust Agreement may be initially executed and delivered in temporary form exchangeable for definitive Certificates when ready for delivery. The temporary Certificates may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Trustee, shall be in fully registered form and may contain such reference to any of the provisions of this Trust Agreement as may be appropriate. Every temporary Certificate shall be executed and delivered by the Trustee, upon the same conditions and terms and in substantially the same manner as definitive Certificates. If the Trustee executes and delivers temporary Certificates it will execute and furnish definitive Certificates and thereupon the temporary Certificates may be surrendered, for cancellation, in exchange therefor at the Corporate Trust Office of the Trustee, and the Trustee shall deliver in exchange for such temporary Certificates definitive Certificates evidencing and representing an equal aggregate principal amount of Certificates of authorized denominations. Until so exchanged, the temporary Certificates shall be entitled to the same benefits under this Trust Agreement as definitive Certificates delivered hereunder.

SECTION 2.11. Use of Book-Entry System for Certificates. (a) The Certificates initially shall be delivered in the form of a single executed fully registered securities certificate for each stated Certificate Payment Date of such Certificates, representing the aggregate principal amount evidenced and represented by the Certificates of such Certificate Payment Date. Upon initial delivery, the ownership of all such Certificates shall be registered in the registration records maintained by the Trustee pursuant to Section 2.08 hereof in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), or such other nominee as DTC shall request pursuant to the Representation Letter. The Trustee may treat DTC (or its nominee) as the sole and exclusive owner of the Certificates registered in its name for the purposes of payment of the principal or prepayment price and interest evidenced and represented by such Certificates, selecting the Certificates or portions thereof to be prepaid, giving any notice permitted or required to be given to Owners hereunder, registering the transfer of Certificates, obtaining any consent or other action to be taken by Owners of the Certificates and for all other purposes whatsoever; and the Trustee shall not be affected by any notice to the contrary. Neither the Trustee nor the Authority shall have any responsibility or obligation to any Participant (which shall mean, for purposes of this section, securities brokers and dealers, banks, trust companies, clearing corporations and other entities, some of whom directly or indirectly own DTC), any person claiming a beneficial ownership interest in the Certificates under or through DTC or any Participant, or any other person which is not shown on the registration records as being an Owner of Certificates, with respect to (i) the accuracy of any records maintained by DTC or any Participant, (ii) the payment by DTC or any Participant of any amount in respect of the principal or prepayment price or interest evidenced and represented by the Certificates (iii) any notice which is permitted or required to be given to Owners of Certificates hereunder, (iv) the selection by DTC or any Participant of any person to receive payment in the event of a partial prepayment of the Certificates, or (v) any consent given or other action taken by DTC as Owner of Certifi-

ates. Notwithstanding anything to the contrary herein, the Trustee shall pay all principal, prepayment premium, if any, and interest evidenced and represented by the Certificates only at the times, to the accounts, at the addresses and otherwise in accordance with the Representation Letter, and all such payments shall be valid and effective to satisfy fully and discharge the principal, prepayment premium, if any, and interest evidenced and represented by the Certificates to the extent of the sum or sums so paid. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of its then existing nominee, the Certificates will be transferable to such new nominee in accordance with subsection (c) of this section.

(b) Upon written instruction of the Authority to the Trustee that beneficial owners of the Certificates be able to obtain securities certificates, the Trustee shall so notify DTC, whereupon DTC shall notify the Participants of the availability through DTC of securities certificates. In such event, the Certificates will be transferable in accordance with subsection (c) of this section. DTC may determine to discontinue providing its services with respect to the Certificates at any time by giving written notice of such discontinuance to the Authority and the Trustee and discharging its responsibilities with respect thereto under applicable law. In such event, the Certificates will be transferable in accordance with subsection (c) of this section. Whenever DTC requests the Authority and the Trustee to do so, the Trustee and the Authority will cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of all certificates evidencing the Certificates then Outstanding. In such event, the Certificates will be transferable to such securities depository in accordance with subsection (c) of this section, and thereafter, all references in this Trust Agreement to DTC or its nominee shall be deemed to refer to such successor securities depository and its nominee, as appropriate.

(c) In the event that any transfer or exchange of Certificates is authorized under subsection (a) or (b) of this section, such transfer or exchange shall be accomplished upon receipt by the Trustee from the registered owner thereof of the Certificates to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee, all in accordance with the applicable provisions of Sections 2.06 and 2.07 hereof. In the event certificates are delivered to Owners other than Cede & Co., its successor as nominee for DTC as Owner of all the Certificates, another securities depository as Owner of all the Certificates, or the nominee of such successor securities depository, the provisions of Sections 2.06 and 2.07 hereof shall also apply to, among other things, the registration, exchange and transfer of the Certificates and the method of payment of principal, prepayment premium, if any, and interest evidenced and represented by the Certificates.

SECTION 2.12. Procedure for the Delivery of Certificates. The Trustee is hereby authorized to execute and deliver the Certificates to the purchaser thereof upon the Written Request of the Authority and upon receipt of the proceeds of the sale thereof. Upon receipt of the proceeds of the sale of the Certificates from the purchaser thereof, the Trustee shall set aside and deposit the proceeds received from such sale in the following respective accounts or funds or with the following respective persons, in the following order of priority:

(a) The Trustee shall deposit in the Interest Account hereinafter referred to the accrued interest received by the Trustee upon the delivery of the Certificates, being a sum equal to \$63,313.38;

(b) The Trustee shall transfer to the Escrow Agent, for deposit to the Escrow Fund established and maintained under the Escrow Agreement, a sum equal to \$24,629,776.72, to provide for the defeasance of the 1992 Certificates; and

(c) The Trustee shall deposit the remainder of the proceeds of sale of the Certificates in the Costs of Issuance Fund (such amount being \$144,056.00), which fund is hereby created and which fund the Authority hereby agrees to maintain with the Trustee until May 1, 1998. All money in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance of the Certificates upon receipt of a Written Request of the Authority filed with the Trustee, each of which shall be sequentially numbered and shall state the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On May 1, 1998 or upon the earlier Written Request of the Authority, any remaining balance in the Costs of Issuance Fund shall be transferred to the City for deposit in the Improvement Fund established under the Contract.

### ARTICLE III

#### 1997 PAYMENTS

SECTION 3.01. 1997 Payments Held in Trust. The 1997 Payments shall be held in trust by the Trustee for the benefit of the Owners from time to time of the Certificates, but shall nonetheless be disbursed, allocated and applied solely for the uses and purposes provided herein.

SECTION 3.02. Deposit of 1997 Payments. The Trustee hereby agrees to establish, maintain and hold in trust the Debt Service Fund, for so long as any Certificates shall be Outstanding hereunder. All 1997 Payments (except as otherwise provided) received by the Trustee shall be immediately deposited in the Debt Service Fund and shall be disbursed and applied only as hereinafter provided.

SECTION 3.03. Establishment and Maintenance of Accounts for Use of Money in the Debt Service Fund. Subject to Section 4.03, all money in the Debt Service Fund shall be set aside by the Trustee in the following respective special accounts within the Debt Service Fund (each of which is hereby created and each of which the Trustee hereby agrees and covenants to maintain) in the following order of priority:

- (a) Interest Account, and
- (b) Prepayment Account (with a Principal Subaccount and a Sinking Fund Subaccount therein).

All money in each of such accounts and subaccounts shall be held in trust by the Trustee for the benefit of the Owners and shall be applied, used and withdrawn only for the purposes hereinafter authorized in this section.

(a) Interest Account. On the Business Day immediately preceding each April 1 and October 1, commencing on April 1, 1998, the Trustee shall set aside from the Debt Service Fund and deposit in the Interest Account that amount of money which is equal to the amount of interest evidenced and represented by the Certificates becoming due and payable on such April 1 or October 1, as the case may be.

No deposit need be made in the Interest Account if the amount contained therein is at least equal to the aggregate amount of interest evidenced and represented by the Certificates becoming due and payable on such Interest Payment Date.

All money in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest as it shall become due and payable (including accrued interest evidenced and represented by any Certificates purchased or prepaid prior to their respective Certificate Payment Date).

(b) Prepayment Account. On the Business Day immediately preceding each October 1, commencing on October 1, 1998, the Trustee shall set aside from the Debt Service Fund and deposit in the Principal Subaccount in the Prepayment Account an amount of money equal to the principal amount evidenced and represented by the Outstanding serial Certificates with a Certificate Payment Date of such October 1 and in the Sinking Fund Subaccount in the Prepayment Account the amount of all Sinking Fund Payments required to be made on such October 1.

No deposit need be made in the Prepayment Account if the amount contained in the Principal Subaccount therein is at least equal to the aggregate amount of the principal evidenced and represented by the Outstanding serial Certificates with a Certificate Payment Date of such October 1 and the amount contained in the Sinking Fund Subaccount therein is at least equal to the aggregate amount of all Sinking Fund Payments required to be made on such October 1.

All money in the Principal Subaccount in the Prepayment Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal evidenced and represented by the serial Certificates as they shall become due and payable, whether at their respective Certificate Payment Dates or on prior prepayment, and all money in the Sinking Fund Subaccount in the Prepayment Account shall be used and withdrawn by the Trustee only to purchase or to prepay or to pay term Certificates, and with respect to the Sinking Fund Subaccount, on each Sinking Fund Payment date, the Trustee shall apply the Sinking Fund Payment required on that date to the prepayment (or payment at Certificate Payment Date, as the case may be) of the term Certificates upon the notice and in the manner provided in Article II; provided, that at any time prior to giving such notice of such prepayment, the Trustee may, upon the Written Request of the Authority and receipt of moneys sufficient therefor, purchase for cancellation of term Certificates at public or private sale as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as may

be directed in a Written Request of the Authority, except that the purchase price (excluding accrued interest) shall not exceed the prepayment price that would be payable for such term Certificates upon prepayment by application of such Sinking Fund Payment, and if during the twelve-month period immediately preceding any Sinking Fund Payment date the Trustee has so purchased term Certificates, such Certificates so purchased shall be applied to the extent of the full principal amount evidenced and represented thereby to reduce the Sinking Fund Payment.

**SECTION 3.04. Parity Reserve Fund.** The Trustee hereby agrees and covenants to maintain the Parity Reserve Fund so long as the Contract has not been discharged in accordance with its terms or any Certificates remain Outstanding hereunder. Amounts on deposit in the Parity Reserve Fund are hereby pledged to the payment of the Certificates and any obligations issued in connection with a supplement to the Contract and shall be applied only for such purposes as hereinafter provided. The Trustee shall deposit in the Parity Reserve Fund the Reserve Fund Requirement and such other amounts transferred to the Trustee by the City pursuant to Section 2.04(b)(2) of the Contract, as directed by the Authority in a Written Request of the Authority. Moneys on deposit in the Parity Reserve Fund shall be transferred by the Trustee to the Debt Service Fund to pay principal and interest evidenced and represented by the Certificates on any Interest Payment Date in the event amounts on deposit therein are insufficient for such purposes. The Trustee shall also, from such amounts on deposit in the Parity Reserve Fund, transfer or cause to be transferred to any applicable debt service fund established under a trust agreement under which any obligations are issued in connection with a supplement to the Contract, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without discrimination or preference, that sum or sums, if any, equal to the amount required to be deposited therein pursuant to such trust agreement under which any obligations are issued in connection with a supplement to the Contract. All investments in the Parity Reserve Fund shall (beginning on October 1, 1998) be valued on or before October 1 of each year at the greater of the cost or accreted value thereof. Following such valuation, all moneys on deposit in the Parity Reserve Fund in excess of the Reserve Fund Requirement will be transferred by the Trustee to the City for deposit in the Revenue Fund.

The Reserve Fund Requirement may be provided by one or more surety bonds, insurance policies, or letters of credit as described in the definition of Reserve Fund Requirement set forth in the Contract.

On the date of the delivery of the Certificates, the Authority will deposit or cause to be deposited with the Trustee to the credit of the Parity Reserve Fund the 1997 Certificate Reserve Policy in a face amount equal to the Reserve Requirement with respect to the Bond. In the event the 1997 Certificates Reserve Policy for any reason lapses or expires, the Authority shall immediately deposit or cause to be deposited cash or one or more surety bonds, insurance policies, letters of credit as described in the definition of the Reserve Fund Requirement as set forth in the Contract in the amount of the Reserve Requirement with respect to the Certificates. In the event the Trustee draws on the 1997 Certificate Reserve Policy pursuant to the provisions of this Section 3.04 the Trustee shall draw first on cash, if and to the extent of such deposits (or to the extent Permitted Investments have been purchased with cash such Permitted Investments shall be liquidated and the proceeds applied as required hereunder) in the Parity Reserve Fund,

and second on the 1997 Certificate Reserve Policy. The Trustee shall ascertain the necessity for a claim upon the 1997 Certificate Reserve Policy provided hereby and the Trustee shall make a demand for payment at least two (2) Business Days prior to the date the funds are required.

The Authority hereby agrees that payments received by the City pursuant to Section 2.04(b)(2) of the Contract shall be used first to reimburse the 1997 Certificate Insurer for amounts advanced under the 1997 Certificate Reserve Policy and not yet reimbursed at the rates and in accordance with the Debt Service Reserve Policy Agreement, and second to increase the balance in the Parity Reserve Fund to the Reserve Requirement.

If the Authority shall fail to repay any costs under the Debt Service Reserve Fund Policy Agreement, the 1997 Certificate Insurer shall be entitled to exercise any and all remedies available at law or under the Trust Agreement other than (i) acceleration of the maturity of the 1997 Payments or (ii) remedies which would adversely affect Certificateholders.

SECTION 3.05. Deposit and Investments of Money in Accounts and Funds. Subject to Section 4.03, all money held by the Trustee in any of the accounts or funds established pursuant hereto shall be invested in Permitted Investments at the Written Request of the Authority filed with the Trustee which such Permitted Investments shall, as nearly as practicable, mature on or before the dates on which such money is anticipated to be needed for disbursement hereunder, and the Trustee shall have no liability or responsibility for any loss resulting from any investment made in accordance herewith; provided, that if no such Written Request is received by the Trustee, the Trustee shall invest such money in those Permitted Investments described in clause (9) of the definition thereof. Subject to Section 4.03, all interest or profits received on any money so invested shall be deposited in the Debt Service Fund.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

The Trustee shall not be liable for any loss from any Permitted Investment acquired, held, or disposed of at the written request of the Authority. Any Permitted Investments that are registered securities shall be registered in the name of the Trustee.

SECTION 3.06. Assignment to Trustee; Enforcement of Obligations. (a) The Authority hereby transfers, assigns and sets over to the Trustee all of the 1997 Payments and any and all rights and privileges it has under the Contract, including, without limitation, the right to collect and receive directly all of the 1997 Payments, and any 1997 Payments collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee, and shall forthwith be paid by the Authority to the Trustee.

The Trustee also shall, subject to the provisions of the Trust Agreement, take all steps, actions and proceedings required to be taken as provided in any Opinion of Counsel delivered to it, reasonably necessary to maintain in force for the benefit of the Owners of the Certificates the Trustee's rights in and priority to the following security granted to it for the payment of the Certificates: the Trustee's rights as assignee of the 1997 Payments under the Contract and as beneficiary of any other rights to security for the Certificates which the Trustee may receive in the future.

(b) The Trustee may, in performing the obligations set out in Section 3.06(a) above, rely and shall be protected in acting or refraining from acting upon an Opinion of Counsel furnished by the City.

#### ARTICLE IV

##### COVENANTS OF THE AUTHORITY AND THE TRUSTEE

SECTION 4.01. Compliance with Trust Agreement. The Trustee will not execute or deliver any Certificates in any manner other than in accordance with the provisions hereby; and the Authority will not suffer or permit any default by it to occur hereunder, but will faithfully comply with, keep, observe and perform all the agreements and covenants to be observed or performed by it contained herein and in the Certificates.

SECTION 4.02. Observance of Laws and Regulations. The Authority and the Trustee will faithfully comply with, keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on them by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of each and every franchise, right or privilege now owned or hereafter acquired by them, including their right to exist and carry on their respective businesses, to the end that such franchises, rights and privileges shall be maintained and preserved and shall not become abandoned, forfeited or in any manner impaired.

SECTION 4.03. Tax Covenants. The Authority hereby covenants with the Owners of the Certificates that, notwithstanding any other provisions of this Trust Agreement, it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of interest evidenced and represented by the Certificates under Section 103 of the Code. The Authority shall not, directly or indirectly, use or permit the use of proceeds of the Certificates or any of the property financed or refinanced with proceeds of the Certificates, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of interest evidenced and represented by the Certificates.

The Authority shall not take any action, or fail to take any action, if any such action or failure to take action would cause the Certificates to be "private activity bonds" within the

meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the Certificates or any of the property financed or refinanced with proceeds of the Certificates, or any portion thereof, or any other funds of the Authority, that would cause the Certificates to be "private activity bonds" within the meaning of Section 141 of the Code. To that end, so long as any Certificates are Outstanding, the Authority, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder, to the extent such requirements are, at the time, applicable and in effect. The Authority shall establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of the Certificates as "governmental bonds."

The Authority shall not, directly or indirectly, use or permit the use of any proceeds of any Certificates, or of any property financed or refinanced thereby, or other funds of the Authority, or take or omit to take any action, that would cause the Certificates to be "arbitrage bonds" within the meaning of Section 148 of the Code. To that end, the Authority shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Certificates.

The Authority shall not make any use of the proceeds of the Certificates or any other funds of the Authority, or take or omit to take any other action, that would cause the Certificates to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

In furtherance of the foregoing tax covenants, the Authority covenants that it will comply with the provisions of the Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or defeasance of the Certificates.

SECTION 4.04. Accounting Records and Reports. The Trustee will keep or cause to be kept proper books of record and accounts in which complete and correct entries shall be made of all transactions made by the Trustee relating to the receipts, disbursements, allocation and application of the 1997 Payment and the proceeds of the Certificates, and such books shall be available for inspection by the Authority, at reasonable hours and under reasonable conditions. Not more than 180 days after the close of each Fiscal Year, the Trustee shall furnish or cause to be furnished to the Authority a complete financial statement covering receipts, disbursements, allocation and application of 1997 Payments received by the Trustee for such Fiscal Year. The Authority shall keep or cause to be kept such information as required under the Tax Certificate.

SECTION 4.05. Prosecution and Defense of Suits. The Authority will defend against every suit, action or proceeding at any time brought against the Trustee upon any claim to the extent arising out of the receipt, application or disbursement of any of the 1997 Payments and the proceeds of the Certificates or to the extent involving the failure of the Authority to fulfill its obligations hereunder; provided that the Trustee or any affected Owner at its election may appear in and defend any such suit, action or proceeding. The Authority will indemnify and hold harmless the Trustee against any and all liability claimed or asserted by any person to the extent arising out of such failure by the Authority, and will indemnify and hold harmless the Trustee against any attorney's fees or other expenses which it may incur in connection with any litigation

to which it may become a party by reason of its actions hereunder, except for any loss, cost, damage or expense resulting from the active or passive negligence, willful misconduct or breach of duty by the Trustee. Notwithstanding any contrary provision hereof, this covenant shall remain in full force and effect even though all Certificates secured hereby may have been fully paid and satisfied.

SECTION 4.06. Amendments to Contract. Except for any Supplemental Contract delivered in accordance with the terms of the Contract, the Authority shall not supplement, amend, modify or terminate any of the terms of the Contract, or consent to any such supplement, amendment, modification or termination, without the prior written consent of the Certificate Insurer and of the Trustee, which such consent shall be given only if (a) such supplement, amendment, modification or termination will not materially adversely affect the interests of the Owners or result in any material impairment of the security hereby given for the payment of the Certificates, or (b) the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount evidenced and represented by the Certificates then Outstanding to such supplement, amendment, modification or termination; provided, that no such supplement, amendment, modification or termination shall reduce the amount of 1997 Payments to be made to the Authority or the Trustee by the City pursuant to the Contract, or extend the time for making such 1997 Payments in any manner that would require the amendment of the Trust Agreement in any manner not in compliance with Section 6.01 hereof, or permit the creation of any lien prior to or on a parity with the lien created hereby on the 1997 Payments without the written consent of all of the Owners of the Certificates then Outstanding.

SECTION 4.07. Recording and Filing. The Trustee upon receipt of a Written Request of the Authority, at the expense of the Authority, shall file, record, register, renew, refile and rerecord all such documents, including financing statements (or continuation statements in connection therewith), all in such manner, at such times and in such places as may be required and to the extent permitted by law in order to fully perfect, preserve and protect the security of the Owners and the rights and interests of the Trustee; provided, however, that the Trustee will not be required to execute a special or general consent to service of process, or to qualify as a foreign corporation in connection with any such filing, recording, registration, refiling or rerecording in any jurisdiction in which it is not now so subject.

SECTION 4.08. Further Assurances. Whenever and so often as reasonably requested to do so by the Trustee or any Owner, the Authority will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Owners all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them hereby.

## ARTICLE V

### THE TRUSTEE

SECTION 5.01. The Trustee. State Street Bank and Trust Company of California, N.A. shall serve as the Trustee for the purpose of receiving all money which the Authority is required to deposit with the Trustee hereunder and for the purpose of allocating, applying and using such money as provided herein and for the purpose of paying the interest and principal and prepayment premiums, if any, evidenced and represented by the Certificates presented for payment, and for the purpose of canceling all paid or prepaid Certificates as provided herein. The Authority agrees that it will at all times maintain a Trustee having a corporate trust office in either San Francisco, California or Los Angeles, California.

The Authority may at any time, unless there exists any Event of Default as defined in Section 7.01, remove the Trustee initially appointed and any successor thereto and may appoint a successor or successors thereto by an instrument in writing; provided that any such successor shall be a bank or trust company doing business and having a principal office in either San Francisco, California or Los Angeles, California, having (or if such bank or trust company is a member of a bank holding company system, its bank holding company has) a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000 and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Trustee may at any time resign by giving written notice of such resignation to the Authority and by mailing to the Owners notice of such resignation. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing. Any removal or resignation of a Trustee and appointment of a successor Trustee shall become effective only upon the acceptance of appointment by the successor Trustee. If, within 30 days after notice of the removal or resignation of the Trustee no successor Trustee shall have been appointed and shall have accepted such appointment, the removed or resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Trustee having the qualifications required hereby.

The Trustee shall only hold the duties set forth in this Indenture and no duties shall be implied against the Trustee. Following the occurrence of an Event of Default, the Trustee shall exercise such of the rights and powers vested in it hereby, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

SECTION 5.02. Liability of Trustee. The recitals of facts, agreements and covenants herein and in the Certificates shall be taken as recitals of facts, agreements and covenants of the Authority, and the Trustee assumes no responsibility for the correctness of the same or makes any representation as to the sufficiency or validity hereof or of the Certificates, or shall incur any

responsibility in respect thereof other than in connection with the rights or obligations assigned to or imposed upon it herein, in the Certificates or in law or equity. The Trustee shall not be liable in connection with the performance of its duties hereunder except for its own active or passive negligence or willful misconduct.

The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Certificates at the time Outstanding, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee hereunder.

The Trustee shall be under no obligation to exercise any of the rights or powers vested in it hereby at the request, order or direction of any of the Owners pursuant to the provisions hereof unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby. The Trustee has no obligation or liability to the Owners for the payment of interest, principal or prepayment premium, if any, evidenced and represented by the Certificates from its own funds; but rather the Trustee's obligations shall be limited to the performance of its duties hereunder.

The Trustee shall not be deemed to have knowledge of any default hereunder or default under the Contract unless and until it shall have actual knowledge thereof or shall have received written notice thereof at its Corporate Trust Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Certificates or as to the existence of a default hereunder.

The Trustee shall be entitled to advice of counsel and other professionals concerning all matters of trust and its duty hereunder, but the Trustee shall not be answerable for the professional malpractice of any attorney-at-law or certified public accountant in connection with the rendering of his professional advice in accordance with the terms hereof, if such attorney-at-law or certified public accountant was selected by the Trustee with due care.

The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

Whether or not therein expressly so provided, every provision hereof or of the Contract or any related documents relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this article.

The Trustee makes no representation or warranty, express or implied, as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation,

condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or City of the 1997 Project. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Contract or this Trust Agreement for the existence, furnishing or use of the 1997 Project.

The Trustee shall be protected in acting upon any notice, requisition, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its rights and obligations hereunder the Trustee shall deem it necessary or desirable that a matter be established or proved prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the Authority, which certificate shall be full warrant to the Trustee for any action taken or suffered under the provisions hereof upon the faith thereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

No provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers.

The Trustee shall have no responsibility, opinion or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the execution and delivery of the Certificates.

All immunities, indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, employees, officers and agents thereof.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, so long as such company shall meet the requirements set forth in Section 5.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

The Trustee may become the owner or pledgee of any Certificates with the same rights it would have if it were not Trustee.

SECTION 5.03. Compensation and Indemnification of Trustee. The Authority covenants to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compen-

sation for all services rendered by it in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the Authority will pay or reimburse the Trustee upon its request for all expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, default or willful misconduct. The Authority, to the extent permitted by law, shall indemnify, defend and hold harmless the Trustee against any loss, damages, liability or expense incurred without negligence, default or willful misconduct on the part of the Trustee arising out of or in connection with (i) the acceptance or administration of the trusts created hereby, or the exercise or performance of any of its powers or duties hereunder, or (ii) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of any of the Certificates, including costs and expenses (including attorneys' fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. The rights of the Trustee and the obligations of the Authority under this section shall survive the discharge of the Certificates and the Trust Agreement and the resignation or removal of the Trustee.

## ARTICLE VI

### AMENDMENT OF THE TRUST AGREEMENT

SECTION 6.01. Amendment of the Trust Agreement. Subject to the prior written approval of the 1997 Certificate Insurer, the Trust Agreement and the rights and obligations of the Authority and of the Owners may be amended at any time by a Supplemental Trust Agreement which shall become binding when the written consents of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, exclusive of Certificates disqualified as provided in Section 6.02, are filed with the Trustee; provided, that before executing any such Supplemental Trust Agreement the Trustee may first obtain at the Authority's expense an Opinion of Counsel that such Supplemental Trust Agreement complies with the provisions of the Trust Agreement, on which opinion the Trustee may conclusively rely. No such amendment shall (1) extend the Certificate Payment Date of, or change the payment dates of, or reduce the rate of interest or principal or prepayment premium, if any, evidenced and represented by any Certificate without the express written consent of the Owner of such Certificate, or (2) reduce the percentage of Certificates required for the written consent to any such amendment, or (3) modify any rights or obligations of the Trustee without its prior written assent thereto.

The Trust Agreement and the rights and obligations of the Authority and of the Owners may also be amended at any time by a Supplemental Trust Agreement which shall become binding upon adoption without the consent of any Owners, but only to the extent permitted by law, for any purpose that will not materially adversely affect the interests of the Owners, including (without limitation) for any one or more of the following purposes:

(a) to add to the agreements and covenants required herein to be performed by the Authority other agreements and covenants thereafter to be performed by the Authority, or to surrender any right or power reserved herein to or conferred herein on the Authority;

(b) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the Authority may deem desirable or necessary and not inconsistent herewith;

(c) to add to the agreements and covenants required herein, such agreements and covenants as may be necessary to qualify the Trust Agreement under the Trust Indenture Act of 1939;

(d) to make any amendments or supplements necessary or appropriate to preserve or protect the exclusion of interest evidenced and represented by the Certificates from gross income for federal income tax purposes under the Code or the exemption of such interest from State of California personal income taxes;

(e) to make such amendments or supplements as may be necessary or appropriate to maintain any then current rating on the Certificates by any of the Rating Agencies; or

(f) to add to the rights of the Trustee.

SECTION 6.02. Disqualified Certificates. Certificates owned or held by or for the account of the Authority or the City shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Certificates provided in this article, and shall not be entitled to consent to or take any other action provided in this article.

SECTION 6.03. Endorsement or Replacement of Certificates After Amendment. After the effective date of any action taken as hereinabove provided, the Authority may determine that the Certificates may bear a notation by endorsement in form approved by the Authority as to such action, and in that case upon demand of the Owner of any Outstanding Certificates and presentation of such Owner's Certificate for such purpose at the Corporate Trust Office of the Trustee a suitable notation as to such action shall be made on such Certificate. If the Authority shall so determine, new Certificates so modified as, in the opinion of the Authority, shall be necessary to conform to such action shall be prepared and executed, and in that case upon demand of the Owner of any Outstanding Certificate a new Certificate or Certificates shall be exchanged at the Corporate Trust Office of the Trustee without cost to each Owner for its Certificate or Certificates then Outstanding upon surrender of such Outstanding Certificates.

SECTION 6.04. Amendment by Mutual Consent. The provisions of this article shall not prevent any Owner from accepting any amendment as to the particular Certificates held by him, provided that due notation thereof is made on such Certificates.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF OWNERS

SECTION 7.01. Events of Default; Acceleration; Waiver of Default. If an Event of Default (as that term is defined in the Contract) shall happen, then such Event of Default shall constitute a default hereunder, and in each and every such case during the continuance of such Event of Default the Trustee or the Owners of not less than a majority in aggregate principal amount of the Certificates then Outstanding shall exercise the remedies provided to the Authority in the Contract; provided, that nothing contained herein shall affect or impact the right of action of any Owner to institute suit directly against the City to enforce payment of the obligation evidenced and represented by such Owner's Certificates. In determining whether a payment default has occurred hereunder, or whether a payment on the Certificates has been made hereunder, no effect shall be given to payments made under the 1997 Certificate Insurance Policy.

SECTION 7.02. Other Remedies of the Trustee. The Trustee shall have the right --

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce the Authority's rights under the Contract against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform or carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained in the Contract;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Trustee; or

(c) by suit in equity upon the happening of any Event of Default hereunder to enforce the Authority's rights under the Contract to require the City and its directors, officers and employees to account as the trustee of an express trust.

SECTION 7.03. Non-Waiver. A waiver of any default or breach of any duty or contract by the Trustee shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Trustee to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or any acquiescence therein, and every right or remedy conferred upon the Trustee by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee.

If any action, proceeding or suit to enforce any right or to exercise any remedy is abandoned or determined adversely to the Trustee, the Trustee, and the City shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

SECTION 7.04. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or the Owners is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

SECTION 7.05. No Liability by the City to the Owners. Except for the payment when due of the 1997 Payments and the performance of the other agreements and covenants required to be performed by it contained in the Contract, the City shall not have any obligation or liability to the Owners with respect to the Trust Agreement or the preparation, execution, delivery or transfer of the Certificates or the disbursement of the 1997 Payments by the Trustee to the Owners, or with respect to the performance by the Trustee of any right or obligation required to be performed by it contained herein.

SECTION 7.06. No Liability by the Trustee to the Owners. Except as expressly provided herein, the Trustee shall not have any obligation or liability to the Owners with respect to the payment when due of the 1997 Payments by the City, or with respect to the performance by the City of the other agreements and covenants required to be performed by its contained in the Contract.

## ARTICLE VIII

### DEFEASANCE

SECTION 8.01. Discharge of Trust Agreement. When the obligations of the City under the Contract shall cease pursuant to Article VI of the Contract (except for the right of the Trustee and the obligation of the City to have the money and Federal Securities mentioned therein applied to the payment of Payments as therein set forth), then and in that case the obligations created by this Trust Agreement shall thereupon cease, determine and become void except for the right of the Owners and the obligation of the Trustee to apply such moneys and Federal Securities to the payment of the Certificates as herein set forth and the right of the Trustee to collect any fees or expenses due hereunder and the Trustee shall turn over to the City, as an overpayment of Payments, all balances remaining in any other funds or accounts other than moneys and Federal Securities held for the payment of the Certificates at maturity or on prepayment, which moneys and Federal Securities shall continue to be held by the Trustee in trust for the benefit of the Owners and shall be applied by the Trustee to the payment, when due, of the principal and interest and premium if any represented by the Certificates, and after such payment, this Trust Agreement shall become void.

If moneys or Federal Securities are deposited with and held by the Trustee as hereinabove provided, the Trustee shall mail a notice, first-class postage prepaid, to the Owners at the addresses listed on the registration books kept by the Trustee pursuant to Section 2.08, stating that (a) moneys or Federal Securities are so held by it, and (b) that this Trust Agreement has been released in accordance with the provisions of this Section.

Notwithstanding the foregoing, the Trust Agreement shall not be discharged until all costs due and owing to the 1997 Certificate Insurer under the Debt Service Reserve Policy Agreement shall have been paid.

SECTION 8.02. Deposit of Money or Securities with Trustee. Whenever in this Trust Agreement or the Contract it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities (certified to be sufficient by a report of an Independent Certified Public Accountant) in the necessary amount to pay or prepay any Certificates, the money or securities to be so deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Trust Agreement and shall be --

(a) lawful money of the United States of America in an amount equal to the principal amount represented by such Certificates and all unpaid interest represented thereby to maturity, except that, in the case of Certificates which are to be prepaid prior to maturity and in respect of which notice of such prepayment shall have been given as in Article II provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount plus accrued interest to such date of prepayment plus a prepayment premium, if any, represented by such Certificates; or

(b) Federal Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form) or municipal obligations which have been defeased under irrevocable escrow instructions with Federal Securities and which are rated in the highest rating category by the Rating Agencies, the principal of and interest on which when due will provide, in its opinion of an Independent Certified Public Accountant, delivered to the Trustee, money sufficient to pay the principal plus prepayment premium, if any, plus all accrued interest to maturity or to the prepayment date, as the case may be, represented by the Certificates to be paid or prepaid, as such amounts become due, provided that, in the case of Certificates which are to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article II provided or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of this Trust Agreement and the Contract or by Written Request of the City) to apply such money to the payment of such principal plus prepayment premium, if any, plus interest represented by such Certificates.

SECTION 8.03. Unclaimed Money. Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of any of the Certificates which remains unclaimed for two years after the date when such Certificates have become due and payable, either at their stated Certificate Payment Dates or by call for prepayment prior to Certificate Payment Date, if such money was held by the Trustee at such date, or for two years after the date of deposit of such money if deposited with the Trustee after the date when such Certificates have become due and payable, shall be repaid by the Trustee to the City as its absolute property free from trust, and the Trustee shall thereupon be released and

discharged with respect thereto and the Owners shall look only to the City for the payment of the 1997 Payments evidenced and represented by such Certificates; provided, however, that before being required to make any such payment to the City, the Trustee shall, at the request of and at the expense of the City, cause to be mailed to all Owners and the Securities Depositories and the Information Services a notice that such money remains unclaimed and that, after a date named in such notice, which date shall not be less than 30 days after the date of the first publication of each such notice, the balance of such money then unclaimed will be returned to the Authority.

## ARTICLE IX

### MISCELLANEOUS

SECTION 9.01. Benefits of this Trust Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the Authority, the Trustee and the Owners any right, remedy or claim under or by reason hereof. Any agreement or covenant required herein to be performed by or on behalf of the Authority or any member, officer or employee thereof shall be for the sole and exclusive benefit of the Trustee and the Owners.

SECTION 9.02. Successor Is Deemed Included In All References To Predecessor. Whenever herein either the Authority or any member, officer or employee thereof is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Authority or such member, officer or employee, and all agreements and covenants required hereby to be performed by or on behalf of the Authority or any member, officer or employee thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

SECTION 9.03. Execution of Documents by Owners. Any declaration, request or other instrument which is permitted or required herein to be executed by Owners may be in one or more instruments of similar tenor and may be executed by Owners in person or by their attorneys appointed in writing. The fact and date of the execution by any Owner or his attorney of any declaration, request or other instrument or of any writing appointing such attorney may be proved by the certificate of any notary public or other officer authorized to make acknowledgments of deeds to be recorded in the state or territory in which he purports to act that the person signing such declaration, request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly-sworn to before such notary public or other officer. The ownership of any Certificates and the amount, Certificate Payment Date, number and date of holding the same may be proved by the registration books relating to the Certificates at the corporate trust office of the Trustee.

Any declaration, request or other instrument or writing of the Owner of any Certificate shall bind all future Owners of such Certificate with respect to anything done or suffered to be done by the Authority or the Trustee in good faith and in accordance therewith.

SECTION 9.04. Waiver of Personal Liability. No member, officer or employee of the Authority shall be individually or personally liable for the payment of the interest or principal or prepayment premiums, if any, evidenced and represented by the Certificates by reason of their issuance, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by applicable provisions of law or hereby.

SECTION 9.05. Content of Certificates. Every Certificate of the Authority with respect to compliance with any agreement, condition, covenant or provision provided herein shall include (a) a statement that the person or persons making or giving such certificate have read such agreement, condition, covenant or provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or provision has been complied with; and (d) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or provision has been complied with.

Any Certificate of the Authority may be based, insofar as it relates to legal matters, upon an Opinion of Counsel unless the person making or giving such certificate knows that the Opinion of Counsel with respect to the matters upon which his certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters or information with respect to which is in the possession of the Authority, upon a representation by an officer or officers of the Authority unless the counsel executing such Opinion of Counsel knows that the representation with respect to the matters upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

SECTION 9.06. Accounts and Funds; Business Days. The Trustee may establish such funds and accounts as it deems necessary and appropriate to perform its duties and obligations hereunder. Any account or fund required herein to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee either as an account or a fund, and may, for the purposes of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to all such accounts and funds shall at all times be maintained in accordance with sound industry practice and with due regard for the protection of the security of the Certificates and the rights of the Owners. Any action required to occur hereunder on a day which is not a Business Day shall be required to occur on the next succeeding Business Day with the same effect as if made on such non-Business Day.

SECTION 9.07. Notices. All written notices to be given hereunder shall be given by mail or hand delivery to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the Authority:	Modesto Public Financing Authority c/o City of Modesto 1012 "I" Street, 2nd Floor Modesto, CA 95354 Attention: Auditor and Treasurer
If to the City:	City of Modesto 1012 "I" Street, 2nd Floor Modesto, CA 95354 Attention: Finance Director
If to the Trustee:	State Street Bank and Trust Company of California, N.A. 725 South Figueroa Street, Suite 3100 Los Angeles, California 90017 Attention: Corporate Trust Department
If to the 1997 Certificate Insurer:	Financial Guaranty Insurance Company 115 Broadway New York, New York 10006 Attention: General Counsel
If to the Fiscal Agent (as defined in Section 9.12):	State Street Bank and Trust Company, N.W. 61 Broadway New York, New York 10006 Attention: Corporate Trust Department

SECTION 9.08. CUSIP Numbers. Neither the Authority nor the Trustee shall be liable for any defect or inaccuracy in the CUSIP number that appears on any Certificate or in any prepayment notice relating thereto. The Trustee may, in its discretion, include in any prepayment notice relating to any of the Certificates a statement to the effect that the CUSIP numbers on the Certificates have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the Authority nor the Trustee shall be liable for any defects or inaccuracies in such numbers.

SECTION 9.09. Article and Section Headings and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 9.10. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Authority or the Trustee shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof or of the Certificates, and the Owners shall retain all the benefit, protection and security afforded to them under any applicable provisions of law. The Authority and the Trustee hereby declare that they would have executed and delivered this Trust Agreement and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the execution and delivery of the Certificates pursuant hereto irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 9.11. Execution in Several Counterparts. This Trust Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 9.12. Payment Under the 1997 Certificate Insurance Policy.

(a) If, on the third day preceding any Interest Payment Date there is not on deposit with the Trustee sufficient moneys available to pay all principal and interest evidenced and represented by the Certificates due on such date, the Trustee shall immediately notify the 1997 Certificate Insurer and State Street Bank and Trust Company, N.A., New York, New York or its successor as its Fiscal Agent (the "Fiscal Agent") of the amount of such deficiency. If, by said Interest Payment Date, the City has not provided the amount of such deficiency, the Trustee shall simultaneously make available to the 1997 Certificate Insurer and to the Fiscal Agent the registration books for the Certificates maintained by the Trustee. In addition:

- (i) The Trustee shall provide the 1997 Certificate Insurer with a list of the Certificateholders entitled to receive principal or interest payments from the 1997 Certificate Insurer under the terms of the 1997 Certificate Insurance Policy and shall make arrangements for the 1997 Certificate Insurer and its Fiscal Agent (1) to mail checks or drafts to Certificateholders entitled to receive full or partial interest payments from the 1997 Certificate Insurer and (2) to pay principal evidenced and represented by the Certificates surrendered to the Fiscal Agent by the Certificateholders entitled to receive full or partial principal payments from the 1997 Certificate Insurer; and
- (ii) The Trustee shall, at the time it makes the registration books available to the 1997 Certificate Insurer pursuant to (i) above, notify Certificateholders entitled to receive the payment of principal or interest evidenced and represented by the Certificates from the 1997 Certificate Insurer (1) as to the fact of such entitlement, (2) that the 1997 Certificate Insurer will remit

to them all or part of the interest payments coming due subject to the terms of the 1997 Certificate Insurance Policy, (3) that, except as provided in subsection (b) below, in the event that any Certificateholder is entitled to receive full payment of principal from the 1997 Certificate Insurer, such Certificateholder must tender his Certificate with the instrument of transfer in the form provided on the Certificate executed in the name of the 1997 Certificate Insurer, and (4) that, except as provided in subsection (b) below, in the event that such Certificateholder is entitled to receive partial payment of principal from the 1997 Certificate Insurer, such Certificateholder must tender his Certificate for payment first to the Trustee, which shall note on such Certificate the portion of principal paid by the Trustee, and then, with an acceptable form of assignment executed in the name of the 1997 Certificate Insurer, to the Fiscal Agent, which will then pay the unpaid portion of principal to the Certificateholder subject to the terms of the 1997 Certificate Insurance Policy.

- (b) In the event that the Trustee has notice that any payment of principal or interest evidenced and represented by a Certificate has been recovered from a Certificateholder pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee shall, at the time it provides notice to the 1997 Certificate Insurer, notify all Certificateholders that in the event that any Certificateholder's payment is so recovered, such Certificateholder will be entitled to payment from the 1997 Certificate Insurer to the extent of such recovery, and the Trustee shall furnish to the 1997 Certificate Insurer its records evidencing the payments of principal and interest evidenced and represented by the Certificates which have been made by the Trustee and subsequently recovered from Certificateholders, and the dates on which such payments were made.
- (c) The 1997 Certificate Insurer shall, to the extent it makes payment of principal or interest evidenced and represented by the Certificates, become subrogated to the rights of the recipients of such payments in accordance with the terms of the 1997 Certificate Insurance Policy and, to evidence such subrogation, (1) in the case of subrogation as to claims for past due interest, the Trustee shall note the Certificate Insurer's rights as subrogee on the registration books maintained by the Trustee upon receipt from the 1997 Certificate Insurer of proof of the payment of interest thereon to the Certificateholders of such Certificates and (2) in the case of subrogation as to claims for past due principal, the Trustee shall note the 1997 Certificate Insurer's rights as subrogee on the registration books for the Certificates maintained by the Trustee upon receipt of proof of the payment of principal thereof to the Certificateholders of such Certificates. Notwithstanding anything in this Trust Agreement or the Certificates to the contrary, the Trustee shall make payment of such past due interest and past due principal directly to the 1997 Certificate Insurer to the extent that the 1997 Certificate Insurer is a subrogee with respect thereto.

**SECTION 9.13. Additional Provisions Related to the 1997 Certificate Insurance Policy and the 1997 Certificate Reserve Policy.** For so long as, and only during such time as, the 1997 Certificate Insurance Policy is in effect and the 1997 Certificate Insurer has not failed to comply with its payment obligations thereunder, the following provisions shall be in effect, and any conflict between the provisions of this Section and the provisions of any other Section hereof shall be governed by the provisions of this Section:

(a) The Trustee shall provide the 1997 Certificate Insurer with the following information:

- (i) Notice of any draw upon or deficiency due to market fluctuation in the amount, if any, on deposit in the Parity Reserve Fund; and
- (ii) Notice of the prepayment, other than mandatory sinking fund prepayment, of any of the Certificates, or of any advance refunding of the Certificates, including the principal amount, maturities and CUSIP numbers thereof; and
- (iii) Such additional information as the 1997 Certificate Insurer may reasonably request from time to time.

(b) Any policies of municipal bond insurance or surety bonds provided in lieu of a cash deposit into the Parity Reserve Fund shall conform to the requirements set forth in Exhibit B hereto.

(c) Notice of any prepayment of Certificates shall either (i) explicitly state that the proposed prepayment is conditioned on there being on deposit in the applicable fund or account on the prepayment date sufficient money to pay the full prepayment price of the Certificates to be prepaid or (ii) be sent only if sufficient money to pay the full prepayment price of the Certificates to be prepaid is on deposit in the applicable fund or account.

(d) The Trustee shall provide the 1997 Certificate Insurer with immediate notice of any payment default and shall provide the 1997 Certificate Insurer notice of any other default known to the Trustee within 30 days of the Trustee's knowledge thereof.

(e) For all purposes of the provisions hereof and of the Contract governing events of default and remedies, except the giving of notice of default to Certificateholders, the 1997 Certificate Insurer shall be deemed to be the sole holder of the Certificates it has insured.

(f) No resignation or removal of the Trustee shall become effective until a successor has been appointed and has accepted the duties of Trustee. The 1997 Certificate Insurer shall be furnished with written notice of the resignation or removal of the Trustee and the appointment of any successor thereto.

(g) The 1997 Certificate Insurer is deemed to be a party in interest and is entitled to (i) notify the City, the Trustee, or any applicable receiver of the occurrence of an event of default hereunder or under the Contract and (ii) request the Trustee or receiver to intervene in judicial

proceedings that affect the Certificates or the security therefor. The Trustee or receiver is required to accept notice of default hereunder or under the Contract from the 1997 Certificate Insurer.

(h) Any amendment of or supplement to this Trust Agreement shall be subject to the prior written consent of the 1997 Certificate Insurer. Any rating agency rating the Certificates must receive notice of each amendment or supplement and a copy thereof at least 15 days in advance of its execution or adoption. The 1997 Certificate Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.

(i) Only cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated "AAA" by S&P or "Aaa" by Moody's (or any combination thereof) shall be used to effect defeasance of the Certificates unless the 1997 Certificate Insurer otherwise approves. In the event of an advance refunding, the City shall cause to be delivered a verification report of an independent nationally recognized certified public accountant. If a forward supply contract is employed in connection with the refunding, (i) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding project relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement and authorizing document, the terms of the escrow agreement and authorizing document shall be controlling.

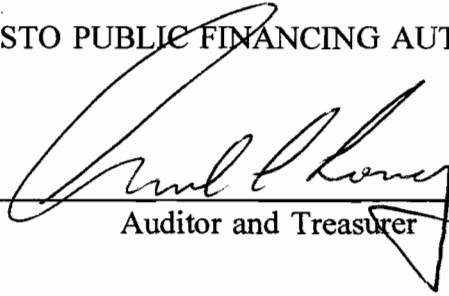
(j) Notwithstanding anything herein to the contrary, the rights given to the 1997 Certificate Insurer hereunder to give consents, directions and approvals shall not be effective so long as it is in default of its obligations under the 1997 Certificate Insurance Policy or 1997 Certificate Reserve Policy.

SECTION 9.14. California Law. This Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Modesto Public Financing Authority has caused this Trust Agreement to be signed in its name by its Auditor and Treasurer and State Street Bank and Trust Company of California, N.A., in token of its acceptance of the trusts created hereunder, has caused this Trust Agreement to be signed by one of the officers thereunder duly authorized, all as of the day and year first above written.

MODESTO PUBLIC FINANCING AUTHORITY

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



Auditor and Treasurer

STATE STREET BANK AND TRUST COMPANY  
OF CALIFORNIA, N.A., as Trustee

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

Authorized Officer

IN WITNESS WHEREOF, the Modesto Public Financing Authority has caused this Trust Agreement to be signed in its name by its Auditor and Treasurer and State Street Bank and Trust Company of California, N.A., in token of its acceptance of the trusts created hereunder, has caused this Trust Agreement to be signed by one of the officers thereunder duly authorized, all as of the day and year first above written.

MODESTO PUBLIC FINANCING AUTHORITY

By: \_\_\_\_\_  
Auditor and Treasurer

STATE STREET BANK AND TRUST COMPANY  
OF CALIFORNIA, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Officer

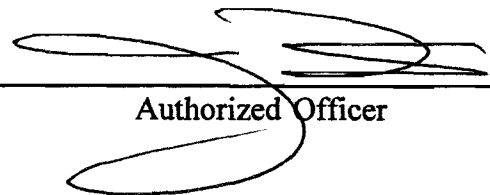


EXHIBIT A

[FORM OF CERTIFICATE OF PARTICIPATION]

REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
(1997 WATER UTILITY SYSTEM REFINANCING PROJECT)  
Evidencing and Representing a Proportionate Interest of the Owner Hereof  
in 1997 Payments to be made by the City of Modesto

No. R- \_\_\_\_\_ \$ \_\_\_\_\_

	<u>Certificate</u>		
<u>Interest Rate</u>	<u>Payment Date</u>	<u>Dated Date</u>	<u>CUSIP</u>
_____%	October 1, ____	November 1, 1997	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: \$ \_\_\_\_\_

THIS IS TO CERTIFY that the registered owner set forth above of this Refunding Revenue Certificate of Participation (1997 Water Utility System Refinancing Project) (the "Certificate"), is the owner of a proportionate interest in the 1997 Payments (as that term is defined in the Trust Agreement hereinafter mentioned) under and pursuant to that certain Master Installment Purchase Contract executed and entered into as of November 1, 1997, as supplemented by that certain 1997 Supplemental Installment Purchase Contract, executed and entered into as of November 1, 1997, each by and between the City of Modesto, a charter city and municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") and the Modesto Public Financing Authority, a joint exercise of powers agency duly organized and existing under and by virtue of the laws of the State of California (the "Authority") (which Master Installment Purchase Contract as so supplemented is referred to herein as the "Contract"), all of which rights in the 1997 Payments have been assigned by the Authority to State Street Bank and Trust Company of California, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, or any other bank or trust company which may at any time be substituted in place of the original trustee as provided in the Trust Agreement hereinafter mentioned (the "Trustee").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Contract and any right of prepayment prior thereto hereinafter provided for, on the Certificate Payment Date (as that term is defined in the Trust Agreement hereinafter mentioned, and herein a "Certificate Payment Date") set forth above, upon surrender of this Certificate on such Certificate Payment Date or on the date of prepayment prior thereto at the corporate trust office

of the Trustee, the principal sum set forth above, representing the registered owner's proportionate share of the 1997 Payments constituting principal installments with respect to Certificates becoming due and payable on such Certificate Payment Date or on the date of prepayment prior thereto, and to receive an interest installment on such principal installment at the rate per annum specified above (based on a 360-day year of twelve 30-day months) on April 1, 1998, and semiannually thereafter on April 1 and October 1 in each year (each, an "Interest Payment Date") to the respective Certificate Payment Date or date of prepayment prior thereto. The registered owner of this Certificate as shown in the registration books maintained by the Trustee as of the close of business on the 15th day of the month next preceding each Interest Payment Date is entitled to receive such registered owner's proportionate share of the 1997 Payments constituting interest installments evidenced by the Certificates from the Interest Payment Date next preceding the date of execution hereof by the Trustee; unless such date of execution is after the fifteenth day of the month immediately preceding an Interest Payment Date and on or before the following Interest Payment Date, in which event from such Interest Payment Date, or unless such date of execution is prior to March 15, 1998, in which event from the dated date specified above) until such Certificate Payment Date or date of prepayment specified above; provided that if at the time of execution of this Certificate, interest evidenced by the Certificates is then in default, interest shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Certificates. Interest due on or before the Certificate Payment Date or prior prepayment of this Certificate shall be payable in lawful money of the United States of America, by check mailed on such Interest Payment Date by first-class mail to the registered owner hereof; provided, that if the registered owner hereof shall be the owner of \$1,000,000 or more in aggregate principal amount of Certificates, upon the written request of the registered owner hereof received by the Trustee prior to the applicable record date (which such request shall remain in effect until rescinded in writing by such registered owner), interest shall be paid by wire transfer in immediately available funds to an account within the United States. The principal evidenced and represented hereby is payable in lawful money of the United States of America at the corporate trust office of the Trustee.

This Certificate is one of the duly authorized certificates of participation aggregating \$25,585,000, which have been executed by the Trustee under and pursuant to the provisions of a Trust Agreement dated as of November 1, 1997 (the "Trust Agreement") between the Authority and the Trustee. Copies of the Trust Agreement are on file at the corporate trust office of the Trustee in Los Angeles, California and reference is hereby made to the Trust Agreement and to any and all amendments thereof and supplements thereto for a description of the covenants and pledges securing the 1997 Payments and the Certificates, for the nature, extent and manner of enforcement of such covenants and pledges, for the rights and remedies of the registered owners of the Certificates with respect thereto and for the other conditions and terms upon which the Certificates are executed and delivered thereunder.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto, but no such amendment shall (1) extend the Certificate Payment Date of this Certificate, or change the payment dates of, or reduce the rate of interest or principal or prepayment premium, if any, evidenced and represented hereby, without the express written consent of the registered owner hereof, or (2) reduce the percentage of Certificates required for the written consent to any

amendment, or (3) modify any rights or obligations of the Trustee without its prior written assent thereto.

The Certificates with a Certificate Payment Date of October 1, 2017 and October 1, 2022, are subject to mandatory prepayment prior to their respective Certificate Payment Dates, in part by lot, on October 1 of each year on and after October 1, 2013 and October 1, 2018, respectively, upon notice as provided in the Trust Agreement, from and in the amount of the principal amount of 1997 Payments due and payable on such dates, at a prepayment price equal to the sum of the principal amount evidenced and represented thereby plus accrued and unpaid interest evidenced and represented thereby to the prepayment date, without a prepayment premium.

The Certificates with a Certificate Payment Date on or after October 1, 2008 are subject to optional prepayment prior to their respective Certificate Payment Dates, upon notice as provided in the Trust Agreement, from prepayments of 1997 Payments made by the City pursuant to the Contract, as a whole or in part (for such Certificate Payment Dates as are designated by the Authority to the Trustee at the direction of the City or, if the Authority fails to designate such Certificate Payment Dates, in inverse order of Certificate Payment Date and by lot within a Certificate Payment Date) on any date on or after October 1, 2007, at the following prepayment prices (expressed as percentages of the principal amount evidenced and represented by Certificates called for prepayment), plus accrued and unpaid interest to the prepayment date:

<u>Prepayment Period</u> <u>(dates inclusive)</u>	<u>Prepayment</u> <u>Price</u>
October 1, 2007 through September 30, 2008	101 %
October 1, 2008 through September 30, 2009	100.5
October 1, 2009 and thereafter	100

Notice of prepayment of any Certificate selected for prepayment shall be given by first-class mail not less than 30 days nor more than 60 days before the prepayment date to the registered owner hereof, subject to and in accordance with provisions of the Trust Agreement with respect thereto. If notice of prepayment has been duly given as aforesaid and money for the payment of the prepayment price is held by the Trustee, then this Certificate shall, on the prepayment date designated in such notice, become due and payable, and from and after the date so designated interest evidenced and represented by this Certificate shall cease to accrue, and the registered owner of this Certificate shall have no rights with respect hereto except to receive payment of the prepayment price hereof.

This Certificate is transferable on the books to be kept for that purpose at the above-mentioned office of the Trustee by the registered owner hereof in person or by his duly authorized attorney upon payment of the charges provided in the Trust Agreement and upon surrender of this Certificate for cancellation accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Trustee, and thereupon a new Certificate or Certificates of the same Certificate Payment Date evidencing and representing a like aggregate principal amount in authorized denominations will be delivered to the transferee. This Certificate may be exchanged at the above-mentioned office of the Trustee upon payment of the charges

provided in the Trust Agreement for a like aggregate principal amount of Certificates of the same Certificate Payment Date of other authorized denominations. The Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of the interest and principal evidenced and represented hereby and for all other purposes, whether this Certificate shall be overdue or not, and the Trustee shall not be affected by any notice or knowledge to the contrary; and payment of the interest and principal and prepayment premium, if any, evidenced and represented by this Certificate shall be made only to such registered owner, which payments shall be valid and effectual to satisfy and discharge liability on this Certificate to the extent of the sum or sums so paid.

The Certificates each evidence and represent a proportionate interest in the 1997 Payments in an amount equal to the aggregate principal amount of Certificates originally executed and delivered by the Trustee pursuant to the Trust Agreement and enjoy the benefits of a security interest in the moneys held in the funds established pursuant to the Trust Agreement, subject to the provisions of the Trust Agreement permitting the disbursement thereof for or to the purposes and on the conditions and terms set forth therein. The obligation of the City to make the 1997 Payments is a special obligation of the City payable solely from the Gross Revenues of the Water Utility System as provided in the Contract, and does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction. The City may incur other obligations payable on a parity with the 1997 Payments in accordance with the Contract.

The Trustee has no obligation or liability to the Certificate owners for the payment of the interest or principal or the prepayment premiums, if any, evidenced and represented by the Certificates; but rather the Trustee's sole obligations are to administer, for the benefit of the City and the Certificate owners, the various funds established under the Trust Agreement.

No member, officer or employee of the Authority shall be individually or personally liable for the payment of the interest or principal or prepayment premiums, if any, evidenced and represented by the Certificates by reason of their delivery, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by applicable provisions of law or hereby.

The Trust Agreement prescribes the manner in which it may be discharged and after which the Certificates shall no longer be secured by or entitled to the benefits of the Trust Agreement.

THIS IS TO FURTHER CERTIFY that all acts, conditions and things required by the Constitution and statutes of the State of California and the Trust Agreement, to have been performed, to have happened and to exist precedent to and in connection with the execution and delivery of this Certificate, have been performed, have happened and do exist in regular and due time, form and manner as required by law, and that the Trustee is duly authorized to execute and deliver this Certificate, and that the amount of this Certificate, together with all other Certificates executed and delivered under the Trust Agreement, is not in excess of the amount of Certificates authorized to be executed and delivered thereunder.

IN WITNESS WHEREOF, this Certificate has been executed by the manual signature of an authorized signatory of the Trustee as of the date below.

EXECUTION DATE: \_\_\_\_\_

STATE STREET BANK AND TRUST  
COMPANY OF CALIFORNIA, N.A., as  
Trustee

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

[FORM OF ASSIGNMENT TO APPEAR ON CERTIFICATES]

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Taxpayer Identification Number: \_\_\_\_\_) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

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

\_\_\_\_\_

Note: The signature to this Assignment must correspond with the name as written on the face of the Certificate in every particular, without alteration or enlargement or any change whatever.

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

Notice: Signature must be guaranteed by an eligible guarantor institution.

## **STATEMENT OF INSURANCE**

Financial Guaranty Insurance Company, doing business in California as FGIC Insurance Company ("Financial Guaranty") has issued a policy containing the following provisions with respect to the City of Modesto, California, Refunding Revenue Certificates of Participation, (1997 Water Utility System Refinancing Project) (the "Certificates"), such policy being on file at the corporate trust office of First Trust of California, National Association, as trustee (the "Trustee"):

Financial Guaranty hereby unconditionally and irrevocably agrees to pay for disbursement to the Certificateholders that portion of the principal of and interest on the Certificates which is then due for payment and which the issuer of the Certificates (the "Issuer") shall have failed to provide. Due for payment means, with respect to principal, the stated maturity date thereof, or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which the payment of principal of the Certificates is due by reason of call for redemption (other than mandatory sinking fund redemption), acceleration or other advancement of maturity, and with respect to interest, the stated date for payment of such interest.

Upon receipt of telephonic or telegraphic notice, subsequently confirmed in writing, or written notice by registered or certified mail, from a Certificateholder or the Paying Agent to Financial Guaranty that the required payment of principal or interest has not been made by the Issuer to the Paying Agent, Financial Guaranty on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with State Street Bank and Trust Company, N.A., or its successor as its agent (the "Fiscal Agent"), sufficient to make the portion of such payment not paid by the Issuer. Upon presentation to the Fiscal Agent of evidence satisfactory to it of the Certificateholder's right to receive such payment and any appropriate instruments of assignment required to vest all of such Certificateholder's right to such payment in Financial Guaranty, the Fiscal Agent will disburse such amount to the Certificateholder.

As used herein the term "Certificateholder" means the person other than the Issuer or the borrower(s) of bond proceeds who at the time of nonpayment of a Certificate is entitled under the terms of such Certificate to payment thereof.

The policy is non-cancelable for any reason.

**FINANCIAL GUARANTY INSURANCE COMPANY**  
doing business in California as FGIC Insurance Company

## EXHIBIT B

### RESERVE FUND SURETY GUIDELINES

The following requirements shall be met prior to satisfying the Reserve Fund Requirement with one or more surety bonds, insurance policies, or letters of credit (other than a credit instrument issued by the 1997 Certificate Insurer) in lieu of cash:

1. A surety bond or insurance policy issued to the Trustee, as agent of the Certificateholders, by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Certificates (a "municipal bond insurer") may be deposited in the Parity Reserve Fund to meet the Reserve Fund Requirement if the claims paying ability of the issuer thereof shall be rated "AAA" or "Aaa" by S&P or Moody's, respectively.
2. A surety bond or insurance policy issued to the Trustee, as agent of the Certificateholders, by an entity other than a municipal bond insurer may be deposited in the Parity Reserve Fund to meet the Reserve Fund Requirement if the form and substance of such instrument and the issuer thereof shall be approved by the 1997 Certificate Insurer.
3. An unconditional irrevocable letter of credit issued to the Trustee, as agent of the Certificateholders, by a bank may be deposited in the Parity Reserve Fund to meet the Reserve Fund Requirement if the issuer thereof is rated at least "AA" by S&P. The letter of credit shall be payable in one or more draws upon presentation by the beneficiary of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal or interest evidenced and represented by the Certificates. The draws shall be payable within two days of presentation of the sight draft. The letter of credit shall be for a term of not less than three years. The issuer of the letter of credit shall be required to notify the City and the Trustee, not later than 30 months prior to the stated expiration date of the letter of credit, as to whether such expiration date shall be extended, and, if so, shall indicate the new expiration date.
4. If such notice indicates that the expiration date shall not be extended, the City shall deposit in the Parity Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Parity Reserve Fund together with any other qualifying credit instruments, to equal the Reserve Fund Requirement on all outstanding Certificates, such deposit to be paid in equal installments on at least a semi-annual basis over the remaining term of the letter of credit, unless the Parity Reserve Fund credit instrument is replaced by a Parity Reserve Fund credit instrument meeting the requirements in any of 1-3 above. The letter of credit shall permit a draw in full not less than two weeks prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Trust Agreement shall, in turn, direct the Trustee to draw upon the letter of credit prior to its expiration or termination unless an acceptable

replacement is in place or the Parity Reserve Fund is fully funded in its required amount.

5. The use of any Parity Reserve Fund credit instrument pursuant to this Paragraph shall be subject to receipt of an opinion of counsel acceptable to the 1997 Certificate Insurer and in form and substance satisfactory to the 1997 Certificate Insurer as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally, and, in the event the issuer of such credit instrument is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the 1997 Certificate Insurer. In addition, the use of an irrevocable letter of credit shall be subject to receipt of an opinion of counsel acceptable to the 1997 Certificate Insurer and in form and substance satisfactory to the 1997 Certificate Insurer to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar state laws by or against the City (or any other account party under the letter of credit).
6. The obligation to reimburse the issuer of a Parity Reserve Fund credit instrument for any fees, expenses, claims or draws upon such Parity Reserve Fund credit instrument shall be subordinate to the payment of debt service on the Certificates. The right of the issuer of a Parity Reserve Fund credit instrument to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Parity Reserve Fund, and, subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Parity Reserve Fund. The Parity Reserve Fund credit instrument shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Parity Reserve Fund credit instrument to reimbursement will be further subordinated to cash replenishment of the Parity Reserve Fund to an amount equal to the difference between the full original amount available under the Parity Reserve Fund credit instrument and the amount then available for further draws or claims. If (a) the issuer of a Parity Reserve Fund credit instrument becomes insolvent or (b) the issuer of a Parity Reserve Fund credit instrument defaults in its payment obligations thereunder or (c) the claims-paying ability of the issuer of the insurance policy or surety bond falls below a S&P "AAA" or a Moody's "Aaa" or (d) the rating of the issuer of the letter of credit falls below a S&P "AA", the obligation to reimburse the issuer of the Parity Reserve Fund credit instrument shall be subordinate to the cash replenishment of the Parity Reserve Fund.
7. If (a) the revolving reinstatement feature described in the preceding paragraph is suspended or terminated or (b) the rating of the claims paying ability of the issuer of the surety bond or insurance policy falls below a S&P "AAA" or a Moody's

"Aaa" or (c) the rating of the issuer of the letter of credit falls below a S&P "AA", the City shall either (i) deposit into the Parity Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Parity Reserve Fund to equal the Reserve Fund Requirement on all outstanding Certificates, such amount to be paid over the ensuing five years in equal installments deposited at least semi-annually or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of the surety bond or insurance policy falls below "A" or (b) the rating of the issuer of the letter of credit falls below "A" or (c) the issuer of the Parity Reserve Fund credit instrument defaults in its payment obligations or (d) the issuer of the Parity Reserve Fund credit instrument becomes insolvent, the City shall either (i) deposit into the Parity Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Parity Reserve Fund to equal to Reserve Fund Requirement on all outstanding Certificates, such amount to be paid over the ensuing year in equal installments on at least a monthly basis or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence.

8. Where applicable, the amount available for draws or claims under the Parity Reserve Fund credit instrument may be reduced by the amount of cash or permitted investments deposited in the Parity Reserve Fund pursuant to clause (i) of the preceding subparagraph 6.
9. If the City chooses the above described alternatives to a cash-funded Reserve Fund, any amounts owed by the City to the issuer of such credit instrument as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of debt service requirements required to be made pursuant to the Trust Agreement for any purpose, e.g., rate covenant or additional bonds test.
10. The Trust Agreement shall require the Trustee to ascertain the necessity for a claim or draw upon the Parity Reserve Fund credit instrument and to provide notice to the issuer of the Parity Reserve Fund credit instrument in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Parity Reserve Fund credit instrument) prior to each interest payment date.
11. Cash on deposit in the Parity Reserve Fund shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Parity Reserve Fund credit instrument. If and to the extent that more than one Parity Reserve Fund credit instrument is deposited in the Parity Reserve Fund, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

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TRUST AGREEMENT

between the

MODESTO PUBLIC FINANCING AUTHORITY

and

THE BANK OF NEW YORK TRUST COMPANY, N.A.,  
as Trustee

Dated as of May 1, 2008

Relating to

\$47,625,000

WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

EVIDENCING AND REPRESENTING PROPORTIONATE INTERESTS  
OF THE OWNERS THEREOF IN 2008 PAYMENTS TO BE MADE BY THE  
CITY OF MODESTO  
TO THE  
MODESTO PUBLIC FINANCING AUTHORITY

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# TABLE OF CONTENTS

Page

## ARTICLE I

### DEFINITIONS; EQUAL SECURITY

Section 1.01. Definitions.....	2
Section 1.02. Equal Security.....	17
Section 1.03. New York City Time .....	18

## ARTICLE II

### THE 2008 CERTIFICATES

Section 2.01. Conditions and Terms of 2008 Certificates .....	18
Section 2.02. Terms of the 2008 Certificates.....	18
Section 2.03. Prepayment of Certificates.....	20
Section 2.04. Form of 2008 Certificates .....	24
Section 2.05. Execution of 2008 Certificates.....	24
Section 2.06. Transfer and Payment of 2008 Certificates .....	24
Section 2.07. Exchange of Certificates .....	25
Section 2.08. Certificate Registration Books.....	25
Section 2.09. Mutilated, Destroyed, Stolen or Lost Certificates .....	25
Section 2.10. Temporary Certificates .....	26
Section 2.11. Use of Book-Entry System for Certificates. ....	26
Section 2.12. Authorization of Delivery of 2008 Certificates; Application of Proceeds .....	28
Section 2.13. Reserved.....	29
Section 2.14. Determination of Flexible Rates and Interest Periods During Flexible Mode .....	29
Section 2.15. Determination of Interest Rates During the Daily Mode and the Weekly Mode .....	30
Section 2.16. Determination of Term Rates and Fixed Rates.....	30
Section 2.17. Alternate Rates.....	31
Section 2.18. Changes in Mode .....	32

## ARTICLE III

### TENDERS OF 2008 CERTIFICATES; REMARKETING

Section 3.01. Optional Tenders of Certificates in a Daily Mode or a Weekly Mode .....	38
Section 3.02. Mandatory Tender for Purchase on Mandatory Purchase Date .....	38
Section 3.03. Purchases of Certificates in Daily Mode, Weekly Mode, Flexible Mode and Term Rate Mode; Payment of Purchase Price; Notices. ....	38
Section 3.04. Source of Funds for Purchase of 2008 Certificates in Daily Mode, Weekly Mode, Flexible Mode, or Term Rate Mode .....	39

Section 3.05.	Delivery of Certificates in Daily Mode, Weekly Mode, Flexible Mode or Term Rate Mode .....	40
Section 3.06.	Book-Entry Tenders.....	40
Section 3.07.	Tender Provisions Applicable Upon Discontinuation of Book-Entry System.....	42
Section 3.08.	Certificates Deemed Purchased .....	42
Section 3.09.	Establishment of 2008 Purchase Fund .....	43
Section 3.10.	Insufficient Funds for Tenders; Delayed Remarketing Period. ....	44
Section 3.11.	Liquidity Facility; Alternate Liquidity Facility. ....	45
Section 3.12.	Appointment of Remarketing Agent.....	46
Section 3.13.	Duties of Remarketing Agent. ....	47

## ARTICLE IV

### 2008 PAYMENTS; 2008 PROJECT

Section 4.01.	2008 Payments Held in Trust.....	47
Section 4.02.	Deposit of 2008 Payments .....	47
Section 4.03.	Establishment and Maintenance of Accounts for Use of Money in the 2008 Debt Service Fund.....	47
Section 4.04.	Parity Reserve Fund.....	49
Section 4.05.	Establishment and Application of Costs of Issuance Fund.....	50
Section 4.06.	Deposit and Investments of Money in Accounts and Funds .....	50
Section 4.07.	Assignment to Trustee; Enforcement of Obligations.....	51

## ARTICLE V

### COVENANTS OF THE AUTHORITY AND THE TRUSTEE

Section 5.01.	Compliance with Trust Agreement.....	51
Section 5.02.	Observance of Laws and Regulations.....	52
Section 5.03.	Accounting Records and Reports.....	52
Section 5.04.	Prosecution and Defense of Suits .....	52
Section 5.05.	Amendments to Contract .....	52
Section 5.06.	Recording and Filing.....	53
Section 5.07.	Further Assurances.....	53

## ARTICLE VI

### THE TRUSTEE

Section 6.01.	The Trustee. ....	53
Section 6.02.	Liability of the Trustee.....	54
Section 6.03.	Compensation and Indemnification of Trustee.....	57

ARTICLE VII

AMENDMENT OF THE TRUST AGREEMENT

Section 7.01. Amendment of the Trust Agreement .....57  
Section 7.02. Disqualified Certificates .....59  
Section 7.03. Endorsement or Replacement of Certificates After Amendment .....59  
Section 7.04. Amendment by Mutual Consent .....59  
Section 7.05. Consent of Liquidity Facility Provider .....59  
Section 7.06. Notice.....59

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 8.01. Events of Default: Acceleration; Waiver of Default.....59  
Section 8.02. Other Remedies of the Trustee .....60  
Section 8.03. Non-Waiver.....60  
Section 8.04. Remedies Not Exclusive .....60  
Section 8.05. No Liability by the City to the Owners.....60  
Section 8.06. No Liability by the Trustee to the Owners.....60  
Section 8.07. Control of Remedies by Credit Enhancement Provider or Liquidity  
Facility Provider.....61

ARTICLE IX

DEFEASANCE

Section 9.01. Discharge of Trust Agreement.....61  
Section 9.02. Deposit of Money or Securities with Trustee .....62  
Section 9.03. Unclaimed Money.....63

ARTICLE X

CERTIFICATE INSURANCE PROVISIONS

Section 10.01. Payment Under the 2008 Certificate Insurance Policy .....63  
Section 10.02. Additional Provisions Related to the 2008 Certificate Insurance Policy.....67

ARTICLE XI

MISCELLANEOUS

Section 11.01. Benefits of this Trust Agreement Limited to Parties .....69  
Section 11.02. Successor is Deemed Included In All References To Predecessor.....70  
Section 11.03. Execution of Documents by Owners .....70  
Section 11.04. Waiver of Personal Liability.....70  
Section 11.05. Content of Certificates of the Authority .....70

Section 11.06. Accounts and Funds; Business Days .....	71
Section 11.07. Notices. ....	71
Section 11.08. CUSIP Numbers.....	73
Section 11.09. Article and Section Headings and References .....	73
Section 11.10. Partial Invalidity.....	73
Section 11.11. Execution in Several Counterparts.....	74
Section 11.12. California Law .....	74
EXHIBIT A    FORM OF CERTIFICATE OF PARTICIPATION .....	A-1

## TRUST AGREEMENT

THIS TRUST AGREEMENT, dated as of May 1, 2008 (the "Trust Agreement"), is by and between the MODESTO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority"), and THE BANK OF NEW YORK TRUST COMPANY, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America (the "Trustee");

### WITNESSETH:

WHEREAS, the Authority is a joint exercise of powers authority duly organized and existing under and pursuant to the Joint Exercise of Powers Act (being Sections 6500 et seq. of the Government Code of the State of California) (the "Act") and a Joint Exercise of Powers Agreement (the "JPA Agreement"), dated as of December 1, 1989, by and between the City of Modesto (the "City") and the Industrial Development Authority of the City of Modesto; and

WHEREAS, the Act and the Agreement authorize and empower the Authority to assist the City in acquiring and financing and refinancing certain additions, betterments, extensions and improvements to the water utility system of the City; and

WHEREAS, the Authority and the City have heretofore entered into a Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), as supplemented by the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Supplemental Contract"), under and pursuant to which the Authority agreed to assist the City by refinancing certain additions, betterments, extensions and improvements to the water utility system of the City (the "1997 Project" as defined therein); and

WHEREAS, the City is obligated to make certain payments to the Authority under the 1997 Supplemental Contract (the "1997 Payments"), and all rights to receive such payments have been assigned by the Authority to State Street Bank and Trust Company of California, N.A., as succeeded by The Bank of New York Trust Company, N.A., as successor trustee for the owners of the Refunding Revenue Certificates of Participation (1997 Water Utility Refinancing Project); and

WHEREAS, the Authority and the City have heretofore entered into the 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006 (the "2006 Supplemental Contract"), under and pursuant to which the Authority agreed to assist the City by financing certain additions, betterments, extensions and improvements to the water utility system of the City (the "2006 Project" as defined therein); and

WHEREAS, the City is obligated to make certain payments to the Authority under the 2006 Supplemental Contract (the "2006 Payments"), and all rights to receive such payments have been assigned by the Authority to the Trustee, as trustee in relation to the Water Revenue Certificates of Participation 2006 Series A; and

WHEREAS, the Authority and the City, concurrently with the execution and delivery of this Trust Agreement, are executing and delivering a 2008 Supplemental Installment Purchase

Contract dated as of May 1, 2008 (the “2008 Supplemental Contract” and together with the Master Contract, the 1997 Supplemental Contract, and the 2006 Supplemental Contract, the “Contract”), under and pursuant to which the Authority has agreed to assist the City in refinancing the 2006 Project as described in the 2008 Supplemental Contract (the “2008 Project” as defined therein); and

WHEREAS, the City is obligated to make certain payments to the Authority under the 2008 Supplemental Contract (the “2008 Payments”), and all rights to receive such payments are being assigned by the Authority to the Trustee in relation to the Water Refunding Revenue Certificates of Participation, 2008 Series A (the “2008 Certificates”); and

WHEREAS, in consideration of such assignment of the 2008 Payments and the execution and entering into of the Trust Agreement, the Trustee has agreed to execute and deliver the 2008 Certificates in an aggregate principal amount equal to the aggregate principal amount of such 2008 Payments, each representing a proportionate interest in such 2008 Payments; and

WHEREAS, the Authority has determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Trust Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the execution and delivery of this Trust Agreement have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein, and for other valuable consideration, the parties hereto do hereby covenant and agree, as follows:

## ARTICLE I

### DEFINITIONS; EQUAL SECURITY

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes hereof and of any Supplemental Trust Agreement and of any certificate, opinion, request or other document herein or therein mentioned have the meanings herein specified unless the context or use clearly indicates another or different meaning or intent:

“Alternate Liquidity Facility” means a letter of credit, line of credit, surety bond, standby purchase agreement or other security or liquidity instrument, as the case may be, approved by the 2008 Certificate Insurer and issued in accordance with the terms hereof with respect to the 2008 Certificates as a replacement or substitute for any Liquidity Facility then in effect.

“Alternate Rate” means, on any Rate Determination Date, for the 2008 Certificates in a Daily Mode, a Weekly Mode, a Flexible Rate Mode or a Term Rate Mode, a rate per annum equal to (a) the SIFMA Municipal Swap Index (the “SIFMA Rate”) most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Rate is no longer published, the S&P Weekly High Grade Index (formerly the J.J. Kenny Index), or (c) if neither the SIFMA Rate nor the S&P Weekly High Grade Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing

Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association (“SIFMA”) to determine the SIFMA Rate just prior to when the SIFMA stopped publishing the SIFMA Rate. If there is no Remarketing Agent for the 2008 Certificates, if the Remarketing Agent fails to make any such determination or if the Remarketing Agent has suspended its remarketing efforts in accordance with the Remarketing Agreement, then the Trustee shall make the determinations required by this definition, or if the Trustee shall decline to make such determination, a financial advisor, investment banker or other qualified party shall make such determination at the expense of the Authority.

“Authority” means the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State.

“Authority Account” means the account by that name established within the 2008 Purchase Fund pursuant to Section 3.09(c) hereof.

“Authorized Denominations” means: (i) with respect to 2008 Certificates in a Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; (ii) with respect to 2008 Certificates in a Flexible Mode, \$100,000 and any integral multiple of \$1,000 in excess thereof; and (iii) with respect to 2008 Certificates in a Term Rate Mode or Fixed Rate Mode, \$5,000 and any integral multiple thereof.

“Automatic Termination Event” means an event of default set forth in a Reimbursement Agreement between the Authority and a Liquidity Facility Provider which would result in the immediate termination of the Liquidity Facility provided pursuant to such Reimbursement Agreement prior to its stated expiration date without prior notice from the Liquidity Facility Provider to the Trustee.

“Available Amount” means the amount available under a Credit Enhancement or Liquidity Facility, as applicable, to pay the principal and interest with respect to the 2008 Certificates or the Purchase Price with respect to the 2008 Certificates, as applicable.

“Basic Certificate Rate” shall mean the rate of interest applicable to 2008 Certificates that are not Liquidity Provider Certificates.

“Beneficial Owner” means, so long as the 2008 Certificates are held in the Book-Entry System, any Person who acquires a beneficial ownership interest in a 2008 Certificate held by the Securities Depository, and during any period the 2008 Certificates are not held in the Book-Entry System, Beneficial Owner shall mean the registered owner for purposes of this Trust Agreement.

“Book-Entry System” means a system under which physical certificates in fully registered form are registered only in the name of a Securities Depository or its nominee.

“Business Day” means any day other than (i) a Saturday or Sunday or (ii) a day on which the Trustee or applicable Remarketing Agent are required or authorized to be closed or (iii) a day on which the office of the applicable Credit Enhancement Provider or applicable Liquidity Facility Provider at which draws or advances will be paid is required or authorized to be closed or (iv) a day on which The New York Stock Exchange is closed.

“Certificate of the Authority” means an instrument in writing signed by the Auditor and Treasurer of the Authority or by any other officer of the Authority duly authorized by the Authority for that purpose.

“Certificate Payment Date” means, with respect to any 2008 Certificate, subject to Section 2.03(a) hereof, the Certificate Payment Date designated therein, which is the October 1 on which or, in the case of 2008 Certificates subject to mandatory sinking fund prepayment, by which, the principal component of the final 2008 Payment evidenced and represented thereby shall become due and payable.

“City” means the City of Modesto, a charter city and municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State.

“Code” means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code shall be deemed to be a reference to any successor to any such section.

“Contract” means that certain Master Contract, as supplemented by the 1997 Supplemental Contract, the 2006 Supplemental Contract, and the 2008 Supplemental Contract, and as otherwise amended or supplemented from time to time.

“Corporate Trust Office” means the corporate trust office of the Trustee in San Francisco, California, or such other office as may be specified by written notice from the Trustee to the Authority.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City or the Authority and related to the authorization, execution and delivery of the Contract and the Trust Agreement and the execution, sale and delivery of the 2008 Certificates, including, but not limited to, costs of preparation and reproduction of documents, costs of rating agencies and costs to provide information required by rating agencies, filing and recording fees, initial fees and charges of the Trustee and its counsel, legal fees and charges, fees and disbursements of consultants and professionals, fees and expenses of the underwriter, fees and charges for preparation, execution and safekeeping of the 2008 Certificates, fees and expenses of the Liquidity Facility Provider, fees of the Authority and any other cost, charge or fee in connection with the original execution and delivery of the 2008 Certificates.

“Costs of Issuance Fund” means the fund by that name established pursuant to Section 4.05 hereof.

“Credit Enhancement” means the 2008 Certificate Insurance Policy issued by the 2008 Certificate Insurer.

“Credit Enhancement Provider” means the 2008 Certificate Insurer.

“Credit Enhancement Provider Failure” means: (i) a failure of a Credit Enhancement Provider to pay any amount due under such Credit Enhancement; (ii) the filing or commencement of any bankruptcy or insolvency proceedings by or against a Credit

Enhancement Provider, provided such proceeding has not been dismissed within 60 consecutive days; (iii) the declaration by a Credit Enhancement Provider of a moratorium on the payment of its unsecured debt obligations; or (iv) the written repudiation by a Credit Enhancement Provider of its Credit Enhancement.

“Current Mode” shall have the meaning specified in Section 2.18(a)(i) hereof.

“Daily Mode” means the Mode during which the 2008 Certificates evidence interest at the Daily Rate.

“Daily Rate” means the per annum interest rate with respect to the 2008 Certificates in the Daily Mode determined pursuant to Section 2.15(a) hereof.

“Daily Rate Period” means the period during which the 2008 Certificates in the Daily Mode shall evidence interest at a Daily Rate, which shall be from the Business Day upon which a Daily Rate is set to but not including the next succeeding Business Day.

“Defaulted Interest” means interest evidenced by any 2008 Certificate that is payable but not duly paid on the date due.

“Delayed Remarketing Period” shall have the meaning specified in Section 3.10(b) hereof.

“Delivery Date” means May 30, 2008.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

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

“Eligible Account” means an account that is either (i) maintained with a federal or state-chartered depository institution or trust company that has a Standard & Poor’s short-term debt rating of at least ‘A-2’ (or, if no short-term debt rating, a long-term debt rating of ‘BBB+’); or (ii) maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the U.S. Code of Federal Regulation Section 9.10(b), which, in either case, has corporate trust powers and is acting in its fiduciary capacity.

“Expiration Date” means the stated expiration date of a Liquidity Facility, as it may be extended from time to time as provided in such Liquidity Facility, or any earlier date on which such Liquidity Facility shall terminate at the direction of the Authority, expire or be cancelled (other than the date on which a Liquidity Facility shall terminate as a result of an Automatic Termination Event or an event of default under the Reimbursement Agreement entered into in connection with such Liquidity Facility).

“Event of Default” means an event described in Section 8.01 hereof.

“Favorable Opinion of Special Counsel” means, with respect to any action the occurrence of which requires such an opinion, an Opinion of Special Counsel, addressed to the Trustee, to the effect that the action proposed to be taken will not, in and of itself, adversely affect any exclusion from gross income of interest with respect to the 2008 Certificates.

“Federal Securities” shall have the meaning ascribed thereto in the Contract.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the Authority as its Fiscal Year.

“Fixed Rate” means the per annum interest rate or interest rates evidenced by the 2008 Certificates in a Fixed Rate Mode determined pursuant to Section 2.16(b) hereof.

“Fixed Rate Certificates” means the 2008 Certificates in a Fixed Rate Mode.

“Fixed Rate Mode” means the Mode during which the 2008 Certificates evidence interest at a Fixed Rate.

“Fixed Rate Period” means, with respect to 2008 Certificates converted to the Fixed Rate Mode, the period from the Mode Change Date upon which the 2008 Certificates were converted to a Fixed Rate Mode to but not including the Maturity Date.

“Fixed Rate Remarketing Agent” means, an investment banking firm or firms selected by the Authority that has or have entered into a written agreement with the Authority to remarket or purchase and remarket the 2008 Certificates upon their being converted to a Fixed Rate Mode in accordance with the terms and provisions set forth herein.

“Flexible Mode” means the Mode during which the 2008 Certificates evidence interest at Flexible Rates.

“Flexible Rate” means, with respect to the 2008 Certificates in a Flexible Mode, the per annum interest rate determined for the 2008 Certificate pursuant to Section 2.14 hereof.

“Flexible Rate Certificates” means the 2008 Certificates in a Flexible Mode.

“Flexible Rate Period” means, with respect to the 2008 Certificates in a Flexible Mode, the period of from 1 to 397 calendar days (which Flexible Rate Period must end on a day preceding a Business Day) during which a Flexible Rate Certificate shall evidence interest at a Flexible Rate, as established by the Remarketing Agent pursuant to Section 2.14 hereof.

“Improvement Fund” means the fund by that name established pursuant to Section 2.02 of the Master Contract.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State, appointed and paid by the Authority, and who, or each of whom—

(1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the Authority;

(2) does not have a substantial financial interest, direct or indirect, in the operations of the Authority; and

(3) is not connected with the Authority as a member, officer or employee of the Authority, but who may be regularly retained to audit the accounting records of and make reports thereon to the Authority.

“Information Services” means Financial Information, Inc.’s “Daily Called Bond Service,” 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; FIS/Mergent, Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attn: Call Notification; Standard & Poor’s Securities Evaluation, Inc., 55 Water Street, 45th Floor, New York, New York 10041, Attention: Notification Department; Xcitek, 5 Hanover Square, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to the redemption of bonds or the prepayment of certificates of participation as the Authority may designate in a Certificate of the Authority filed with the Trustee.

“Interest Accrual Period” means the period during which the 2008 Certificates accrue interest payable on the next Interest Payment Date applicable thereto. Each Interest Accrual Period shall commence on (and include) the last Interest Payment Date to which interest has been paid (or, if no interest has been paid, from the date of original authentication and delivery of the 2008 Certificates) to, but not including, the Interest Payment Date on which interest is to be paid. If, at the time of authentication of any 2008 Certificate, interest is in default or overdue with respect to the 2008 Certificates, such 2008 Certificate shall evidence interest from the date to which interest has previously been paid in full or made available for payment in full with respect to the 2008 Certificates.

“Interest Payment Date” means each date on which interest is to be paid and is: (i) with respect to the 2008 Certificates in a Daily Mode or a Weekly Mode, the first Business Day of each month; (ii) with respect to the 2008 Certificates in a Flexible Mode, each Mandatory Purchase Date applicable thereto; (iii) with respect to the 2008 Certificates in a Fixed Rate Mode or a Term Rate Mode, the first day of April or October, which is at least 3 months after the month in which such Long-Term Mode takes effect, and the first day of each April and October thereafter or, upon the receipt by the Trustee of a Favorable Opinion of Special Counsel, any other six-month interval chosen by the Authority (beginning with the first such day which is at least three months after the Mode Change Date) and, with respect to a Term Rate Mode, the final day of the current Interest Period if other than a regular six-month interval; (iv) (without duplication as to any Interest Payment Date listed above) any Mode Change Date, other than a change between a Daily Mode and a Weekly Mode, and each Maturity Date; and (v) with respect to any Liquidity Provider Certificates, the day set forth in the applicable Reimbursement Agreement.

“Interest Period” means, for the 2008 Certificates in a particular Mode, the period of time that the 2008 Certificates evidence interest at the rate (per annum) which becomes effective at

the beginning of such period, and shall include, a Daily Rate Period, a Weekly Rate Period, a Flexible Rate Period, a Term Rate Period, and a Fixed Rate Period.

“Liquidity Facility” means, initially, the Stand-by Certificate Purchase Agreement, dated as of May 1, 2008, between the Authority and Bank of America, N.A., and any future line of credit, letter of credit, standby purchase agreement or other instrument, if any, which provides for the payment of the purchase price of the 2008 Certificates upon the tender thereof in the event remarketing proceeds are insufficient therefor.

“Liquidity Facility Account” means an Eligible Account by that name established within the 2008 Purchase Fund pursuant to Section 3.09(b) hereof and held in the name of the Trustee for the benefit of the Owners.

“Liquidity Facility Provider” means, initially, Bank of America, N.A., and any future bank, insurance company, pension fund or other financial institution acceptable to the 2008 Certificate Insurer which provides a Liquidity Facility or Alternate Liquidity Facility for the 2008 Certificates.

“Liquidity Facility Provider Failure” means: (i) a failure of a Liquidity Facility Provider to pay a properly presented and conforming draw or request for advance; or (ii) the filing or commencement of any bankruptcy or insolvency proceedings by or against a Liquidity Facility Provider, provided such proceeding has not been dismissed within 60 consecutive days; or (iii) the declaration by a Liquidity Facility Provider of a moratorium on the payment of its unsecured debt obligations; or (iv) the written repudiation by a Liquidity Facility Provider of its Liquidity Facility.

“Liquidity Provider Certificates” means any 2008 Certificates purchased by a Liquidity Facility Provider with funds drawn on or advanced under the Liquidity Facility provided by such Liquidity Facility Provider.

“Long-Term Interest Period” means a Term Rate Period or a Fixed Rate Period.

“Long-Term Mode” means a Term Rate Mode or a Fixed Rate Mode.

“Mandatory Purchase Date” means: (i) with respect to a Flexible Rate Certificate, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Certificate; (ii) for the 2008 Certificates in a Term Rate Mode, the first Business Day following the last day of each Term Rate Period for such 2008 Certificates; (iii) any Mode Change Date; (iv) any Substitution Date; (v) the fifth Business Day prior to an Expiration Date; (vi) the date specified by the Trustee following the occurrence of an event of default with respect to the Liquidity Facility which requires or gives the Liquidity Facility Provider the option to terminate the Liquidity Facility upon notice and requires that all Outstanding 2008 Certificates secured by such Liquidity Facility be tendered for purchase under the applicable Reimbursement Agreement, which date shall be a Business Day not less than 20 days after the Trustee’s receipt of notice of such event of default from the applicable Liquidity Facility Provider and in no event later than the Business Day preceding the termination date specified in the notice of event of default delivered to the Trustee by such Liquidity Facility Provider; and (vii) for the 2008 Certificates in a Daily Mode or a Weekly Mode, any Business Day specified by the Authority in

a notice delivered to the Trustee, which Mandatory Purchase Date shall be not less than twenty (20) days after the Trustee's receipt of such notice from the Authority.

“Master Contract” means that certain Master Installment Purchase Contract, executed and entered into as a November 1, 1997, by and between the City and the Authority, as the same may be amended or supplemented from time to time.

“Maturity Date” means, with respect to the 2008 Certificates, the maturity date specified for the 2008 Certificates in Section 2.02 hereof or, if Serial Certificates or more than one Term Certificates are established for the 2008 Certificates pursuant to Section 2.18(d) hereof upon a change of the 2008 Certificates to a Fixed Rate Mode, the maturity dates established for such Serial Certificates or Term Certificates.

“Maximum Rate” or “Maximum Interest Rate” means, with respect to all 2008 Certificates other than Liquidity Provider Certificates, a rate of interest of 12% per annum, and with respect to Liquidity Provider Certificates, such rate not greater than 25% as is provided for in the applicable Liquidity Facility; provided, however, that such rate shall not in any event exceed the highest rate then permitted by law.

“Mode” means, as the context may require, the Daily Mode, the Weekly Mode, the Flexible Mode, the Term Rate Mode, or the Fixed Rate Mode.

“Mode Change Date” means with respect to the 2008 Certificates in a particular Mode, the day on which another Mode for the 2008 Certificates begins.

“Mode Change Notice” means the notice from the Authority to the other Notice Parties of the intention of the Authority to change the Mode with respect to the 2008 Certificates.

“Moody's” means Moody's Investors Service Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then “Moody's” shall be deemed to refer to any other nationally recognized municipal securities rating agency selected by the Authority.

“New Mode” shall have the meaning specified in Section 2.18(a)(i) hereof.

“1997 Certificates” means the \$25,585,000 Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project), evidencing and representing and proportionate interests of the owners thereof in the 1997 Payments to be made by the City.

“1997 Supplemental Contract” means the 1997 Supplemental Installment Purchase Contract, executed and entered into as of November 1, 1997, by and between the City and the Authority, supplementing the Master Contract.

“1997 Payments” means the installment payments required to be made by the City to the Authority under and pursuant to the 1997 Supplemental Contract.

“1997 Trust Agreement” means that certain Trust Agreement, dated as of November 1, 1997, by and between the Authority and State Street Bank and Trust Company, N.A., which has been succeeded by The Bank of New York Trust Company, N.A., as trustee, pursuant to which there was executed and delivered the 1997 Certificates.

“Notice Parties” means the Authority, the City, the Trustee, the Credit Enhancement Provider, if any, the Liquidity Facility Provider, if any, the Remarketing Agent, if any, and the Fixed Rate Remarketing Agent, if any.

“Opinion of Counsel” means a written opinion of counsel of recognized standing in the field of law being addressed in such opinion retained the Authority.

“Outstanding,” when used as of any particular time with reference to 2008 Certificates, means (subject to the provisions of Section 7.02 hereof) all 2008 Certificates except

- (1) 2008 Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;
- (2) 2008 Certificates paid or deemed to have been paid within the meaning of Section 9.01 hereof; and
- (3) 2008 Certificates in lieu of or in substitution for which other 2008 Certificates shall have been executed and delivered by the Trustee pursuant hereto.

“Owner” means any person who shall be the registered owner of any Outstanding 2008 Certificate.

“Parity Reserve Fund” means the fund by that name continued pursuant to Section 4.04 hereof.

“Parity Reserve Fund Obligation” means the 1997 Certificates, the 2008 Certificates and any other obligations hereafter issued in connection with a Supplemental Contract.

“Payment Agreement Payments” has the meaning given such term in the Master Contract.

“Payment Agreement Receipts” has the meaning given such term in the Master Contract.

“Permitted Investments” means any of the following obligations if and to the extent then permitted by law:

- (1) Federal Securities;
- (2) Obligations issued by the Resolution Funding Corporation and the Student Loan Marketing Association, or obligations, participations, or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Government National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal);

(3) Bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or any of its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System and which are drawn on any bank the short-term obligations of which are rated in the highest letter and numerical rating category as provided by Moody's and by S&P; provided, that purchases of eligible bankers acceptances may not exceed 270 days' maturity;

(4) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating category as provided by Moody's and by S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of \$500,000,000 and that have an "A1" or higher rating for the issuer's unsecured debentures, other than commercial paper, as provided by Moody's and by S&P; provided, that purchases of eligible commercial paper may not exceed 180 days' maturity nor represent more than 10% of the outstanding commercial paper of an issuing corporation;

(5) Non-negotiable certificates of deposit issued by a state or national bank (including the Trustee or any of its affiliates) that have maturities of not more than 365 days or deposit accounts with a state or national bank and that are fully insured by the Federal Deposit Insurance Corporation or the short term obligations of which state or national bank are rated no lower than "A1" by Moody's and "A+" by S&P;

(6) Any repurchase agreement of any securities enumerated in subdivisions (1) and (2) with any state or national bank (including the Trustee or any of its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than "A1" by Moody's and "A+" by S&P or whose commercial paper is rated no lower than "P-1" by Moody's and no lower than "A-1" by S&P; (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; provided, that (a) the term of such repurchase agreement is less than one (1) year or due on demand; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the market value of the collateral (as determined at least once in every 14 days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody's and to S&P; (d) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; and (e) the repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with "retail customers" which falls under the jurisdiction of the Securities Investors Protection Corporation; provided, that: (a) the market value of the collateral (as determined at least once in every 14 days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody's and to S&P; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the Trustee has a perfected first priority security interest in the collateral; (d) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase

agreement or reverse repurchase agreement; and (e) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;

(7) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State or any local agencies therein which are rated in the highest short-term rating category or within one of the three highest long-term rating categories by Moody's and by S&P (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);

(8) For amounts less than \$100,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof, and of which an aggregate total of \$100,000 is not exceeded in any one financial institution;

(9) Investments in units of a money-market fund portfolio that is rated in the highest letter and numerical rating category by Moody's and by S&P (including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services) and that is composed of obligations guaranteed by the full faith and credit of the United States of America or repurchase agreements collateralized by such obligations;

(10) A guaranteed investment contract with a financial institution or insurance company (or guaranteed by a financial institution or insurance company) which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated within the two highest rating categories of any Rating Agency;

(11) Other investments approved in writing by the 2008 Certificate Insurer; and

(12) The Local Agency Investment Fund, the California Asset Management Program, or similar pooled fund operated by or on behalf of the State and which is authorized to accept investments by or on behalf of the Authority of the moneys held by the Trustee in any of the accounts or funds established pursuant hereto to the extent deposits and withdrawals may be made by the Trustee directly.

"Person" shall mean an individual, a corporation, an association, a joint venture, a partnership, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Prepayment Date" means the date fixed for prepayment of any 2008 Certificate in any notice of prepayment given in accordance with the terms hereof.

"Purchase Date" means (i) for a 2008 Certificate in the Daily Mode or the Weekly Mode, any Business Day selected by the Beneficial Owner of said 2008 Certificate pursuant to the provisions of Section 3.01 hereof, and (ii) any Mandatory Purchase Date.

“Purchase Price” means an amount equal to the principal amount of the 2008 Certificates purchased on any Purchase Date, plus accrued interest to such Purchase Date (unless such Purchase Date is also an Interest Payment Date, in which case the Purchase Price shall not include accrued interest, which shall be paid in the normal course).

“Rate Determination Date” means any date on which the interest rate with respect to the 2008 Certificates shall be determined, which: (i) in the case of a Flexible Mode, shall be the first day of an Interest Period; (ii) in the case of a Daily Mode, shall be each Business Day commencing with the first day (which must be a Business Day) the 2008 Certificates become subject to the Daily Mode; (iii) in the case of the initial conversion to a Weekly Mode, shall be no later than the Business Day prior to the Mode Change Date for the 2008 Certificates, and thereafter, shall be each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday; (iv) in the case of a Term Rate Mode, shall be a Business Day no earlier than 15 Business Days and no later than the Business Day next preceding the first day of an Interest Period for the 2008 Certificates, as determined by the Remarketing Agent; and (v) in the case of a Fixed Rate Mode, shall be a date determined by the Remarketing Agent which shall be at least one Business Day prior to the Mode Change Date.

“Rating Agencies” means Moody’s and S&P, and their respective successors or assigns, or any other nationally recognized securities rating agency or agencies rating the 2008 Certificates at the request of the City.

“Rating Confirmation Notice” shall mean a written notice from the Rating Agencies then rating the 2008 Certificates, confirming that the rating on the 2008 Certificates (without giving effect to any Liquidity Facility) will not be lowered or withdrawn (other than a withdrawal of a short-term rating upon a change to a Fixed Rate Mode) as a result of the action proposed to be taken.

“Record Date” means: (i) with respect to the 2008 Certificates in a Short-Term Mode, the last Business Day before each Interest Payment Date; and (ii) with respect to the 2008 Certificates in a Long-Term Mode, the 15th day (whether or not a Business Day) of the month next preceding each Interest Payment Date.

“Reimbursement Agreement” means any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement, between a Credit Enhancement Provider or a Liquidity Facility Provider, as applicable, and the Authority and/or the City, as the same may be amended from time to time pursuant to its terms.

“Remarketing Agent” means, initially, Banc of America Securities LLC, the remarketing agent for the 2008 Certificates selected by the Authority pursuant to Section 3.12 hereof and approved by the 2008 Certificate Insurer.

“Remarketing Agreement” means an agreement approved by the 2008 Certificate Insurer, providing for the remarketing of the 2008 Certificates tendered for purchase, as the same may be amended from time to time pursuant to its terms.

“Remarketing Proceeds Account” means an Eligible Account by that name established within the 2008 Purchase Fund pursuant to Section 3.09(a) hereof and held in the name of the Trustee for the benefit of the Owners.

“Required Stated Amount” means, (i) in the case of each Liquidity Facility, at any time of calculation with respect to the 2008 Certificates, an amount equal to the aggregate principal amount of the 2008 Certificates then Outstanding together with interest accruing thereon (assuming an annual rate of interest equal to the Maximum Rate) for the minimum period specified by the Rating Agencies then rating the 2008 Certificates, as necessary to maintain the short-term rating of the 2008 Certificates, or (ii) in the case of each Credit Enhancement (other than a Credit Enhancement in the form of an insurance policy), at any time of calculation with respect to the 2008 Certificates, an amount equal to the aggregate principal amount of the 2008 Certificates then Outstanding together with interest accruing thereon (assuming an annual rate of interest equal to the Maximum Rate) for the minimum period specified by the Rating Agencies then rating the 2008 Certificates, as necessary to maintain the short-term rating (or, if no short term rating is then in effect, the rating) of the 2008 Certificates.

“Representation Letter” means the letter of representation to The Depository Trust Company, New York, New York, from the Authority.

“Reserve Funding Instruments” shall have the meaning given to such term in Section 4.04 hereof, including the 2008 Parity Reserve Fund Insurance Policy.

“Reserve Fund Requirement” shall have the meaning ascribed thereto in the Contract.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Company, and its successors or assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then “S&P” shall be deemed to refer to any other nationally recognized municipal securities rating agency selected by the Authority.

“Securities Depositories” means: The Depository Trust Company, 55 Water Street, 50<sup>th</sup> Floor, New York, New York 10041-0099, Attention: Call Notification Department, Fax: (212) 855-7232; or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority may designate in a Certificate of the Authority to the Trustee.

“Serial Certificate” means any 2008 Certificate not subject to mandatory prepayment from Sinking Fund Payments.

“Short-Term Mode” means the Daily Mode, the Weekly Mode or the Flexible Mode.

“Sinking Fund Payments” means the payments required under Section 2.03(a) hereof to be deposited in the 2008 Sinking Fund Subaccount under Section 4.03(b) hereof.

“Special Counsel” means any firm of nationally recognized municipal bond attorneys selected by the Authority and experienced in the issuance of municipal bonds and matters

relating to the exclusion of the interest thereon from gross income for federal income tax purposes.

“State” means the State of California.

“Substitution Date” means the date on which an Alternate Liquidity Facility is substituted for the Liquidity Facility then in effect.

“Supplemental Contract” shall have the meaning given such term in the Contract.

“Supplemental Trust Agreement” means any trust agreement then in full force and effect which has been duly executed and delivered by the Authority and the Trustee amendatory hereof or supplemental hereto; but only if and to the extent that such Supplemental Trust Agreement is specifically authorized hereunder.

“Tax Certificate” means, collectively, the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the 2008 Certificates, executed and delivered by the City on the date of delivery of the 2008 Certificates, including any and all exhibits attached thereto.

“Tender Notice Deadline” means: (i) during the Daily Mode, 11:00 a.m. New York City time on any Business Day; and (ii) during the Weekly Mode, 5:00 p.m. New York City time on the Business Day 7 days prior to the applicable Purchase Date.

“Tender Notice” means a notice delivered by Electronic means or in writing that states: (i) the principal amount of the 2008 Certificates to be purchased pursuant to Section 3.01 hereof; (ii) the Purchase Date on which such 2008 Certificates are to be purchased; (iii) applicable payment instructions with respect to such 2008 Certificates being tendered for purchase; and (iv) an irrevocable demand for such purchase.

“Term Certificates” means the 2008 Certificates subject to mandatory prepayment from Sinking Fund Payments.

“Term Rate” means the per annum interest rate for the 2008 Certificates in the Term Rate Mode determined pursuant to Section 2.16(a) hereof.

“Term Rate Mode” means the Mode during which the 2008 Certificates evidence interest at a Term Rate.

“Term Rate Period” means the period from (and including) the Mode Change Date or the date of initial conversion of the 2008 Certificates to a Term Rate Mode, as applicable, to (but excluding) the last day of the first period that 2008 Certificates shall be in the Term Rate Mode as established by the Authority pursuant to Section 2.16(a) hereof and, thereafter, the period from (and including) the beginning date of each successive Interest Rate Period selected for the 2008 Certificates by the Authority pursuant to Section 2.16(a) hereof while the 2008 Certificates are in the Term Rate Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period. Except as otherwise provided in this Trust

Agreement, an Interest Period for the 2008 Certificates in the Term Rate Mode must be at least 180 days in length.

“Trust Agreement” means this Trust Agreement, dated as of May 1, 2008, between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented by all Supplemental Trust Agreements executed pursuant to the provisions hereof.

“Trustee” means The Bank of New York Trust Company, N.A., or any other association or corporation which may at any time be substituted in its place as provided in Section 6.01 hereof.

“2006 Certificates” means the Water Revenue Certificates of Participation 2006 Series A.

“2006 Supplemental Contract” means the 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006, by and between the City and the Authority, and consented to by the Trustee and Financial Guaranty Insurance Company.

“2006 Trust Agreement” means that certain Trust Agreement, dated as of November 1, 2006, by and between the Authority and the Trustee, delivered in connection with the 2006 Certificates.

“2008 Certificate Insurance Policy” means the financial guaranty insurance policy issued by the 2008 Certificate Insurer guaranteeing the scheduled payment of principal of and interest evidenced and represented by the 2008 Certificates.

“2008 Certificate Insurer” means Assured Guaranty Corp., its successors and assigns.

“2008 Certificates” means all of the Water Refunding Revenue Certificates of Participation, 2008 Series A, evidencing and representing proportionate interests of the owners thereof in the 2008 Payments to be made by the City, and executed and delivered in accordance with Article II hereof.

“2008 Debt Service Fund” means the fund by that name established pursuant to Section 4.02 hereof.

“2008 Interest Account” means the account by that name established within the 2008 Debt Service Fund pursuant to Section 4.03(a) hereof.

“2008 Interest Rate Swap Agreement” has the meaning given such term in the 2008 Supplemental Contract.

“2008 Parity Reserve Fund Insurance Policy” means the reserve fund financial guaranty insurance policy issued by the 2008 Certificate Insurer and deposited in the Parity Reserve Fund pursuant to Section 2.12 hereof.

“2008 Payments” means the installment payments of interest, principal, and prepayment premium, if any, payable by the City under and pursuant to the 2008 Supplemental Contract.

“2008 Prepayment Subaccount” means the subaccount by that name established within the 2008 Principal Account of the 2008 Debt Service Fund pursuant to Section 4.03(b) hereof.

“2008 Principal Account” means the account by that name established within the 2008 Debt Service Fund pursuant to Section 4.03(b) hereof.

“2008 Project” means the refinancing of improvements to the Water Utility System described in Exhibit A to the 2008 Supplemental Contract.

“2008 Purchase Fund” means the fund by that name established pursuant to Section 3.09 hereof.

“2008 Sinking Fund Subaccount” means the subaccount by that name within the 2008 Principal Account of the 2008 Debt Service Fund established pursuant to Section 4.03(b) hereof.

“2008 Supplemental Contract” means that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, by and between the City and the Authority, supplementing the Master Contract.

“Weekly Mode” means the Mode during which the 2008 Certificates evidence interest at the Weekly Rate.

“Weekly Rate” means the per annum interest rate with respect to the 2008 Certificates in the Weekly Mode determined pursuant to Section 2.15(b) hereof.

“Weekly Rate Period” means the period during which the 2008 Certificates evidence interest at a Weekly Rate, which shall be the period commencing on Thursday of each week to and including Wednesday of the following week, except the first Weekly Rate Period which shall be from the Mode Change Date for the 2008 Certificates to and including the Wednesday of the following week and the last Weekly Rate Period which shall be from and including the Thursday of the week prior to the Mode Change Date to and including the day next preceding the Mode Change Date.

“Written Request of the Authority” means an instrument in writing signed by the Auditor and Treasurer of the Authority or by any other officer of the Authority duly authorized by the Authority for that purpose.

Section 1.02. Equal Security. In consideration of the acceptance of the 2008 Certificates by the Owners thereof, this Trust Agreement shall be deemed to be and shall constitute a contract between the Authority and the Owners from time to time of all 2008 Certificates authorized, executed, and delivered hereunder and then Outstanding to secure the full and final payment of the interest, principal, and prepayment premiums, if any, evidenced and represented by the 2008 Certificates which may from time to time be authorized, executed, issued and delivered hereunder, subject to the agreements, conditions, covenants and provisions contained herein; and all agreements and covenants set forth herein to be performed by or on behalf of the Trustee shall be for the equal and proportionate benefit, protection and security of all Owners without distinction, preference or priority as to security or otherwise of any 2008 Certificates over any other 2008 Certificates by reason of the number or date thereof or the time of authorization, sale,

execution, or delivery thereof or for any cause whatsoever, except as expressly provided herein or therein.

Section 1.03. New York City Time. All references herein to a particular time of day shall be New York City time unless the context clearly otherwise requires.

## ARTICLE II

### THE 2008 CERTIFICATES

Section 2.01. Conditions and Terms of 2008 Certificates. The Trustee is hereby authorized and directed to execute and deliver the 2008 Certificates in the aggregate principal amount of \$47,625,000, aggregating the principal installments of the 2008 Payments, and each evidencing and representing a proportionate interest in the 2008 Payments.

#### Section 2.02. Terms of the 2008 Certificates.

(a) The 2008 Certificates shall be issued as fully registered securities certificates without coupons in Authorized Denominations. The 2008 Certificates shall be registered initially in the name of "Cede & Co.," as nominee of DTC, the initial Securities Depository, and shall be evidenced by one certificate in the total aggregate principal amount of the 2008 Certificates. Registered ownership of the 2008 Certificates, or any portion thereof, may not thereafter be transferred except as set forth in Section 2.06 hereof.

(b) The 2008 Certificates shall be dated the Delivery Date.

(c) Except as otherwise provided in the Liquidity Facility or the Reimbursement Agreement, or, in the case of 2008 Certificates being converted to a Fixed Rate, except as otherwise provided in Section 2.18(d) hereof, the 2008 Certificates shall mature on October 1, 2036.

(d) The 2008 Certificates shall be subject to prepayment as provided in Section 2.03 hereof and optional and mandatory tender for purchase as provided in Article III.

(e) The Trustee shall identify all payments (whether made by check or by wire transfer) of interest, principal, Purchase Price and Prepayment Price by CUSIP number of the 2008 Certificates.

(f) During each Interest Period for each Mode, the interest rate or rates with respect to the 2008 Certificates shall be determined in accordance with this Article II and shall be payable on the applicable Interest Payment Date for such Interest Period; provided that the interest rate or rates shall not exceed the Maximum Rate. All 2008 Certificates shall evidence interest in the same Mode, but need not evidence interest at the same rate at any one time. Interest with respect to the 2008 Certificates accruing at the Daily Rate, Weekly Rate or Flexible Rate shall be computed upon the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed. Interest with respect to the 2008 Certificates accruing at a Fixed Rate or a Term Rate shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months. Each 2008 Certificate shall evidence interest on overdue principal and, to the extent

permitted by law, on overdue interest at the rate evidenced by such 2008 Certificate on the date on which such principal became due and payable. Notwithstanding the foregoing, the interest rate and payment terms of Liquidity Provider Certificates shall be governed by the provisions of the Liquidity Facility.

(g) Interest evidenced by each 2008 Certificate shall accrue from and including the Interest Accrual Date immediately preceding the date of authentication thereof, or, if such date of authentication shall be an Interest Accrual Date, from such Interest Accrual Date or if such date of authentication shall be prior to the second Interest Accrual Date, from the Delivery Date; provided, however, that if interest evidenced by the 2008 Certificates shall be in default, interest on the 2008 Certificates issued in exchange for 2008 Certificates surrendered for registration of transfer or exchange shall accrue from the date to which interest has been paid in full with respect to the 2008 Certificates or, if no interest has been paid with respect to the 2008 Certificates, from the Delivery Date.

(h) Payment of interest evidenced by the 2008 Certificates shall be made to the person appearing on the registration books of the Trustee as the Owner thereof as of the close of business on the applicable Record Date, such interest to be payable on each Interest Payment Date by the Trustee (i) by check mailed on such Interest Payment Date to such Owner's address as it appears on the registration books of the Trustee at the close of business on the Record Date or (ii) by wire transfer to any Owner of at least \$1,000,000 aggregate principal amount of 2008 Certificates according to the written instructions provided by such Owner on or prior to the applicable Record Date to the Trustee, which written instructions shall remain in effect until revised by such Owner by an instrument in writing delivered to the Trustee.

(i) If for any reason, the Liquidity Provider Certificates remain in book-entry and are not assigned a separate CUSIP number, the Trustee shall pay the principal of, prepayment premium, if any, and interest with respect to the 2008 Certificates (including the Liquidity Provider Certificates) in accordance with the letter of representations with DTC computed at the Basic Certificate Rate; and the Authority shall pay to the Trustee for payment to the Liquidity Facility provider outside the book-entry system the remainder of (i) the interest then due with respect to Liquidity Provider Certificates computed at the applicable interest rate minus (ii) the interest that would then be due with respect to Liquidity Provider Certificates if such interest were computed at the Basic Certificate Rate.

(j) The principal evidenced and represented by the 2008 Certificates shall be payable in lawful money of the United States of America upon the surrender thereof on the respective 2008 Certificate Payment Date or on prepayment prior thereto at the Corporate Trust Office of the Trustee.

(k) The first Mode for the 2008 Certificates shall be the Weekly Mode. The first Weekly Rate Period for the 2008 Certificates shall be the period commencing on and including the Delivery Date and ending on and including June 4, 2008. The First Interest Payment Date is June 2, 2008. The Mode for the 2008 Certificates may be changed in accordance with this Article II.

(l) In the absence of manifest error, the determination of any Daily Rate, Weekly Rate, Flexible Rate, Term Rate and Fixed Rate by the Remarketing Agent, the determination of each Flexible Rate Period for any 2008 Certificate in a Flexible Mode by the Remarketing Agent and the determination of the length of each Term Rate Period by the Authority shall be conclusive and binding upon the Authority, the other Notice Parties and each Owner.

(m) In the absence of manifest error, the record of interest rates maintained by the Trustee shall be conclusive and binding upon the Authority, the other Notice Parties and each Owner.

Section 2.03. Prepayment of Certificates.

(a) Mandatory Sinking Fund Prepayment. Except in the event of serialization of the 2008 Certificates in accordance with Section 2.18(d) hereof, the 2008 Certificates are subject to mandatory prepayment from Sinking Fund Payments prior to their Maturity Date, in part by lot, on October 1 of each year on and after October 1, 2008, in accordance with the schedule set forth below upon notice as hereinafter provided, from and in the amount of the principal installment of the 2008 Payments due and payable on such dates, at a prepayment price equal to the sum of the principal amount evidenced and represented thereby plus accrued and unpaid interest evidenced and represented thereby to the Prepayment Date, without a prepayment premium.

Certificates Sinking Fund Payments

<u>Mandatory Sinking Fund Payment Date (October 1)</u>	<u>Sinking Fund Payment</u>	<u>Mandatory Sinking Fund Payment Date (October 1)</u>	<u>Sinking Fund Payment</u>
2008	\$290,000	2023	\$2,300,000
2009	285,000	2024	2,410,000
2010	285,000	2025	2,515,000
2011	285,000	2026	2,595,000
2012	310,000	2027	2,705,000
2013	310,000	2028	2,810,000
2014	340,000	2029	2,945,000
2015	340,000	2030	3,055,000
2016	365,000	2031	3,185,000
2017	365,000	2032	3,295,000
2018	395,000	2033	3,430,000
2019	395,000	2034	3,570,000
2020	395,000	2035	3,705,000
2021	425,000	2036	3,870,000
2022	450,000		

Notwithstanding the foregoing, no 2008 Certificate (other than a Liquidity Provider Certificate) shall be optionally prepaid while any Liquidity Provider Certificate is Outstanding unless all Outstanding Liquidity Provider Certificates are prepaid or purchased by the Trustee and cancelled concurrently with such prepayment or purchase.

If for any reason, the Liquidity Provider Certificates remain in book-entry but have not been assigned a separate CUSIP number, the Trustee shall apply the amounts in the 2008 Sinking Fund Subaccount set aside for prepayment to the purchase from the Liquidity Facility provider of Liquidity Provider Certificates in an aggregate principal amount not in excess of the principal amount intended to be prepaid at a purchase price equal to the prepayment price specified above. The Liquidity Provider Certificates so purchased shall be cancelled by the Trustee, and the principal amount thereof shall be credited against the principal amount of the 2008 Certificates otherwise required to be prepaid.

Notwithstanding the foregoing, if any such 2008 Certificates have been optionally prepaid pursuant to Section 2.03(c) hereof, the amounts of such Sinking Fund Payments shall be reduced as directed by the Authority, or if not so directed, proportionately in increments of Authorized Denominations by the principal amount evidenced and represented by all such 2008 Certificates so optionally prepaid.

All such Sinking Fund Payments shall be deposited in the 2008 Sinking Fund Subaccount of the 2008 Principal Account established pursuant to Section 4.03 hereof. On each Sinking Fund Payment date, the Trustee shall apply the Sinking Fund Payment required on such date to the mandatory prepayment or payment of Term Certificates, upon the notice and in the manner provided in this Section 2.03(a) hereof; provided that, at any time prior to giving notice of such prepayment, the Trustee may apply moneys in the 2008 Sinking Fund Subaccount to the purchase of Term Certificates at public or private sale, as and when and at such prices (including brokerage and other charges) as directed in writing by the Authority, except that the purchase price shall not exceed the prepayment price that would be payable for Term Certificates upon prepayment by application of such Sinking Fund Payment. If, during the 12-month period immediately preceding said Sinking Fund Payment date, the Trustee has purchased Term Certificates with moneys in the 2008 Sinking Fund Subaccount, or, during said period and prior to giving said notice of prepayment, the City or the Authority has deposited Term Certificates with the Trustee (together with a request of the Authority or the City to apply such 2008 Certificates so deposited to the Sinking Fund Payment due on said Sinking Fund Payment date), or Term Certificates were at any time purchased or prepaid by the Trustee from the 2006 Prepayment Account and allocable to said Sinking Fund Payment, such 2008 Certificates so purchased, deposited, or prepaid shall be applied, to the extent of the full principal amount evidenced and represented thereby, to reduce said Sinking Fund Payment.

(b) Mandatory Prepayment of Liquidity Provider Certificates. Any Liquidity Provider Certificates from time to time Outstanding shall be subject to mandatory prepayment in the amounts and at the times and at the prepayment prices specified therefor in the Liquidity Facility with the Liquidity Facility Provider applicable thereto.

(c) Optional Prepayment.

(i) Each 2008 Certificate in a Daily Mode or a Weekly Mode shall be subject to prepayment at the option of the Authority, in whole or in part, in Authorized Denominations on any Business Day, at a prepayment price equal to 100% of the principal amount thereof, plus, accrued interest, if any, to the Prepayment Date, without premium.

(ii) Flexible Rate Certificates are not subject to optional prepayment prior to their respective Mandatory Purchase Dates. Flexible Rate Certificates shall be subject to prepayment at the option of the Authority in whole or in part on their respective Mandatory Purchase Dates at a prepayment price equal to 100% of the principal amount thereof, without premium.

(iii) Each 2008 Certificate in a Term Rate Mode shall be subject to prepayment at the option of the Authority, in whole or in part, on each Mandatory Purchase Date applicable to the 2008 Certificates in a Term Rate Mode, at a prepayment price equal to 100% of the principal amount thereof, without premium.

(iv) Each Certificate in a Term Rate Mode or a Fixed Rate Mode is subject to prepayment in whole or in part on any date (and if in part, in such order of maturity as the Authority shall specify and within a maturity by lot or by such other method as the Trustee determines to be fair and reasonable and in Authorized Denominations) commencing on the Interest Payment Date next following the tenth anniversary of the change to a Term Rate Mode or a Fixed Mode at a prepayment price equal to 100% of the principal amount of 2008 Certificates being prepaid, together with accrued interest, if any, to the Prepayment Date, without premium. If the length of the Term Rate Period or the Fixed Rate Period for the 2008 Certificates is less than ten (10) years, then the 2008 Certificates shall not be subject to optional prepayment during the Term Rate Period or Fixed Rate Period, as applicable.

(v) In connection with a change to a Term Rate Mode or a Fixed Rate Mode for the 2008 Certificates, the Authority may waive or otherwise alter its rights to direct the prepayment of the 2008 Certificates set forth in (c)(iv) above; provided that notice describing such waiver or alteration shall be submitted to the Trustee and the Remarketing Agent, or Fixed Rate Remarketing Agent, as applicable, together with a Favorable Opinion of Special Counsel.

(d) Reserved.

(e) Selection of 2008 Certificates. If less than all of the Outstanding 2008 Certificates are to be prepaid at any one time, the Authority shall designate the Certificate Payment Dates or portions thereof of the 2008 Certificates to be prepaid; provided, that any Liquidity Provider Certificates that remain outstanding shall be selected for prepayment prior to 2008 Certificates that are not Liquidity Provider Certificates. If less than all Outstanding 2008 Certificates of any particular Certificate Payment Date are to be prepaid at any one time, the Trustee shall select the 2008 Certificates of such Certificate Payment Date to be prepaid by lot, except that if any 2008 Certificate or portion thereof to be prepaid is a Term Certificate, the Authority may specify in a Written Request of the Authority filed with the Trustee, the particular Sinking Fund Payments for such Term Certificate to be prepaid. For purposes of such selection, 2008 Certificates of each Certificate Payment Date shall be deemed to be composed of Authorized Denominations and any such Authorized Denomination may be separately prepaid. If the Authority elects to optionally prepay 2008 Certificates pursuant to Section 2.03(c) hereof, it will notify the Trustee of the prepayment date and the principal amount evidenced and represented by the 2008 Certificates of each Certificate Payment Date to be prepaid on such

prepayment date at least 45 days prior to such prepayment date; provided, that the Trustee may, at its option, waive any such notice or accept any notice received at a later date.

(f) Notice of Prepayment. Notice of prepayment shall be mailed by the Trustee, not less than 30 nor more than 60 days prior to the prepayment date to (i) the respective Owners of the 2008 Certificates designated for prepayment at their addresses appearing on the registration books of the Trustee, (ii) the Securities Depositories and (iii) one or more Information Services. Notice of prepayment to the Securities Depositories and the Information Services shall be given by first-class mail, certified mail, overnight delivery or facsimile transmission or by other approved means. Each notice of prepayment shall state the date of such notice, the prepayment price, the place of prepayment (including the name and appropriate address of the Trustee), the CUSIP number (if any) of the 2008 Certificates to be prepaid, and, if less than all of the 2008 Certificates maturing on any one Certificate Payment Date are to be prepaid, the distinctive certificate numbers of the 2008 Certificates of such Certificate Payment Date to be prepaid and, in the case of 2008 Certificates to be prepaid in part only, the respective portions of the principal amount evidenced and represented thereby to be prepaid. Each such notice shall also state that on said date there will become due and payable on each of said 2008 Certificates the prepayment price thereof and in the case of a 2008 Certificate to be prepaid in part only, the specified portion of the principal amount evidenced and represented thereby to be prepaid, together with accrued and unpaid interest evidenced and represented thereby to the prepayment date, and that from and after such prepayment date interest evidenced and represented thereby shall cease to accrue, and shall require that such 2008 Certificates be then surrendered at the address of the Trustee specified in the prepayment notice. Failure to receive such notice shall not invalidate any of the proceedings taken in connection with such prepayment.

Any prepayment may be cancelled if the notice of such prepayment has not been mailed to the respective Owners of the 2008 Certificates or if such notice expressly conditioned the prepayment upon the occurrence of one or more events. Notice of any such cancellation shall be given in the same manner as the notice of prepayment was given at least 3 Business Days prior to the date scheduled for prepayment.

If notice of prepayment has been duly given as aforesaid and money for the payment of the prepayment price of the 2008 Certificates called for prepayment is held by the Trustee, then on the prepayment date designated in such notice, 2008 Certificates so called for prepayment shall become due and payable, and from and after the date so designated interest evidenced and represented by such 2008 Certificates shall cease to accrue, and the Owners of such 2008 Certificates shall have no rights in respect thereof except to receive payment of the prepayment price thereof.

All 2008 Certificates prepaid pursuant to the provisions of this Section shall be cancelled and destroyed by the Trustee and shall not be redelivered.

(g) No Notice of Prepayment. Notwithstanding any other provision of this Trust Agreement to the contrary, no notice of prepayment is required to be given with respect to any prepayment occurring on a Mandatory Purchase Date.

(h) Mandatory Purchase in Lieu of Prepayment. Each Owner, by purchase and acceptance of any 2008 Certificate irrevocably grants to the Authority the option to purchase such 2008 Certificate on any date such 2008 Certificate is subject to optional prepayment provided in (c) above at a purchase price equal to the prepayment price then applicable to such 2008 Certificate, plus accrued interest thereon to the date of purchase. In order to exercise such option, the Authority shall deliver to the Trustee a Favorable Opinion of Special Counsel and shall direct the Trustee to provide notice of mandatory purchase in lieu of prepayment, such notice to be provided, as and to the extent applicable, in accordance with the provisions set forth in Section 3.02 hereof. On the date fixed for purchase of any 2008 Certificate pursuant to this Section 2.03(h), the Authority shall pay the purchase price of such 2008 Certificate to the Trustee in immediately available funds and the Trustee shall pay the same to the Owners of the 2008 Certificates being purchased against delivery thereof. All 2008 Certificates so purchased shall be delivered to the Trustee to hold for the benefit of the Authority or for cancellation upon the receipt of such instructions from the Authority. Without the prior written consent of the 2008 Certificate Insurer, no 2008 Certificates shall be purchased in lieu of prepayment by the Authority, the City or any of its affiliates unless such 2008 Certificates are redeemed, defeased or cancelled.

Notwithstanding any other provision of this Trust Agreement, the purchase price of any 2008 Certificate subject to mandatory purchase in lieu of prepayment pursuant to this Section 2.03(h) shall be paid solely by the Authority and such 2008 Certificate shall not be eligible to be purchased and shall not be purchased from a drawing on any Liquidity Facility. In the event that the Authority lacks sufficient funds to pay the purchase price of any 2008 Certificate subject to mandatory purchase in lieu of prepayment pursuant to this Section 2.03(h) on the date fixed for such purchase, the Authority shall cancel such mandatory purchase in lieu of prepayment and shall return each such 2008 Certificate to the Owner who shall have tendered such 2008 Certificate for mandatory purchase in lieu of prepayment pursuant to this Section 2.03(h). The Trustee shall give notice that such mandatory purchase was not effected promptly following the date fixed for such purchase. Any failure to pay the purchase price of any 2008 Certificate subject to mandatory purchase pursuant to this Section 2.03(h) shall not constitute an Event of Default under this Trust Agreement.

Section 2.04. Form of 2008 Certificates. The 2008 Certificates while in Weekly Mode shall be substantially in the form set forth in Exhibit A hereto attached and by this reference herein incorporated. Upon a change in Mode of the 2008 Certificates to another Mode, and upon any subsequent change from one Mode to another Mode, a new form of 2008 Certificate shall be prepared, if and to the extent necessary, which contains the terms of the 2008 Certificates applicable in the new Mode.

Section 2.05. Execution of 2008 Certificates. The 2008 Certificates shall be executed by the Trustee by the manual signature of an authorized officer or signatory of the Trustee.

Section 2.06. Transfer and Payment of 2008 Certificates. Any 2008 Certificates may, in accordance with its terms, be transferred in the books required to be kept pursuant to the provisions of Section 2.08 hereof by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such 2008 Certificates at the Corporate Trust Office of the Trustee for cancellation accompanied by delivery of a duly executed written

instrument of transfer in a form acceptable to the Trustee. Whenever any 2008 Certificate or 2008 Certificates shall be surrendered for transfer, the Trustee shall execute and deliver to the transferee a new 2008 Certificate or 2008 Certificates of the same Certificate Payment Date evidencing and representing a like aggregate principal amount in Authorized Denominations. The Trustee shall require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer as a condition precedent to the exercise of such privilege.

The Trustee may deem and treat the registered owner of any 2008 Certificates as the absolute owner of such 2008 Certificates for the purpose of receiving payment thereof and for all other purposes, whether such 2008 Certificates shall be overdue or not, and the Trustee shall not be affected by any notice or knowledge to the contrary; and payment of the interest and principal and prepayment premium, if any, evidenced and represented by such 2008 Certificates shall be made only to such registered owner, which payments shall be valid and effectual to satisfy and discharge liability on such 2008 Certificates to the extent of the sum or sums so paid.

The Trustee shall not be required to register the transfer of any 2008 Certificate during the period commencing on the date 15 days preceding the selection of 2008 Certificates for prepayment and ending on the date of mailing of notice of such prepayment, or any 2008 Certificate which has been selected for prepayment in whole or in part, from and after the day of mailing of a notice of prepayment of such 2008 Certificates selected for prepayment in whole or in part as provided in Section 2.03 hereof.

Section 2.07. Exchange of Certificates. 2008 Certificates may be exchanged at the Corporate Trust Office of the Trustee for 2008 Certificates evidencing and representing a like aggregate principal amount of 2008 Certificates of the same Certificate Payment Date of other Authorized Denominations. The Trustee shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange as a condition precedent to the exercise of such privilege.

The Trustee shall not be required to exchange any 2008 Certificate during the 15-day period preceding the selection of 2008 Certificates for prepayment, or any 2008 Certificate which has been selected for prepayment in whole or in part, from and after the day of mailing of a notice of prepayment of such 2008 Certificates selected for prepayment in whole or in part as provided in Section 2.03 hereof.

Section 2.08. Certificate Registration Books. The Trustee will keep at its Corporate Trust Office sufficient books for the registration and transfer of the 2008 Certificates which shall at all times be open to inspection by the Authority during regular business hours with reasonable prior notice, and upon presentation for such purpose the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer the 2008 Certificates in such books as hereinabove provided.

Section 2.09. Mutilated, Destroyed, Stolen or Lost Certificates. If any 2008 Certificate shall become mutilated the Trustee, at the expense of the Owner, shall thereupon execute and deliver a new 2008 Certificate of like tenor and amount in exchange and substitution for the 2008 Certificate so mutilated, but only upon surrender to the Trustee of the 2008 Certificate so

mutilated. Every mutilated 2008 Certificate so surrendered to the Trustee shall be cancelled and destroyed.

If any 2008 Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory to the Trustee and indemnity satisfactory to the Trustee has been given, the Trustee, at the expense of the Owner, shall thereupon execute and deliver a new 2008 Certificate of like tenor in lieu of and in substitution for the 2008 Certificate so lost, destroyed or stolen.

The Trustee may require payment of a reasonable sum for each new 2008 Certificate delivered under this Section 2.09 and of the expenses which may be incurred by the Authority and the Trustee in the premises. Any 2008 Certificate executed and delivered under the provisions of this Section in lieu of any 2008 Certificate alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other 2008 Certificates secured by this Trust Agreement. The Trustee shall not be required to treat both the original 2008 Certificate and any replacement 2008 Certificate as being Outstanding for the purpose of determining the principal amount of 2008 Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of 2008 Certificates Outstanding hereunder, but both the original and replacement 2008 Certificate shall be treated as one and the same.

Section 2.10. Temporary Certificates. The 2008 Certificates executed and delivered under this Trust Agreement may be initially executed and delivered in temporary form exchangeable for definitive 2008 Certificates when ready for delivery. The temporary 2008 Certificates may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Trustee, shall be in fully registered form and may contain such reference to any of the provisions of this Trust Agreement as may be appropriate. Every temporary 2008 Certificate shall be executed and delivered by the Trustee, upon the same conditions and terms and in substantially the same manner as definitive 2008 Certificates. If the Trustee executes and delivers temporary 2008 Certificates it will execute and furnish definitive 2008 Certificates and thereupon the temporary 2008 Certificates may be surrendered, for cancellation, in exchange therefor at the Corporate Trust Office of the Trustee, and the Trustee shall deliver in exchange for such temporary 2008 Certificates definitive 2008 Certificates evidencing and representing an equal aggregate principal amount of 2008 Certificates of Authorized Denominations. Until so exchanged, the temporary 2008 Certificates shall be entitled to the same benefits under this Trust Agreement as definitive 2008 Certificates delivered hereunder.

Section 2.11. Use of Book-Entry System for Certificates.

(a) The 2008 Certificates initially shall be delivered in the form of a single executed fully registered securities certificate for each stated Maturity Date of such 2008 Certificates, representing the aggregate principal amount evidenced and represented by the 2008 Certificates of such Maturity Date. Upon initial delivery, the ownership of all such 2008 Certificates shall be registered in the registration records maintained by the Trustee pursuant to Section 2.08 hereof in the name of Cede & Co., as nominee of DTC, or such other nominee as DTC shall request pursuant to the Representation Letter. The Trustee may treat DTC (or its nominee) as the sole and exclusive owner of the 2008 Certificates registered in its name for the purposes of payment

of the principal or prepayment price and interest evidenced and represented by such 2008 Certificates, selecting the 2008 Certificates or portions thereof to be prepaid, giving any notice permitted or required to be given to Owners hereunder, registering the transfer of 2008 Certificates, obtaining any consent or other action to be taken by Owners of the 2008 Certificates and for all other purposes whatsoever; and the Trustee shall not be affected by any notice to the contrary. Neither the Trustee nor the Authority shall have any responsibility or obligation to any Participant (which shall mean, for purposes of this Section, securities brokers and dealers, banks, trust companies, clearing corporations and other entities, some of whom directly or indirectly own DTC), any person claiming a beneficial ownership interest in the 2008 Certificates under or through DTC or any Participant, or any other person which is not shown on the registration records as being an Owner of 2008 Certificates, with respect to (i) the accuracy of any records maintained by DTC or any Participant, (ii) the payment by DTC or any Participant of any amount in respect of the principal or prepayment price or interest evidenced and represented by the 2008 Certificates (iii) any notice which is permitted or required to be given to Owners of 2008 Certificates hereunder, (iv) the selection by DTC or any Participant of any person to receive payment in the event of a partial prepayment of the 2008 Certificates, or (v) any consent given or other action taken by DTC as Owner of 2008 Certificates. Notwithstanding anything to the contrary herein, the Trustee shall pay all principal, prepayment premium, if any, and interest evidenced and represented by the 2008 Certificates only at the times, to the accounts, at the addresses and otherwise in accordance with the Representation Letter, and all such payments shall be valid and effective to satisfy fully and discharge the principal, prepayment premium, if any, and interest evidenced and represented by the 2008 Certificates to the extent of the sum or sums so paid. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of its then existing nominee, the 2008 Certificates will be transferable to such new nominee in accordance with subsection (c) of this Section.

(b) In the event that the Authority determines that it is in the best interests of the beneficial owners of the 2008 Certificates that they be able to obtain securities certificates, the Trustee shall, upon the written instruction of the Authority, so notify DTC, whereupon DTC shall notify the Participants of the availability through DTC of securities certificates. In such event, the 2008 Certificates will be transferable in accordance with subsection (c) of this Section. DTC may determine to discontinue providing its services with respect to the 2008 Certificates at any time by giving written notice of such discontinuance to the Authority and the Trustee and discharging its responsibilities with respect thereto under applicable law. In such event, the 2008 Certificates will be transferable in accordance with subsection (c) of this Section. Whenever DTC requests the Authority and the Trustee to do so, the Trustee and the Authority will cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of all certificates evidencing the 2008 Certificates then Outstanding. In such event, the 2008 Certificates will be transferable to such securities depository in accordance with subsection (c) of this Section, and thereafter, all references in this Trust Agreement to DTC or its nominee shall be deemed to refer to such successor securities depository and its nominee, as appropriate.

(c) In the event that any transfer or exchange of 2008 Certificates is authorized under subsection (a) or (b) of this Section, such transfer or exchange shall be accomplished upon receipt by the Trustee from the registered owner thereof of the 2008 Certificates to be transferred

or exchanged and appropriate instruments of transfer to the permitted transferee, all in accordance with the applicable provisions of Sections 2.06 and 2.07 hereof. In the event securities certificates are delivered to Owners other than Cede & Co., its successor as nominee for DTC as Owner of all the 2008 Certificates, another securities depository as Owner of all the 2008 Certificates, or the nominee of such successor securities depository, the provisions of Sections 2.06 and 2.07 hereof shall also apply to, among other things, the registration, exchange and transfer of the 2008 Certificates and the method of payment of principal, prepayment premium, if any, and interest evidenced and represented by the 2008 Certificates.

(d) Liquidity Provider Certificates. Notwithstanding any other provisions hereof, the Trustee shall take all necessary action to obtain a separate CUSIP number and to qualify Liquidity Provider Certificates for book-entry in accordance with the procedures of DTC. If for any reason the Liquidity Provider Certificates are not assigned a separate CUSIP number, at the request of the Liquidity Facility Provider, Liquidity Provider Certificates shall be registered in the name of the Liquidity Facility Provider or its nominees or registered assigns, and not in the name of the Depository, DTC, Cede & Co. or other nominee or its registered assign. In such case, the Trustee shall take all necessary action to withdraw Liquidity Provider Certificates from the Depository in order to register Liquidity Provider Certificates in the name of the Liquidity Facility Provider, or the nominee or registered assigns thereof.

Section 2.12. Authorization of Delivery of 2008 Certificates; Application of Proceeds. The Trustee is hereby authorized to execute and deliver the 2008 Certificates to the purchaser thereof upon the Written Request of the Authority and upon receipt of the proceeds of the sale thereof. Upon receipt of the proceeds of the sale of the 2008 Certificates from the purchaser thereof (in the amount of \$46,581,988.19 (representing the \$47,625,000.00 aggregate principal amount of the 2008 Certificates, less underwriter's discount of \$153,920.63, and less \$826,615.80 transferred by the purchaser at the request of the Authority to the 2008 Certificate Insurer as payment of the premium for the 2008 Certificate Insurance Policy and \$62,475.38 transferred by the purchaser at the request of the Authority to the 2008 Certificate Insurer as payment of the premium for the 2008 Parity Reserve Fund Insurance Policy), the Trustee shall set aside and deposit the proceeds received from such sale in the following respective accounts or funds or with the following respective persons, in the following order of priority:

(a) the Trustee shall deposit to the 2006 Debt Service Fund, established pursuant to Section 4.03 of the 2006 Trust Agreement, the amount of \$46,275,000.00;

(b) the Trustee shall deposit to the Parity Reserve Fund, created pursuant to the 1997 Trust Agreement, the amount of \$36.57; and

(c) the Trustee shall deposit the remainder of the proceeds of sale of the 2008 Certificates (such amount being \$306,951.62) in the Costs of Issuance Fund established pursuant to Section 4.05 hereof.

Simultaneously with the deposit of proceeds, the Trustee shall (i) retain in the Parity Reserve Fund, created pursuant to the 1997 Trust Agreement, which fund is continued pursuant to Section 4.04 hereof, the amount of \$1,834,515.50 from amounts in the Parity Reserve Fund deposited from the proceeds 2006 Certificates and (ii) deposit in the Parity Reserve Fund the

2008 Parity Reserve Fund Insurance Policy, together being an amount sufficient to cause the balance on deposit in, or credited to the Parity Reserve Fund to be equal to the Reserve Fund Requirement upon delivery of the 2008 Certificates.

Section 2.13. Reserved.

Section 2.14. Determination of Flexible Rates and Interest Periods During Flexible Mode. An Interest Period for the 2008 Certificates in the Flexible Mode shall be of such duration of from one to 397 calendar days, ending on a day preceding a Business Day or the Maturity Date, as the Remarketing Agent shall determine in accordance with the provisions of this Section 2.14. In making the determinations with respect to Interest Periods, subject to limitations imposed by the immediately preceding sentence, on each Rate Determination Date for a Flexible Rate Certificate, the Remarketing Agent shall select the Interest Period that would result in the Remarketing Agent being able to remarket the 2008 Certificates at par in the secondary market at the lowest average interest cost under then-existing marketing conditions; provided, however, that if the Remarketing Agent has received notice from the Authority to the effect that the Mode for the 2008 Certificates is to be changed from the Flexible Mode to any other Mode, the Remarketing Agent shall select Interest Periods that do not extend beyond the resulting Mode Change Date. The Flexible Rate for the 2008 Certificates in a Flexible Mode shall be the rate of interest per annum determined by the Remarketing Agent to be the minimum interest rate which, if evidenced by the 2008 Certificates, would enable the Remarketing Agent to sell the 2008 Certificates under then existing market conditions, including length of Interest Period, on the effective date of such rate at a price equal to the principal amount thereof. Each 2008 Certificate in a Flexible Mode may evidence interest at a different Flexible Rate and may have an Interest Period within the Flexible Mode which differs from the Interest Period applicable to any 2008 Certificate in a Flexible Mode.

The Trustee, in consultation with the Remarketing Agent, shall take such actions as shall be necessary to distinguish 2008 Certificates having different Flexible Rate Periods, which actions may include obtaining different CUSIP numbers if determined desirable by the Trustee or the Remarketing Agent.

By 1:00 p.m. New York City time on each Rate Determination Date, the Remarketing Agent, with respect to each 2008 Certificate in the Flexible Mode that is subject to adjustment on such Rate Determination Date, shall determine the Flexible Rate for the Interest Period then selected for such 2008 Certificate and shall give notice of the Interest Period, the Purchase Date and the Flexible Rate for such 2008 Certificate, such notice to be given by Electronic means to the Trustee and the Authority. The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. New York City time on each Rate Determination Date by telephone or Electronic means to any Beneficial Owner or Notice Party other than the Authority requesting such information.

In the event the use of the Book-Entry System is discontinued, in order to receive payment of the Purchase Price of any 2008 Certificate in the Flexible Mode, the Owner of such 2008 Certificate must present such 2008 Certificate to the Trustee, by 12:00 noon New York City time on the applicable Mandatory Purchase Date. Upon receipt of such 2008 Certificate by 12:00 noon New York City time on a Mandatory Purchase Date, the Trustee shall pay the

Purchase Price to such Owner by 2:30 p.m. New York City time on such Mandatory Purchase Date.

Section 2.15. Determination of Interest Rates During the Daily Mode and the Weekly Mode. The interest rate for the 2008 Certificates during the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of the 2008 Certificates in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to 100% of the principal amount thereof.

(a) During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. New York City time on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once each week by telephone or Electronic means to the Authority, each other Notice Party and any Beneficial Owner requesting such rate.

(b) During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. New York City time on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available no later than 5:00 p.m. New York City time on the Business Day following the Rate Determination Date by telephone or Electronic means to the Authority, each other Notice Party and any Beneficial Owner requesting such rate.

Section 2.16. Determination of Term Rates and Fixed Rates.

(a) Term Rates. The interest rate for the 2008 Certificates in the Term Rate Mode shall be the minimum rate which, in the opinion of the Remarketing Agent, would result in a sale of the 2008 Certificates, under then existing market conditions, at a price equal to 100% of the principal amount thereof on the Rate Determination Date for a Term Rate Period of the duration selected by the Authority, written notice of which shall have been delivered by the Authority to the Remarketing Agent prior to such Rate Determination Date. Notwithstanding the foregoing, if the Authority shall deliver a Favorable Opinion of Special Counsel, the interest rate set for some or all of the affected 2008 Certificates may include a premium or a discount. In no event shall any Term Rate be greater than the Maximum Rate and no Term Rate Period may extend beyond the Maturity Date.

The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. New York City time on the Rate Determination Date and the Remarketing Agent shall make the Term Rate available by telephone or Electronic means after 5:00 p.m. New York City time on the Rate Determination Date to the Authority and each other Notice Party requesting such Term Rate. A copy of each such notice shall be provided to the 2008 Certificate Insurer.

Except as is otherwise provided in Section 2.17 hereof, once the 2008 Certificates are changed to a Term Rate Mode, the 2008 Certificates shall continue in the Term Rate Mode until changed to another Mode in accordance with Section 2.18 hereof. If the Authority shall have failed to select a new Term Rate Period prior to the applicable Rate Determination Date for such new Term Rate Period, the new Term Rate Period shall be the same length as the current Term Rate Period; provided however, that no Term Rate Period may extend beyond the Maturity Date.

(b) Fixed Rates. The Fixed Rate for the 2008 Certificates when being converted from a Short-Term Mode or a Term Rate Mode to the Fixed Rate Mode shall be determined by the Fixed Rate Remarketing Agent in the following manner: not later than 4:00 p.m. New York City time on the applicable Rate Determination Date, the Fixed Rate Remarketing Agent shall determine the Fixed Rate or Fixed Rates, as applicable. The Fixed Rate or Fixed Rates shall be the minimum interest rate(s) which, in the opinion of the applicable Fixed Rate Remarketing Agent, will result in a sale of the 2008 Certificates at a price equal to the principal amount thereof on the Rate Determination Date. Notwithstanding the foregoing, if the Authority shall deliver a Favorable Opinion of Special Counsel, the interest rate set for some or all of the 2008 Certificates may include a premium or a discount. The Fixed Rate Remarketing Agent shall make the Fixed Rate or Fixed Rates, as applicable, available by telephone or by Electronic means after 5:00 p.m. New York City time on the Rate Determination Date to the Authority and each other Notice Party requesting notice of such Fixed Rate or Fixed Rates. A copy of each such notice shall be provided to the 2008 Certificate Insurer. The Fixed Rate or Rates, as applicable, so established for the 2008 Certificates shall remain in effect until the Maturity Date or Maturity Dates, as applicable, of the 2008 Certificates.

Section 2.17. Alternate Rates. When the 2008 Certificates are in a Daily Mode, a Weekly Mode, a Flexible Rate Mode or a Term Rate Mode, the following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate for the 2008 Certificates or to determine the interest rate or Flexible Rate Period for the 2008 Certificates within the Flexible Mode, (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to the 2008 Certificates (or the selection by the Authority of the duration of a Term Rate Period for the 2008 Certificates) shall be held to be unenforceable by a court of law of competent jurisdiction, or (iii) the Remarketing Agent suspends its remarketing effort in accordance with the provisions of the Remarketing Agreement. The provisions set forth in this Section shall continue to apply until such time as the Remarketing Agent (or the Authority, if applicable) resumes making such determinations. In the case of clause (ii) above, the Remarketing Agent (or the Authority, if applicable) shall resume making such determination at such time as there is delivered to the Remarketing Agent or the Authority, as applicable, an opinion of Special Counsel to the effect that there are no longer any legal prohibitions against the Remarketing Agent or Authority, as applicable, making such determinations.

The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode and Term Rate Modes, the Interest Periods, shall be determined for the 2008 Certificates or for any Flexible Rate Certificate as to which any of the events described in clauses (i), (ii) or (iii) above shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) of the immediately preceding paragraph shall become applicable until such time as the events described in clauses (i), (ii) or

(iii) of the immediately preceding paragraph are no longer applicable to the 2008 Certificates or any Flexible Rate Certificate. Notwithstanding any other provision herein, these provisions shall not apply with respect to the selection of the length of the Term Rate Period for the 2008 Certificates in a Term Rate Mode if the Authority fails to select the length of the Term Rate Period for the 2008 Certificates for a reason other than as described in clause (ii) of the immediately preceding paragraph.

(a) For Flexible Rate Certificates, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for the applicable Flexible Rate Certificates to, but excluding, the next succeeding Business Day, and thereafter the Interest Period for such Flexible Rate Certificate shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such Flexible Rate Certificates shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

(b) If the 2008 Certificates are in a Daily Mode or a Weekly Mode, then the 2008 Certificates shall evidence interest during each subsequent Interest Period for the 2008 Certificates at the Alternate Rate in effect on the first day of such Interest Period.

(c) If the 2008 Certificates are in a Term Rate Mode, then the 2008 Certificates shall automatically convert to a Flexible Rate Mode, with an Interest Period commencing on the first day following the last day of the current Interest Period for the 2008 Certificates to, but excluding, the next succeeding Business Day, and thereafter the Interest Period for the 2008 Certificates shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for the 2008 Certificates shall be the applicable Alternate Rate in effect at the beginning of each such Interest Period.

Section 2.18. Changes in Mode. Subject to compliance with the provisions set forth in this Section, the Authority may elect to effect a change in Mode with respect the 2008 Certificates (other than the 2008 Certificates in a Fixed Rate Mode); provided that all the 2008 Certificates of any series shall be converted.

(a) Changes to Modes Other Than Fixed Rate Mode. At the option of the Authority, the 2008 Certificates (other than the 2008 Certificates being changed to a Fixed Rate Mode, which shall be governed by the provisions set forth in Section 2.18(d) hereof) may be changed from one Mode to another Mode (other than a Fixed Rate Mode) as set forth below:

(i) Notice by Authority. At least five (5) Business Days (or such shorter time as may be agreed to by the Authority, the Trustee and the Remarketing Agent) prior to the date that notice of the proposed Mode Change Date is required to be given to the Owners by the Trustee as specified below, the Authority shall give written notice to each of the Notice Parties of its intention to effect a change in the Mode from the Mode then prevailing (for purposes of this Section, the "Current Mode") to another Mode (for purposes of this Section, the "New Mode") which shall be specified in such written notice. Such notice to the Notice Parties shall specify the proposed Mode Change Date and shall also include a statement as to whether a Liquidity Facility is expected to be in

effect with respect to the 2008 Certificates following such change and, if a Liquidity Facility is expected to be in effect, such notice shall identify the anticipated provider of such Liquidity Facility. If the change is to a Term Rate Mode, such notice shall specify the length of the initial Term Rate Period.

(ii) Notice to Owners. Notice of the proposed change in Mode, unless otherwise specified in Section 2.18(d) hereof, shall be given by the Trustee to the Owners of the 2008 Certificates not less than the 15th day next preceding the applicable Mode Change Date; provided that no notice need be given for a Mode Change Date occurring on the first Business Day following the last day of a Flexible Rate Period or a Term Rate Mode or on a Substitution Date. Such notice shall state the Mode to which the conversion will be made and the proposed Mode Change Date and, if applicable, shall be combined with the notice of mandatory purchase required to be delivered by the Trustee pursuant to Section 3.02 hereof. If the Book-Entry System is no longer in effect, such notice shall also provide information with respect to required delivery of physical 2008 Certificates and procedures for payment of Purchase Price. Notwithstanding any other provision of this Trust Agreement, the Trustee shall not mail such written notice if the 2008 Certificates are being converted from a Flexible Mode until the Trustee shall have received a written confirmation from the Remarketing Agent to the effect that no Interest Period for the 2008 Certificates extends beyond the proposed Mode Change Date. The Trustee shall provide a copy of such notice to the Authority and to each of the other Notice Parties.

(iii) Determination of Interest Rates and Interest Periods. The New Mode shall commence on the Mode Change Date and the interest rate(s), together, in the case of a change to the Flexible Mode, with the Interest Period or Interest Period(s), as applicable, shall be determined by the Remarketing Agent (or the Authority in the case of the Interest Period for the 2008 Certificates being converted to a Term Rate Mode) in the manner provided in Section 2.14, Section 2.15 and Section 2.16 hereof, as applicable.

(iv) Conditions Precedent:

(A) The Mode Change Date shall be: (1) in the case of a change from a Flexible Mode, the next Mandatory Purchase Date for all of the Flexible Rate 2008 Certificates; (2) in the case of a change from a Daily Mode or a Weekly Mode, any Business Day; and (3) in the case of a change from a Term Rate Mode to another Mode, or from a Term Rate Period to a Term Rate Period of a different duration, the Mode Change Date shall be limited to (aa) any Interest Payment Date on which the 2008 Certificates are subject to optional prepayment or (bb) the last Interest Payment Date of the current Term Rate Period. The 2008 Certificates shall be subject to mandatory tender for purchase on such Mode Change Date in accordance with Section 3.02 hereof, and, except as is otherwise provided herein, the 2008 Certificates shall be purchased on the Mode Change Date at a Purchase Price equal to 100% of the principal amount thereof; provided, however, that if the 2008 Certificates are to be purchased on an Interest Payment Date other than the last Interest Payment Date applicable to the 2008 Certificates, and if the 2008 Certificates would otherwise be subject to optional prepayment on such Mode

Change Date at a prepayment price of more than 100% of the principal amount thereof, then the 2008 Certificates shall be purchased at a Purchase Price equal to such prepayment price.

(B) If the 2008 Certificates to be converted are in the Flexible Mode, no Interest Period for the 2008 Certificates set after delivery by the Authority to the Remarketing Agent of the notice of the intention to effect a change in Mode shall extend beyond the day preceding the proposed Mode Change Date.

(C) As and to the extent applicable, the Authority shall select a Remarketing Agent for the 2008 Certificates, and shall provide for the delivery of a Liquidity Facility if required.

(D) The Authority shall have obtained and provided to the Trustee the written consent of the 2008 Certificate Insurer to the change in Mode.

(E) The following items shall have been delivered to the Authority, Trustee, the 2008 Certificate Insurer and the Remarketing Agent on or prior to the Mode Change Date:

(1) in the case of a change from any Mode other than a change from a Daily Mode to a Weekly Mode or a change from a Weekly Mode to a Daily Mode, a Favorable Opinion of Special Counsel dated the Mode Change Date;

(2) if there is to be a Liquidity Facility delivered in connection with such change, the items required by Section 3.11 hereof; and

(3) a notice from the Rating Agencies of the rating(s) to be assigned to the 2008 Certificates on such Mode Change Date.

(v) Rescission of Election. The Authority may rescind any election by it to change a Mode in accordance with this Section 2.18(a) as provided in Section 2.18(f) hereof.

(b) Reserved.

(c) Reserved.

(d) Change to Fixed Rate Mode. At the option of the Authority, the 2008 Certificates (other than the 2008 Certificates in a Fixed Rate Mode) may be converted to a Fixed Rate Mode. Any such conversion shall be made as set forth below.

(i) Mode Change Date Provisions. The Mode Change Date shall be:

(A) in the case of a change from a Flexible Mode, the next Mandatory Purchase Date for the Flexible Rate 2008 Certificates of the 2008 Certificates;

(B) in the case of a change from a Daily Mode or a Weekly Mode, any Business Day; and

(C) in the case of a change from a Term Rate Mode, the Mode Change Date shall be limited to (1) any Interest Payment Date on which the 2008 Certificates are subject to optional prepayment or (2) the next Mandatory Purchase Date for the 2008 Certificates being converted, as the case may be. The 2008 Certificates in a Term Rate Mode shall be subject to mandatory tender for purchase pursuant to Section 3.02 hereof and shall be purchased on such Mode Change Date at a Purchase Price equal to 100% of the principal amount thereof; provided that if the 2008 Certificates would otherwise be subject to optional prepayment on such Mode Change Date at a prepayment price of more than 100% of the principal amount thereof, the 2008 Certificates shall be purchased at a Purchase Price equal to such prepayment price.

(ii) Serialization Provisions. Upon conversion of the 2008 Certificates to a Fixed Rate Mode, unless otherwise directed by the Authority, the 2008 Certificates will be converted to Serial Certificates maturing in such years and such principal amounts as correspond to the years and principal amounts set forth in the mandatory Sinking Fund Payment schedule set forth in Section 2.03 hereof

(iii) Notice by Authority. At least 5 Business Days (or such shorter time as may be agreed to by the Trustee, and the Remarketing Agent, if any) prior to the date that notice of the Mode Change Date is required to be given to the Owners by the Trustee as specified in paragraph (iii) below, the Authority shall give written notice to each of the Notice Parties. Such notice shall state that the Mode will be changed to the Fixed Rate Mode, shall set forth the proposed Mode Change Date, and shall be accompanied by the appointment of one or more firms of investment bankers to remarket the 2008 Certificates being changed to the Fixed Rate Mode (such firm or firms of investment bankers being hereinafter referred to as the "Fixed Rate Remarketing Agent"). Together with such notice, the Authority shall file with the Trustee and the 2008 Certificate Insurer a Favorable Opinion of Special Counsel. No conversion to a Fixed Rate Mode shall occur unless the Authority shall also file with the Trustee and the 2008 Certificate Insurer a Favorable Opinion of Special Counsel to the same effect dated the Mode Change Date.

(iv) Notice to Owners. Not less than the 15th day next preceding the Mode Change Date, the Trustee shall mail notice of such proposed change to the Owners of the 2008 Certificates, such notice to state that the Mode on the 2008 Certificates will be changed to a Fixed Rate Mode and to set forth the proposed Mode Change Date. Such notice shall be combined with the notice of mandatory purchase required to be delivered by the Trustee pursuant to Section 3.02 hereof. If the Book-Entry System is no longer in effect, such notice shall also provide information with respect to required delivery of physical 2008 Certificates and the procedures for payment of Purchase Price. Notwithstanding any other provision of this Trust Agreement, the Trustee shall not mail such written notice if the 2008 Certificates are being converted from a Flexible Mode until the Trustee shall have received a written confirmation from the Remarketing Agent to the effect that no Interest Period for the 2008 Certificates extends beyond the proposed

Mode Change Date. The Trustee shall provide a copy of such notice to the Authority and to each of the other Notice Parties.

(v) General Provisions Applying to Change to Fixed Rate Mode. The change to a Fixed Rate Mode shall not occur unless the Authority shall have selected a Fixed Rate Remarketing Agent to remarket the 2008 Certificates being changed to the Fixed Rate Mode and the following items shall have been delivered to the Authority and each of the Notice Parties, such items to be delivered on or prior to the Mode Change Date:

(A) a Favorable Opinion of Special Counsel dated the Mode Change Date;

(B) the written consent of the 2008 Certificate Insurer to the change in Mode; and

(C) notice from the Rating Agencies of the rating(s) to be assigned the 2008 Certificates on such Mode Change Date.

(vi) Determination of Fixed Rates. The Fixed Rate (or Fixed Rates in the case of Serial Certificates) for the 2008 Certificates shall be established by the applicable Fixed Rate Remarketing Agent on the Rate Determination Date applicable thereto. Such Fixed Rate Remarketing Agent shall set the interest rate or interest rates with respect to the 2008 Certificates in accordance with the provisions set forth in Section 2.16(b) hereof. Such Fixed Rate or Fixed Rates, as applicable, shall remain in effect until the Maturity Date or Maturity Dates, as applicable, of the 2008 Certificates. The applicable Remarketing Agent shall make the Fixed Rate or Rates available by telephone or Electronic means not later than 5:00 p.m., New York City time, on the Rate Determination Date to the Authority, the Trustee and each of the other Notice Parties requesting such notice.

(vii) Modification of Serialization Provisions, Prepayment Provisions and Price. Upon conversion of the 2008 Certificates to a Fixed Rate Mode, the 2008 Certificates shall be subject to the serialization provisions set forth in subsection (ii) above, shall be subject to the optional prepayment and mandatory sinking fund prepayment provisions set forth in Section 2.03 hereof and shall be remarketed at par. Notwithstanding the foregoing or any other provision of this Trust Agreement to the contrary, the Authority may elect to change the serialization provisions, the optional prepayment provisions or the mandatory sinking fund prepayment provisions and/or remarket some or all of the 2008 Certificates at a premium or discount to par if the Authority shall file with the Trustee and the 2008 Certificate Insurer a Favorable Opinion of Special Counsel.

(viii) Rescission of Election. The Authority may rescind any election by it to change a Mode in accordance with this Section 2.18(d) as provided in Section 2.18(f) hereof.

(e) Failure to Satisfy Conditions Precedent to a Mode Change. In the event that the Authority has not withdrawn any election by it to change a Mode as provided herein and the

conditions described above in subsections (a), (b), (c) or (d) of this Section, as applicable, have not been satisfied by the applicable Mode Change Date, then the New Mode shall not take effect (although any mandatory purchase shall be made on such date if notice has been sent to the Owners stating that the 2008 Certificates would be subject to mandatory purchase on such date). If the failed change in Mode was from a Flexible Mode, the 2008 Certificates shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the failed Mode Change Date in accordance with Section 2.14 hereof. If the failed change in Mode was from a Daily Mode, the 2008 Certificates shall remain in the Daily Mode, and if the failed change in Mode was from a Weekly Mode, the 2008 Certificates shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 2.15 hereof on and as of the failed Mode Change Date. If the failed change in Mode was from a Term Rate Mode, then the 2008 Certificates shall stay in the Term Rate Mode for an Interest Period ending on the following Interest Payment Date for the 2008 Certificates in the Term Rate Mode and the interest rate shall be established by the Remarketing Agent on the failed Mode Change Date in accordance with Section 2.16(a) hereof.

(f) Rescission of Election. Notwithstanding anything herein to the contrary, the Authority may rescind any election by it to change a Mode as described above prior to the Mode Change Date by giving written notice thereof to the Notice Parties prior to such Mode Change Date. If the Trustee receives notice of such rescission prior to the time the Trustee has given notice to the Owners of the 2008 Certificates, then such notice of change in Mode shall be of no force and effect. If the Trustee receives notice from the Authority of rescission of a Mode change after the Trustee has given notice thereof to the Owners of the 2008 Certificates, then if the proposed Mode Change Date would have been a Mandatory Purchase Date, such date shall continue to be a Mandatory Purchase Date.

If the proposed change in Mode was from a Flexible Mode, the 2008 Certificates shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the proposed Mode Change Date in accordance with Section 2.14 hereof. If the proposed change in Mode was from a Daily Mode, the 2008 Certificates shall remain in the Daily Mode, and if the proposed change in Mode was from a Weekly Mode, the 2008 Certificates shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 2.15 hereof on and as of the proposed Mode Change Date. If the proposed change in Mode was from a Term Rate Mode, then the 2008 Certificates shall stay in the Term Rate Mode for an Interest Period ending on the following Interest Payment Date for the 2008 Certificates in the Term Rate Mode and the interest rate shall be established by the Remarketing Agent on the proposed Mode Change Date in accordance with Section 2.16(a) hereof. If the Remarketing Agent is unable to determine the interest rate on the proposed Mode Change Date, the provisions of Section 2.17 shall apply.

(g) Form of Notices. Upon request, the form of any notice from the Trustee to the Owners of the 2008 Certificates required by this Section 2.18 and by Section 3.02 shall be furnished by the Authority to the Trustee.

## ARTICLE III

### TENDERS OF 2008 CERTIFICATES; REMARKETING

Section 3.01. Optional Tenders of Certificates in a Daily Mode or a Weekly Mode. Subject to Section 3.06 hereof, during any Daily Mode for the 2008 Certificates and during any Weekly Mode for the 2008 Certificates, any 2008 Certificate or portion thereof in a principal amount equal to an Authorized Denomination shall be purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice. Notwithstanding any other provision of this Trust Agreement to the contrary, the provisions set forth in this Section 3.01 shall not apply to any Certificate in a Delayed Remarketing Period.

Section 3.02. Mandatory Tender for Purchase on Mandatory Purchase Date. The 2008 Certificates shall be subject to mandatory purchase on each Mandatory Purchase Date applicable to the 2008 Certificates. The Trustee shall give notice of each such mandatory purchase, such notice to be given by mail to the Owners of the 2008 Certificates subject to mandatory purchase no less than 15 days prior to the applicable Mandatory Purchase Date. No notice shall be required to be given nor shall any notice be given with respect to any 2008 Certificate in a Flexible Rate Mode in connection with the Mandatory Purchase Date occurring at the end of each Interest Period for the 2008 Certificates. The form of the notice of mandatory purchase shall be provided to the Trustee by the Authority.

Any notice to be given pursuant to this Section 3.02 shall state the Mandatory Purchase Date, shall set forth the Purchase Price applicable on such Mandatory Purchase Date, and shall identify the 2008 Certificates to be purchased. Such notice shall also state that interest on the 2008 Certificates subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2008 Certificate shall not affect the validity of the mandatory purchase of any other 2008 Certificate with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Owner. If the Book-Entry System is no longer in effect, such notice shall also provide information with respect to required delivery of physical certificates and the procedures for payment of Purchase Price. A copy of any notice delivered by the Trustee pursuant to this Section 3.02 shall also be provided to each of the Notice Parties.

Section 3.03. Purchases of Certificates in Daily Mode, Weekly Mode, Flexible Mode and Term Rate Mode; Payment of Purchase Price; Notices.

(a) On each date on which 2008 Certificates in a Daily Mode, a Weekly Mode, a Flexible Mode or a Term Rate Mode are to be purchased:

(i) the Remarketing Agent shall notify the Trustee and the Authority by 12:00 noon New York City time of the principal amount of such tendered 2008 Certificates it has remarketed and of the principal amount of such tendered 2008 Certificates it has not remarketed, such notice to be provided by Electronic means;

(ii) subject to Section 3.06(b)(ii), the Remarketing Agent shall cause the proceeds of the remarketing by the Remarketing Agent of such tendered 2008 Certificates to be paid to the Trustee in immediately available funds not later than 12:15 p.m., New York City time, on the Purchase Date for such tendered 2008 Certificates;

(iii) the Remarketing Agent shall notify the Trustee by Electronic means not later than 1:00 p.m. New York City time of such information as may be necessary to register and deliver such remarketed 2008 Certificates, such notice to be provided by Electronic means; and

(iv) if the affected 2008 Certificates are no longer in the Book-Entry System, the Trustee shall authenticate new 2008 Certificates for the respective purchasers thereof which shall be available for pick-up by the Remarketing Agent not later than 2:30 p.m. New York City time.

(b) On each date on which a 2008 Certificate is to be purchased, (i) if the Remarketing Agent shall have given notice to the Trustee pursuant to clause (a)(i) above that it has been unable to remarket all or any portion of any tendered 2008 Certificates or (ii) if the Trustee shall not have received any notice from the Remarketing Agent pursuant to clause (a)(i) above, the Trustee shall draw on the applicable Liquidity Facility, if any, by 12:30 p.m. New York City time in an amount equal to the Purchase Price of all such 2008 Certificates that have not been successfully remarketed for payment by 2:30 p.m. New York City time and shall notify the 2008 Certificate Insurer of such draw; provided, however, that if the draw is in connection with a Mandatory Purchase Date resulting from a Substitution Date, the draw shall be made on the existing Liquidity Facility that is being replaced. In no event shall the Trustee draw on a Liquidity Facility to pay the Purchase Price of any 2008 Certificate not covered by such Liquidity Facility or to pay the Purchase Price of a 2008 Certificate owned by the Authority or the City.

(c) If the Trustee is notified in writing by a Liquidity Facility Provider that an Automatic Termination Event has occurred, with respect to its Liquidity Facility, then the Trustee shall provide prompt written notice thereof to the Owners of the 2008 Certificates to which such Liquidity Facility relates and shall provide copy of such notice to each of the Notice Parties.

(d) If the Trustee does not have funds in the applicable Remarketing Proceeds Account and the applicable Liquidity Facility Account sufficient to pay the Purchase Price of such 2008 Certificates on any Purchase Date, the Trustee shall give the Authority notice of such insufficiency by 2:30 p.m. New York City time on such Purchase Date.

Section 3.04. Source of Funds for Purchase of 2008 Certificates in Daily Mode, Weekly Mode, Flexible Mode, or Term Rate Mode. By 3:00 p.m. New York City time on the date on which a 2008 Certificate in a Daily Mode, a Weekly Mode, a Flexible Mode or a Term Rate Mode is to be purchased, the Trustee shall purchase tendered 2008 Certificates from the tendering Owners at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following

sources in the order of priority indicated and neither the Trustee nor the Remarketing Agent shall be obligated to provide funds from any other source:

- (a) immediately available funds on deposit in the Remarketing Proceeds Account excluding funds received from the Authority or the City;
- (b) immediately available funds on deposit in the applicable Liquidity Facility Account, if any; and
- (c) in the Authority's sole discretion, moneys provided by the Authority that may lawfully be used for such purpose.

Section 3.05. Delivery of Certificates in Daily Mode, Weekly Mode, Flexible Mode or Term Rate Mode. On each date on which a 2008 Certificate in a Daily Mode, a Weekly Mode, a Flexible Mode or a Term Rate Mode is to be purchased, such 2008 Certificate shall be delivered as follows:

(a) Each 2008 Certificate sold by the Remarketing Agent and for which payment has been received as described in Section 3.04(a) hereof shall be delivered by the Remarketing Agent to the purchaser of such Certificate by 3:00 p.m. New York City time; and

(b) Each 2008 Certificate purchased by the Trustee with moneys described in Section 3.04(b) hereof shall be registered immediately in the name of the applicable Liquidity Facility Provider or its nominee (which may be the Securities Depository) as provided in Section 2.11(d), if any, on or before 3:00 p.m. New York City time. The Trustee shall not release any Liquidity Provider Certificates unless the Trustee shall have received evidence that the Liquidity Facility has been reinstated to an amount equal to the principal amount of unremarketed 2008 Certificates, including Liquidity Provider Certificates, plus interest at the Maximum Rate for the number of days required under the Liquidity Facility.

(c) Each 2008 Certificate purchased by the Authority with moneys described in Section 3.04(c) hereof shall be registered immediately in the name of the Authority or its nominee on or before 3:00 p.m. New York City time. Any 2008 Certificate so owned by the Authority shall continue to be Outstanding under the terms of this Trust Agreement and be subject to all of the terms and conditions of the Trust Agreement and shall be subject to remarketing by the applicable Remarketing Agent; provided, however, that the Authority shall not be considered a Owner for the purpose of voting such 2008 Certificates under this Trust Agreement.

Section 3.06. Book-Entry Tenders.

(a) Notwithstanding any other provision of this Trust Agreement to the contrary, all tenders for purchase of 2008 Certificates during any period in which 2008 Certificates so tendered are registered in the name of Cede & Co. (or the nominee of any successor Securities Depository) shall be subject to the terms and conditions set forth in the Representations Letter and to any regulations promulgated by DTC (or any successor Securities Depository). For so

long as the 2008 Certificates are registered in the name of Cede & Co., as nominee for DTC, the tender option rights of Owners of 2008 Certificates may be exercised only by a Direct Participant of DTC (as such term is described in Schedule A attached to the Representation Letter) acting, directly or indirectly, on behalf of a Beneficial Owner of 2008 Certificates by giving notice of its election to tender 2008 Certificates or portions thereof at the times and in the manner described above. Beneficial Owners will not have any rights to tender 2008 Certificates directly to the Trustee.

Procedures under which a Beneficial Owner may direct a Direct Participant of DTC, or an Indirect Participant of DTC (as such term is described in Schedule A attached to the Representation Letter) acting through a director participant of DTC, to exercise a tender option right in respect of 2008 Certificates or portions thereof in an amount equal to all or a portion of such Beneficial Owner's beneficial ownership interest therein, shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. For so long as the 2008 Certificates are registered in the name of Cede & Co., as nominee for DTC, delivery of the 2008 Certificates required to be tendered for purchase shall be effected by the transfer in the Book-Entry System on the applicable Purchase Date of a book-entry credit to the account of the Trustee of a beneficial interest in such 2008 Certificates.

(b) Notwithstanding anything expressed or implied herein to the contrary, so long as the Book-Entry System for the 2008 Certificates is maintained by the Authority:

(i) there shall be no requirement of physical delivery to, or by, the applicable Remarketing Agent or the Trustee of:

(A) any 2008 Certificates subject to optional or mandatory purchase as a condition to the payment of the Purchase Price therefor;

(B) any 2008 Certificates that have become Liquidity Facility Certificates; or

(C) any remarketing proceeds of such 2008 Certificates or Liquidity Facility Certificates to any Owner other than the Securities Depository or its nominee, as applicable; and

(ii) except as provided in (iii) below, the Trustee shall not have any responsibility for paying the Purchase Price of any tendered 2008 Certificate or for remitting remarketing proceeds to any person and such remarketing proceeds may be remitted directly to the Securities Depository by the applicable Remarketing Agent; and

(iii) the Trustee's sole responsibilities in connection with the purchase and remarketing of a tendered 2008 Certificate shall be:

(A) to draw upon the Liquidity Facility (1) in the event the Remarketing Agent for the 2008 Certificates notifies the Trustee as provided herein that any of the 2008 Certificates have not been remarketed on or before the Purchase Date therefor, which draw shall be in an amount equal to the difference between such Purchase Price and any remarketing proceeds received by the

Remarketing Agent in connection with a partial remarketing of such 2008 Certificates, or (2) if no such notice is received, the entire amount of the Purchase Price, and to remit the amount so drawn to or upon the order of the Securities Depository for the benefit of the tendering Beneficial Owners;

(B) remit any proceeds derived from the remarketing of a Liquidity Facility Certificate to the applicable Liquidity Facility Provider; and

(C) remit any funds deposited by the Authority for the payment of the Purchase Price of tendered 2008 Certificates to the Securities Depository for the benefit of the tendering Beneficial Owners.

Section 3.07. Tender Provisions Applicable Upon Discontinuation of Book-Entry System. If at any time the 2008 Certificates shall no longer be in the Book-Entry System, the procedures set forth below shall apply.

(a) Each 2008 Certificate shall be delivered (with all necessary endorsements) at or before 12:00 noon New York City time on the Purchase Date at the corporate trust office of the Trustee; provided, however, that payment of the Purchase Price shall be made pursuant to this Section 3.07(a) only if the 2008 Certificate so delivered to the Trustee conforms in all respects to the description thereof in the notice provided pursuant to Section 3.01 or Section 3.02 hereof, as applicable. Payment of the Purchase Price with respect to purchases pursuant to the provisions set forth in this Section shall be made to the Owners of tendered 2008 Certificates by wire transfer in immediately available funds by the Trustee by 3:00 p.m. New York City time on the Purchase Date.

(b) The Trustee shall hold all 2008 Certificates properly tendered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Owners of the 2008 Certificates that shall have so tendered such 2008 Certificates until moneys representing the Purchase Price of such 2008 Certificates shall have been delivered to or for the account of or to the order of such Owners.

(c) If a 2008 Certificate to be purchased is not delivered by the Owner to the Trustee by 12:00 noon New York City time on the date in which such 2008 Certificate is to be purchased, the provisions set forth in Section 3.08 hereof shall apply.

Section 3.08. Certificates Deemed Purchased. If funds sufficient to pay the Purchase Price of any Certificate are held by the Trustee on any Purchase Date, such 2008 Certificate shall be deemed to have been purchased and shall be purchased according to the terms hereof, for all purposes of this Trust Agreement, irrespective of whether or not such 2008 Certificate shall have been delivered to the Trustee, and neither the former Owner of such 2008 Certificate nor any other person shall have any claim thereon, under this Trust Agreement or otherwise, for any amount other than the Purchase Price thereof.

In the event any 2008 Certificate purchased according to the terms hereof shall not be presented to the Trustee, the Trustee shall segregate and hold uninvested the moneys for the Purchase Price of such 2008 Certificate in trust, without liability for interest thereon, for the benefit of the former Owners of such 2008 Certificate, who shall, except as provided in the

following sentence, thereafter be restricted exclusively to such moneys for the satisfaction of any claim for the Purchase Price of such 2008 Certificate. Any moneys which the Trustee shall segregate and hold in trust for the payment of the Purchase Price of any 2008 Certificate and remaining unclaimed for two (2) years after the date of purchase shall be paid to the Authority. After the payment of such unclaimed moneys to the Authority, the former Owner of such 2008 Certificate shall look only to the Authority for the payment thereof.

Section 3.09. Establishment of 2008 Purchase Fund. The Trustee shall create, establish and maintain, a separate fund to be designated as the “2008 Purchase Fund” (the “2008 Purchase Fund”). Moneys deposited in the 2008 Purchase Fund shall be kept separate from and not commingled with other moneys deposited hereunder or with any other moneys of the Authority. The Trustee shall further create, establish and maintain separate accounts within the 2008 Purchase Fund, such separate account to be designated as the “Remarketing Proceeds Account,” the “Liquidity Facility Account” and the and the “Authority Account.” The 2008 Purchase Fund shall be held in trust solely for the benefit of the Owners of tendered 2008 Certificates and the Trustee shall not have any interest in, claim on or right to, any accounts within the 2008 Purchase Fund or the 2008 Purchase Fund.

(a) Remarketing Proceeds Account. Upon receipt of the proceeds of a remarketing of any 2008 Certificate on the date such 2008 Certificate is to be purchased, the Trustee shall deposit such remarketing proceeds in the Remarketing Proceeds Account, such remarketing proceeds to be applied to the payment of the Purchase Price of such 2008 Certificate. The Authority shall not have any right, title or interest in any of the funds held on deposit in any Remarketing Proceeds Account nor any remarketing proceeds held for any period of time by any Remarketing Agent.

(b) Liquidity Facility Account. Upon receipt of the proceeds of a draw on a Liquidity Facility, the Trustee shall deposit such Liquidity Facility proceeds in the applicable Liquidity Facility Account, such Liquidity Facility proceeds to be applied to the payment of the Purchase Price of the 2008 Certificates to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in a Liquidity Facility Account and not needed for the payment of the Purchase Price of the 2008 Certificates shall be immediately returned to the applicable Liquidity Facility Provider.

(c) Authority Account. Upon receipt of funds from the Authority provided at its sole discretion pursuant to Section 3.04(c) hereof, the Trustee shall deposit such funds in the Authority Account, such funds to be applied to the payment of the Purchase Price of the 2008 Certificates. Any amounts deposited in an Authority Account and not needed for the payment of the Purchase Price of the 2008 Certificates shall be immediately returned to the Authority.

(d) Investment of Funds on Deposit in the 2008 Purchase Funds. Amounts held in the Remarketing Proceeds Account, the Liquidity Facility Account and the Authority Account shall not be commingled with any other funds held by the Trustee and shall be held uninvested.

(e) Eligible Accounts. Each of the Remarketing Proceeds Account and the Liquidity Facility Account shall meet the requirements of an Eligible Account and be held in the name of the Trustee for the benefit of the Owners. In the event the Remarketing Proceeds Account or the Liquidity Facility Account no longer meet the requirements of an Eligible Account, the Trustee shall promptly (and, in any case, within not more than 30 calendar days) move such account to another financial institution such that each account will meet the requirements of an Eligible Account.

Section 3.10. Insufficient Funds for Tenders; Delayed Remarketing Period.

(a) If sufficient funds are not available to pay the Purchase Price of all tendered 2008 Certificates to be purchased on any Purchase Date (such 2008 Certificates being hereinafter referred to as the “Tendered Certificates”): (i) no purchase of such Tendered Certificates shall be consummated on such Purchase Date; (ii) all such Tendered Certificates shall be returned to the Owners thereof; (iii) all remarketing proceeds shall be returned to the applicable Remarketing Agent for return to the persons providing such moneys; and (iv) such insufficiency and the failure to pay the Purchase Price on any Payment Date shall not constitute an Event of Default under this Trust Agreement.

(b) All such Tendered Certificates shall evidence interest at the Maximum Rate during the period of time (such period of time being hereinafter referred to as a “Delayed Remarketing Period”) from and including the applicable Purchase Date to (but not including) the date that all such Tendered Certificates are successfully remarketed.

(c) The Authority may direct the conversion of such Tendered Certificates to a different Mode during a Delayed Remarketing Period in accordance with Section 2.18 hereof; provided that the Authority shall not be required to comply with the notice requirements described in Section 2.18 hereof.

(d) During a Delayed Remarketing Period, the Remarketing Agent shall continue to use its best efforts to remarket such Tendered Certificates. Once the Remarketing Agent has advised the Trustee that it has a good faith belief that it is able to remarket all of such Tendered Certificates, the Trustee shall give written notice by mail to the Owners of such Tendered Certificates not later than five (5) Business Days prior to the proposed Purchase Date, which notice shall state: (i) that such Tendered Certificates will be subject to mandatory tender for purchase on the proposed Purchase Date; (ii) the proposed Purchase Date; (iii) the Mode applicable to such Tendered Certificates from and after the proposed Purchase Date; (iv) the procedures for such mandatory tender for purchase; (v) the Purchase Price applicable to such Tendered Certificates; and (vi) the consequences of a failed remarketing.

(e) During a Delayed Remarketing Period, the Trustee may, upon direction of the Authority, apply amounts on deposit in the 2008 Prepayment Subaccount of the 2008 Principal Account to the prepayment of such Tendered Certificates, as a whole or in part on any Business Day during such Delayed Remarketing Period, at a prepayment price equal to the principal amount thereof, together with interest accrued thereon to the date fixed for prepayment, without premium. Notwithstanding any provisions herein to the contrary, the Trustee shall give five

(5) Business Days' notice of such prepayment to the Owners of the 2008 Certificates to be prepaid.

(f) During a Delayed Remarketing Period, interest on such Tendered Certificates shall be paid to the Owners thereof (i) on the first Business Day of each calendar month occurring during such Delayed Remarketing Period and (ii) on the day after the last day of such Delayed Remarketing Period.

Section 3.11. Liquidity Facility; Alternate Liquidity Facility.

(a) The Authority shall provide a Liquidity Facility approved by the 2008 Certificate Insurer for the 2008 Certificates in a Daily Mode, a Weekly Mode, a Flexible Mode and in a Term Rate Mode. Each such Liquidity Facility (and any Alternate Liquidity Facility provided in replacement thereof) shall provide for the purchase of the 2008 Certificates upon their optional or mandatory tender in accordance with Section 3.01 and Section 3.02 hereof. Any Liquidity Facility (or Alternate Liquidity Facility) shall be a facility provided by a Liquidity Facility Provider in an amount equal to the Required Stated Amount.

(b) If a Liquidity Facility is in effect with respect to the 2008 Certificates, on each date on which a 2008 Certificate is to be purchased, the Trustee, by demand given by Electronic means before 12:30 p.m. New York City time, shall draw on the applicable Liquidity Facility in accordance with the terms thereof so as to receive thereunder by 2:30 p.m. New York City time on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such 2008 Certificates on such date, to enable the Trustee to pay the Purchase Price in connection therewith. The proceeds of such draw shall be paid to the Trustee, who shall deposit said proceeds in the applicable Liquidity Facility Account pursuant to Section 3.09(b) hereof.

(c) If the Authority shall have delivered a Liquidity Facility to the Trustee in accordance with subsection (a) of this Section, the Authority: (i) shall maintain such Liquidity Facility or an Alternate Liquidity Facility, in an amount equal to the Required Stated Amount prior to its termination; and (ii) shall not voluntarily terminate such Liquidity Facility or any Alternate Liquidity Facility without providing at least 30 days written notice to the Trustee and each of the other Notice Parties.

(d) The Authority may provide an Alternate Liquidity Facility approved by the 2008 Certificate Insurer with respect to the 2008 Certificates on any Business Day not later than the 5<sup>th</sup> Business Day prior to the Expiration Date of the Liquidity Facility then in effect for the 2008 Certificates. The Authority shall give at least 30 days' written notice to the Trustee and each of the Notice Parties of (i) its intent to furnish an Alternate Liquidity Facility to the Trustee, which notice shall specify the nature of such Liquidity Facility, the identity of the Liquidity Facility Provider and the proposed Substitution Date. The Trustee shall give notice of each Mandatory Purchase Date resulting from the proposed delivery of an Alternate Liquidity Facility in accordance with the provisions set forth in Section 3.02 hereof.

(e) On or before the Substitution Date, there shall be delivered to the Trustee: (i) the Alternate Liquidity Facility in substitution for the Liquidity Facility then in effect, (ii) a

Favorable Opinion of Special Counsel which shall also be filed with the 2008 Certificate Insurer and (iii) a written Opinion of Counsel for the provider of Alternate Liquidity Facility to the effect that such Alternate Liquidity Facility is a legal, valid, and binding obligation of the provider thereof and covering such other matters as the Authority shall require. Upon the satisfaction of the conditions described in the preceding sentence, the Trustee shall accept such Alternate Liquidity Facility and shall surrender the Liquidity Facility then in effect to the provider thereof on the Substitution Date; provided, however, that if there are insufficient remarketing proceeds to pay the Purchase Price of all 2008 Certificates subject to mandatory purchase on such Substitution Date, the Trustee shall not surrender the Liquidity Facility then in effect until the Trustee shall have drawn upon the existing Liquidity Facility to pay the Purchase Price for the 2008 Certificates subject to mandatory purchase on such Substitution Date. Notwithstanding any other provision of this Trust Agreement to the contrary, if any condition precedent to the substitution of an Alternate Liquidity Facility is not satisfied, the substitution shall not occur but the affected 2008 Certificates shall remain subject to mandatory purchase on the proposed Substitution Date.

(f) In addition to the notice provided pursuant to Section 3.11(d) hereof, the Trustee shall give written notice to the Owners of the 2008 Certificates and each of the Notice Parties of the extension of the Expiration Date of any Liquidity Facility, such notice to be given by mail as promptly as possible upon receipt by the Trustee of notification of such extension.

#### Section 3.12. Appointment of Remarketing Agent.

(a) While the 2008 Certificates are in a Mode which requires the appointment of a Remarketing Agent, the Authority shall appoint a Remarketing Agent for the 2008 Certificates. Any Remarketing Agent shall be approved by the 2008 Certificate Insurer, shall be a member of the National Association of Securities Dealers, Inc., shall have a capitalization of at least \$50,000,000 and shall be authorized by law to perform all the duties set forth herein.

(b) By acceptance of appointment as Remarketing Agent for the 2008 Certificates, the Remarketing Agent shall be deemed to have agreed: (i) to remarket the 2008 Certificates in accordance with the provisions set forth herein; (ii) to keep such books and records as shall be consistent with prudent industry practice; and (iii) to make such books and records available for inspection by each of the Notice Parties at all reasonable times.

(c) The Remarketing Agent may at any time resign and be discharged of the duties and obligations created herein as set forth in the Remarketing Agreement entered into by such Remarketing Agent and the Authority. The Remarketing Agent may suspend its remarketing efforts in accordance with the provisions set forth in Remarketing Agreement entered into by the Remarketing Agent and the Authority. The Remarketing Agent may be removed at any time, at the direction of the Authority in accordance with the provisions set forth in the Remarketing Agreement entered into by the Remarketing Agent and the Authority. The Authority shall provide written notice to each of the Notice Parties of the appointment of any successor Remarketing Agent.

(d) If the Remarketing Agent consolidates with, merges or converts into, or transfers all or substantially all of its assets, to another entity meeting the requirements specified in

subparagraph (a) above, the resulting, surviving or transferee entity shall be the successor Remarketing Agent without any further act.

### Section 3.13. Duties of Remarketing Agent.

(a) Each Remarketing Agent shall use its best efforts to offer for sale at the par amount thereof: (i) all 2008 Certificates (or portions thereof to be remarketed) for which notice of optional tender pursuant to Section 3.01 hereof has been given; (ii) all 2008 Certificates that are required to be purchased (A) on a Mandatory Purchase Date described in clauses (i), (ii), (iii), (iv) or (vii) of the definition of Mandatory Purchase Date set forth in Section 1.01 hereof and (B) on a Mandatory Purchase Date described in clause (v) of the definition of Mandatory Purchase Date set forth in Section 1.01 hereof if no Liquidity Facility is required to be delivered by the Authority in connection with such Mandatory Purchase Date; and (iii) all Liquidity Facility Certificates that are: (A) purchased on a Purchase Date described above in clause (i) or (ii) of this Section 3.13, (B) with respect to which the Liquidity Facility Provider has provided notice that it is ready to reinstate the Available Amount, such notice to have been provided to the Authority, the Trustee and the Remarketing Agent, (C) with respect to which an Alternate Liquidity Facility is in effect, or (D) which are being marketed as Fixed Rate Certificates (if the Remarketing Agent shall have been engaged to be the Fixed Rate Remarketing Agent).

If a notice of prepayment or a notice of mandatory purchase shall have been given with respect to a 2008 Certificate, the Remarketing Agent shall provide a copy of such notice to each Person to which such Certificate is remarketed.

Notwithstanding any provision of this Trust Agreement to the contrary, if there shall have occurred and be continuing either a Credit Enhancement Provider Failure or a Liquidity Facility Provider Failure, the applicable Remarketing Agent shall not be required to remarket any 2008 Certificates.

## ARTICLE IV

### 2008 PAYMENTS; 2008 PROJECT

Section 4.01. 2008 Payments Held in Trust. The 2008 Payments shall be held in trust by the Trustee for the benefit of the Owners from time to time of the 2008 Certificates, but shall nonetheless be disbursed, allocated and applied solely for the uses and purposes provided herein.

Section 4.02. Deposit of 2008 Payments. The Trustee hereby agrees to establish, maintain and hold in trust a separate fund designated as the 2008 Debt Service Fund, for so long as any 2008 Certificates shall be Outstanding hereunder. All 2008 Payments (except as otherwise provided) received by the Trustee shall be immediately deposited in the 2008 Debt Service Fund and shall be disbursed and applied only as hereinafter provided.

Section 4.03. Establishment and Maintenance of Accounts for Use of Money in the 2008 Debt Service Fund. All money in the 2008 Debt Service Fund shall be set aside by the Trustee in the following respective special accounts within the 2008 Debt Service Fund (each of which is hereby created and each of which the Trustee hereby agrees and covenants to maintain) in the following order of priority:

- (a) 2008 Interest Account, and
- (b) 2008 Principal Account (with a 2008 Prepayment Subaccount and a 2008 Sinking Fund Subaccount therein).

All money in each of such accounts and subaccounts shall be held in trust by the Trustee for the benefit of the Owners and shall be applied, used and withdrawn only for the purposes hereinafter authorized in this Section.

(a) 2008 Interest Account. On the Delivery Date, the Trustee shall deposit in the 2008 Interest Account any Payment Agreement Receipts relating to the 2008 Interest Rate Swap Agreement which the City has directed under the 2008 Interest Rate Swap Agreement to be transferred to the Trustee for deposit in the 2008 Interest Account and any amounts transferred to the Trustee pursuant to Section 2.03 of the 2008 Supplemental Contract for the payment of payments due under the 2008 Interest Rate Swap Agreement. On the Business Day immediately preceding each Interest Payment Date, the Trustee shall set aside from the 2008 Debt Service Fund and deposit in the 2008 Interest Account that amount of money which is equal to the amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on each such Interest Payment Date. The Trustee will also apply amounts on deposit in the 2008 Fees Subaccount to pay on behalf of the City, the Payment Agreement Payments required to be paid under the 2008 Interest Rate Swap Agreement and to pay the Remarketing Agent fees as the same shall become due on each due date therefor until such 2008 Fees Subaccount shall be depleted (expected to be on or about November 29, 2008). Investment earnings on amounts on deposit in the 2008 Fees Subaccount shall be transferred to the City for deposit in the Revenue Fund.

No deposit need be made in the 2008 Interest Account if the amount contained therein (exclusive of amounts transferred for the payment of amounts due under the 2008 Interest Rate Swap Agreement) is at least equal to the aggregate amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on such Interest Payment Date.

Except as otherwise provided herein, all money in the 2008 Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest (including accrued interest evidenced and represented by any 2008 Certificates purchased or prepaid prior to their respective Certificate Payment Date) with respect to the 2008 Certificates as it shall become due and payable and paying the Payment Agreement Payments due under the 2008 Interest Rate Swap Agreement as they shall become due and payable. The Trustee shall be under no obligation to calculate the amount of Payment Agreement Payments due under the 2008 Interest Rate Swap Agreement and shall be entitled to rely conclusively on the information received by it with respect to the amount of the Payment Agreement Payments due and owing by the City.

(b) 2008 Principal Account. On the Business Day immediately preceding each October 1, commencing on October 1, 2008, the Trustee shall set aside from the 2008 Debt Service Fund and deposit in the 2008 Principal Subaccount an amount of money equal to the principal amount evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1, and in the 2008 Sinking Fund Subaccount in the

2008 Principal Account the amount of all Sinking Fund Payments required to be made on such October 1.

Amounts to be applied to the optional prepayment of the principal component of the 2008 Certificates pursuant to Section 2.03(c) hereof shall be deposited in the 2008 Prepayment Subaccount of the 2008 Principal Account.

No deposit need be made in the 2008 Principal Account if the amount contained therein is at least equal to the aggregate amount of the principal evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1 and the amount contained in the 2008 Sinking Fund Subaccount therein is at least equal to the aggregate amount of all Sinking Fund Payments required to be made on such October 1.

All money in the 2008 Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal evidenced and represented by the Serial Certificates as they shall become due and payable, whether at their respective Certificate Payment Dates or on prior prepayment, and all money in the 2008 Sinking Fund Subaccount of the 2008 Principal Account shall be used and withdrawn by the Trustee only to purchase or to prepay or to pay Term Certificates, and with respect to the 2008 Sinking Fund Subaccount, on each Sinking Fund Payment date, the Trustee shall apply the Sinking Fund Payment required on that date to the prepayment (or payment at Certificate Payment Date, as the case may be) of the Term Certificates upon the notice and in the manner provided in Article II; provided, that at any time prior to giving such notice of such prepayment, the Trustee may, upon the Written Request of the Authority and receipt of moneys sufficient therefor, purchase for cancellation Term Certificates in accordance with Section 2.03(a) hereof.

Section 4.04. Parity Reserve Fund. The Parity Reserve Fund created pursuant to Section 3.04 of the 1997 Trust Agreement is hereby continued. The Trustee hereby agrees and covenants to maintain the Parity Reserve Fund so long as the Contract has not been discharged in accordance with its terms or any 2008 Certificates remain Outstanding hereunder. Amounts on deposit in the Parity Reserve Fund are pledged to the payment of the 1997 Certificates, the 2008 Certificates and any other obligations hereafter issued in connection with a Supplemental Contract and shall be applied only for such purposes as hereinafter provided. The Trustee shall deposit in the Parity Reserve Fund from the proceeds of the 2008 Certificates, the amount specified in Section 2.12, such amount being sufficient to cause the balance on deposit in or credited to the Parity Reserve Fund, to be equal to the Reserve Fund Requirement upon delivery of the 2008 Certificates. The Trustee shall deposit in the Parity Reserve Fund such other amounts transferred to the Trustee by the City pursuant to Section 2.04(b)(2) of the Contract, as directed by the Authority in a Written Request of the Authority. Moneys on deposit in the Parity Reserve Fund shall be transferred by the Trustee to the 2008 Debt Service Fund to pay principal and interest evidenced and represented by the 2008 Certificates on any Interest Payment Date in the event amounts on deposit therein are insufficient for such purposes. The Trustee shall also, from such amounts on deposit in the Parity Reserve Fund, transfer or cause to be transferred to any applicable debt service fund established under the 1997 Trust Agreement and under any other trust agreement under which any obligations are issued in connection with a Supplemental Contract, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without

discrimination or preference, that sum or sums, if any, equal to the amount required to be deposited therein pursuant to such trust agreement under which any obligations are issued in connection with a Supplemental Contract. All investments in the Parity Reserve Fund shall (notwithstanding anything in the 1997 Trust Agreement to the contrary) be valued on or before October 1 of each year at the lesser of the cost or market value thereof. Following such valuation, any moneys on deposit in the Parity Reserve Fund representing an excess of the Reserve Fund Requirement will be transferred by the Trustee to the City for deposit in the Revenue Fund. The Trustee may create such subaccounts in the Parity Reserve Fund as may be necessary or convenient for the purposes of this Section 4.04.

The Reserve Fund Requirement may be provided by one or more surety bonds, insurance policies, or letters of credit as described in the definition of Reserve Fund Requirement (“Reserve Funding Instruments”) set forth in the Contract.

Notwithstanding anything to the contrary contained in this Trust Agreement, at any time one or more Reserve Funding Instruments are on deposit in the Parity Reserve Fund, the Trustee shall: (i) withdraw and use all cash, if any, on deposit in the Parity Reserve Fund prior to using and withdrawing any amounts derived from payments under any Reserve Funding Instruments; and (ii) draw on all Reserve Funding Instruments on a pro rata basis based on the draw limit of each Reserve Funding Instrument. Amounts received by the Trustee from the City pursuant to Section 2.04(c)(2) of the Master Contract as a replenishment of amounts withdrawn from the Parity Reserve Fund shall be applied (i) first on a pro rata basis to reimburse draws on any Reserve Funding Instruments and (ii) to replenish cash withdrawn from the Parity Reserve Fund.

Section 4.05. Establishment and Application of Costs of Issuance Fund. The Trustee hereby agrees to establish, maintain and hold in trust a separate fund designated as the Costs of Issuance Fund, which fund is hereby created and which fund the Authority hereby agrees to maintain with the Trustee until November 29, 2008. The Trustee shall deposit to the Costs of Issuance Fund the amounts specified in Section 2.12 hereof. All money in the Costs of Issuance Fund shall be used and withdrawn by the Trustee to pay the Costs of Issuance relating to the 2008 Certificates upon receipt of a Written Request of the Authority filed with the Trustee, each of which shall be sequentially numbered and shall state the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On November 29, 2008, or upon the earlier Written Request of the Authority, any remaining balance in the Costs of Issuance Fund shall be transferred to the City for deposit in the 2008 Debt Service Fund.

Section 4.06. Deposit and Investments of Money in Accounts and Funds. All money held by the Trustee in any of the accounts or funds established pursuant hereto shall be invested in Permitted Investments at the Written Request of the Authority filed with the Trustee which such Permitted Investments shall, as nearly as practicable, mature on or before the dates on which such money is anticipated to be needed for disbursement hereunder, and the Trustee shall have no liability or responsibility for any loss resulting from any investment made in accordance herewith; provided, that if no such Written Request is received by the Trustee, the Trustee shall invest such money in those Permitted Investments described in clause (9) of the definition thereof. Except as otherwise provided herein with respect to the Parity Reserve Fund, all interest or profits received on any money so invested shall be deposited in the 2008 Debt Service Fund.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

The Trustee or any of its affiliates may act as principal or agent, sponsor, advisor or manager in connection with any investments made by the Trustee hereunder. For investment purposes, the Trustee may commingle the funds and accounts established hereunder, but shall account for each separately.

The Trustee shall not be liable for any loss from any Permitted Investment acquired, held, or disposed of at the written request of the Authority. Any Permitted Investments that are registered securities shall be registered in the name of the Trustee.

Section 4.07. Assignment to Trustee; Enforcement of Obligations.

(a) The Authority hereby transfers, assigns and sets over to the Trustee all of the 2008 Payments and any and all rights and privileges it has under the Contract, including, without limitation, the right to collect and receive directly all of the 2008 Payments, and any 2008 Payments collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee, and shall forthwith be paid by the Authority to the Trustee.

The Trustee also shall, subject to the provisions of the Trust Agreement, take all steps, actions and proceedings required to be taken as provided in any Opinion of Counsel delivered to it, reasonably necessary to maintain in force for the benefit of the Owners of the 2008 Certificates the Trustee's rights in and priority to the following security granted to it for the payment of the 2008 Certificates: the Trustee's rights as assignee of the 2008 Payments under the Contract and as beneficiary of any other rights to security for the 2008 Certificates which the Trustee may receive in the future.

(b) The Trustee may, in performing the obligations set out in Section 4.07(a) above, rely and shall be protected in acting or refraining from acting upon an Opinion of Counsel furnished by the City.

## ARTICLE V

### COVENANTS OF THE AUTHORITY AND THE TRUSTEE

Section 5.01. Compliance with Trust Agreement. The Trustee will not execute or deliver any 2008 Certificates in any manner other than in accordance with the provisions hereby; and the Authority will not suffer or permit any default by it to occur hereunder, but will faithfully comply with, keep, observe and perform all the agreements and covenants to be observed or performed by it contained herein and in the 2008 Certificates.

Section 5.02. Observance of Laws and Regulations. The Authority and the Trustee will faithfully comply with, keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on them by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of each and every franchise, right or privilege now owned or hereafter acquired by them, including their right to exist and carry on their respective businesses, to the end that such franchises, rights and privileges shall be maintained and preserved and shall not become abandoned, forfeited or in any manner impaired.

Section 5.03. Accounting Records and Reports. The Trustee will keep or cause to be kept proper books of record and accounts in which complete and correct entries shall be made of all transactions made by the Trustee relating to the receipts, disbursements, allocation and application of the 2008 Payments and the proceeds of the 2008 Certificates, and such books shall be available for inspection by the Authority, at reasonable hours and under reasonable conditions. Not more than 180 days after the close of each Fiscal Year, the Trustee shall furnish or cause to be furnished to the Authority and the 2008 Certificate Insurer a complete financial statement covering receipts, disbursements, allocation and application of 2008 Payments received by the Trustee for such Fiscal Year. The Authority shall keep or cause to be kept such information as required under the Tax Certificate.

Section 5.04. Prosecution and Defense of Suits. The Authority will defend against every suit, action or proceeding at any time brought against the Trustee upon any claim to the extent arising out of the receipt, application or disbursement of any of the 2008 Payments and the proceeds of the 2008 Certificates or to the extent involving the failure of the Authority to fulfill its obligations hereunder; provided that the Trustee or any affected Owner at its election may appear in and defend any such suit, action or proceeding. The Authority will indemnify and hold harmless the Trustee against any and all liability claimed or asserted by any person to the extent arising out of such failure by the Authority, and will indemnify and hold harmless the Trustee against any attorney's fees or other expenses which it may incur in connection with any litigation to which it may become a party by reason of its actions hereunder, except for any loss, cost, damage or expense resulting from the active or passive negligence, willful misconduct or breach of duty by the Trustee. Notwithstanding any contrary provision hereof, this covenant shall remain in full force and effect even though all 2008 Certificates secured hereby may have been fully paid and satisfied.

Section 5.05. Amendments to Contract. Except for any Supplemental Contract delivered in accordance with the terms of the Contract, the Authority shall not supplement, amend, modify or terminate any of the terms of the Contract, or consent to any such supplement, amendment, modification or termination, without the prior written consent of the Trustee, which such consent shall be given only if (a) such supplement, amendment, modification or termination will not materially adversely affect the interests of the Owners or result in any material impairment of the security hereby given for the payment of the 2008 Certificates, or (b) the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount evidenced and represented by the 2008 Certificates then Outstanding to such supplement, amendment, modification or termination; provided, that no such supplement, amendment, modification or termination shall reduce the amount of 2008 Payments to be made to the Authority or the Trustee by the City pursuant to the Contract, or extend the time for making such 2008 Payments in any

manner that would require the amendment of the Trust Agreement in any manner not in compliance with Section 7.01 hereof, or permit the creation of any lien prior to or on a parity with the lien created hereby on the 2008 Payments without the written consent of all of the Owners of the 2008 Certificates then Outstanding.

Section 5.06. Recording and Filing. The Trustee upon receipt of a Written Request of the Authority, at the expense of the Authority, shall file, record, register, renew, refile and rerecord all such documents, including financing statements (or continuation statements in connection therewith), all in such manner, at such times and in such places as may be required and to the extent permitted by law in order to fully perfect, preserve and protect the security of the Owners and the rights and interests of the Trustee; provided, however, that the Trustee will not be required to execute a special or general consent to service of process, or to qualify as a foreign corporation in connection with any such filing, recording, registration, refile or rerecording in any jurisdiction in which it is not now so subject.

Section 5.07. Further Assurances. Whenever and so often as reasonably requested to do so by the Trustee or any Owner, the Authority will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Owners all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them hereby.

## ARTICLE VI

### THE TRUSTEE

#### Section 6.01. The Trustee.

(a) The Bank of New York Trust Company, N.A., shall serve as the Trustee for the purpose of receiving all money which the Authority is required to deposit with the Trustee hereunder and for the purpose of allocating, applying and using such money as provided herein and for the purpose of paying the interest and principal and prepayment premiums, if any, evidenced and represented by the 2008 Certificates presented for payment, and for the purpose of canceling all paid or prepaid 2008 Certificates as provided herein. The Authority agrees that it will at all times maintain a Trustee having a corporate trust office in either San Francisco, California or Los Angeles, California.

(b) The Authority may at any time, unless there exists any Event of Default as defined in Section 8.01 hereof, remove the Trustee initially appointed and any successor thereto and may appoint a successor or successors thereto by an instrument in writing; provided that any successor appointed under this Trust Agreement shall be approved by the 2008 Certificate Insurer and shall be a bank with trust powers or trust company doing business and having a principal office in either San Francisco, California or Los Angeles, California, having (or if such bank or trust company is a member of a bank holding company system, its bank holding company has) a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000 and subject to supervision or examination by federal or state authority. If such bank

or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Trustee may at any time resign by giving written notice of such resignation to the Authority and by mailing to the Owners notice of such resignation. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing. Any removal or resignation of a Trustee and appointment of a successor Trustee shall become effective only upon the acceptance of appointment by the successor Trustee. If, within 30 days after notice of the removal or resignation of the Trustee no successor Trustee shall have been appointed and shall have accepted such appointment, the removed or resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Trustee having the qualifications required hereby. Any successor trustee shall signify its acceptance of the duties under this Trust Agreement by an instrument in writing provided to the Authority and the Notice Parties.

(c) In the event that the Trustee breaches its obligations hereunder or under any other financing document in connection with the issuance of the 2008 Certificates, at the request of the 2008 Certificate Insurer, the Authority shall remove and replace the Trustee in accordance with the terms of the foregoing clause (b).

(d) The Trustee shall only hold the duties set forth in this Trust Agreement and no duties shall be implied against the Trustee. Following the occurrence of an Event of Default, the Trustee shall exercise such of the rights and powers vested in it hereby, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

#### Section 6.02. Liability of the Trustee.

(a) The recitals of facts, agreements and covenants herein and in the 2008 Certificates shall be taken as recitals of facts, agreements and covenants of the Authority, and the Trustee assumes no responsibility for the correctness of the same or makes any representation as to the sufficiency or validity hereof or of the 2008 Certificates, or shall incur any responsibility in respect thereof other than in connection with the rights or obligations assigned to or imposed upon it herein, in the 2008 Certificates or in law or equity. The Trustee shall not be liable in connection with the performance of its duties hereunder except for its own active or passive negligence or willful misconduct.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the 2008 Certificates at the time Outstanding, relating

to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee hereunder.

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it hereby at the request, order or direction of any of the Owners pursuant to the provisions hereof unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby. The Trustee has no obligation or liability to the Owners for the payment of interest, principal or prepayment premium, if any, evidenced and represented by the 2008 Certificates from its own funds; but rather the Trustee's obligations shall be limited to the performance of its duties hereunder.

(e) The Trustee shall not be deemed to have knowledge of any default hereunder or default under the Contract unless and until it shall have actual knowledge thereof or shall have received written notice thereof at its Corporate Trust Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the 2008 Certificates or as to the existence of a default hereunder.

(f) The Trustee shall be entitled to advice of counsel and other professionals concerning all matters of trust and its duty hereunder, but the Trustee shall not be answerable for the professional malpractice of any attorney-at-law or certified public accountant in connection with the rendering of his professional advice in accordance with the terms hereof, if such attorney-at-law or certified public accountant was selected by the Trustee with due care.

(g) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(h) Whether or not therein expressly so provided, every provision hereof or of the Contract or any related documents relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this article.

(i) The Trustee makes no representation or warranty, express or implied, as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or City of the 2008 Project. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Contract or this Trust Agreement for the existence, furnishing or use of the 2008 Project.

(j) The Trustee shall be protected in acting upon any notice, requisition, resolution, request, consent, order, certificate, facsimile transmission, electronic mail, report, opinion, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and

complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

(k) Whenever in the administration of its rights and obligations hereunder the Trustee shall deem it necessary or desirable that a matter be established or proved prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the Authority, which certificate shall be full warrant to the Trustee for any action taken or suffered under the provisions hereof upon the faith thereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

(l) No provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers.

(m) The Trustee shall have no responsibility, opinion or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the execution and delivery of the 2008 Certificates.

(n) All immunities, indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, employees, officers and agents thereof.

(o) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, so long as such company shall meet the requirements set forth in Section 6.01 hereof, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

(p) The Trustee may become the owner or pledgee of any 2008 Certificates with the same rights it would have if it were not Trustee.

(q) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay (“unavoidable delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(r) The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Trust Agreement provided, however, that: (i) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (ii) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (iii) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

Section 6.03. Compensation and Indemnification of Trustee. The Authority covenants to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the Authority will pay or reimburse the Trustee upon its request for all expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, default or willful misconduct. The Authority, to the extent permitted by law, shall indemnify, defend and hold harmless the Trustee against any loss, damages, liability or expense incurred without negligence, default or willful misconduct on the part of the Trustee arising out of or in connection with (i) the acceptance or administration of the trusts created hereby, or the exercise or performance of any of its powers or duties hereunder, or (ii) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of any of the 2008 Certificates, including costs and expenses (including attorneys' fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder; provided, however, that the Trustee shall in no event condition any draw upon the Liquidity Facility, any request for payment under the Credit Enhancement or any payment to Owners from such draws under the Liquidity Facility or such payments under the Credit Enhancement upon the provision of any indemnification for such performance. The rights of the Trustee and the obligations of the Authority under this Section shall survive the discharge of the 2008 Certificates and the Trust Agreement and the resignation or removal of the Trustee.

## ARTICLE VII

### AMENDMENT OF THE TRUST AGREEMENT

Section 7.01. Amendment of the Trust Agreement. The Trust Agreement and the rights and obligations of the Authority and of the Owners may be amended at any time by a Supplemental Trust Agreement which shall become binding when the written consents of the Owners of a majority in aggregate principal amount of the 2008 Certificates then Outstanding, exclusive of 2008 Certificates disqualified as provided in Section 7.02 hereof, are filed with the Trustee; provided, that before executing any such Supplemental Trust Agreement the Trustee may first obtain at the Authority's expense an Opinion of Counsel that such Supplemental Trust Agreement complies with the provisions of the Trust Agreement, on which opinion the Trustee may conclusively rely. No such amendment shall (1) extend the Certificate Payment Date of, or

change the payment dates of, or reduce the rate of interest or principal or prepayment premium, if any, evidenced and represented by any 2008 Certificate without the express written consent of the Owner of such Certificate, or (2) reduce the percentage of 2008 Certificates required for the written consent to any such amendment, or (3) modify any rights or obligations of the Trustee without its prior written assent thereto.

The Trust Agreement and the rights and obligations of the Authority and of the Owners may also be amended at any time by a Supplemental Trust Agreement which shall become binding upon adoption without the consent of any Owners, but only to the extent permitted by law, for any purpose that will not materially adversely affect the interests of the Owners, including (without limitation) for any one or more of the following purposes:

- (a) to add to the agreements and covenants required herein to be performed by the Authority other agreements and covenants thereafter to be performed by the Authority, or to surrender any right or power reserved herein to or conferred herein on the Authority;
- (b) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the Authority may deem desirable or necessary and not inconsistent herewith;
- (c) to add to the agreements and covenants required herein, such agreements and covenants as may be necessary to qualify the Trust Agreement under the Trust Indenture Act of 1939;
- (d) to make any amendments or supplements necessary or appropriate to preserve or protect the exclusion of interest evidenced and represented by the 2008 Certificates from gross income for federal income tax purposes under the Code or the exemption of such interest from State of California personal income taxes;
- (e) to make such amendments or supplements as may be necessary or appropriate to maintain any then current rating on the 2008 Certificates by any of the Rating Agencies;
- (f) to add to the rights of the Trustee;
- (g) to modify, alter, amend or supplement this Trust Agreement in any other respect, including amendments which would otherwise be described in the first paragraph of this Section 7.01, if the effective date of such amendments is a date on which all 2008 Certificates affected thereby are subject to mandatory tender for purchase pursuant to the provisions of this Trust Agreement or if notice of the proposed amendments is given to Owners of the affected 2008 Certificates at least thirty (30) days before the proposed effective date of such amendments and, on or before such effective date, such Owners have the right to demand purchase of their 2008 Certificates pursuant to the provisions of this Trust Agreement; or

(h) for any other purpose that does not materially and adversely affect the interests of the Owners of the 2008 Certificates.

Section 7.02. Disqualified Certificates. 2008 Certificates owned or held by or for the account of the Authority or the City shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding 2008 Certificates provided in this article, and shall not be entitled to consent to or take any other action provided in this article.

Section 7.03. Endorsement or Replacement of Certificates After Amendment. After the effective date of any action taken as hereinabove provided, the Authority may determine that the 2008 Certificates may bear a notation by endorsement in form approved by the Authority as to such action, and in that case upon demand of the Owner of any Outstanding 2008 Certificates and presentation of such Owner's 2008 Certificate for such purpose at the Corporate Trust Office of the Trustee a suitable notation as to such action shall be made on such Certificate. If the Authority shall so determine, new 2008 Certificates so modified as, in the opinion of the Authority, shall be necessary to conform to such action shall be prepared and executed, and in that case upon demand of the Owner of any Outstanding 2008 Certificate a new 2008 Certificate or Certificates shall be exchanged at the Corporate Trust Office of the Trustee without cost to each Owner for its 2008 Certificate or 2008 Certificates then Outstanding upon surrender of such Outstanding 2008 Certificates.

Section 7.04. Amendment by Mutual Consent. Subject to Section 10.02 hereof, the provisions of this article shall not prevent any Owner from accepting any amendment as to the particular 2008 Certificates held by him, provided that due notation thereof is made on such 2008 Certificates.

Section 7.05. Consent of Liquidity Facility Provider. Notwithstanding anything to the contrary contained in this Trust Agreement, this Trust Agreement may not be amended without the prior written consent of the Liquidity Facility Provider.

Section 7.06. Notice. The Trustee shall give notice to the Rating Agencies of any amendments pursuant to this Article VII.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 8.01. Events of Default: Acceleration; Waiver of Default. If an Event of Default (as that term is defined in the Contract) shall happen, then such Event of Default shall constitute a default hereunder, and in each and every such case during the continuance of such Event of Default the Trustee or the Owners of not less than a majority in aggregate principal amount of the 2008 Certificates then Outstanding shall exercise the remedies provided to the Authority in the Contract; provided, that nothing contained herein shall affect or impact the right of action of any Owner to institute suit directly against the City to enforce payment of the obligation evidenced and represented by such Owner's 2008 Certificates. In determining whether a payment default has occurred hereunder, or whether a payment on the 2008 Certificates has been made hereunder, no effect shall be given to payments made under the 2008 Certificate Insurance

Policy. Upon the occurrence of any Event of Default, the Trustee shall give notice to the Credit Enhancement Provider and the Liquidity Facility Provider.

Section 8.02. Other Remedies of the Trustee. The Trustee shall have the right—

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce the Authority's rights under the Contract against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform or carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained in the Contract;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Trustee; or

(c) by suit in equity upon the happening of any Event of Default hereunder to enforce the Authority's rights under the Contract to require the City and its directors, officers and employees to account as the trustee of an express trust.

Section 8.03. Non-Waiver. A waiver of any default or breach of any duty or contract by the Trustee shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Trustee to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or any acquiescence therein, and every right or remedy conferred upon the Trustee by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee.

If any action, proceeding or suit to enforce any right or to exercise any remedy is abandoned or determined adversely to the Trustee, the Trustee, and the City shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 8.04. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or the Owners is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

Section 8.05. No Liability by the City to the Owners. Except for the payment when due of the 2008 Payments and the performance of the other agreements and covenants required to be performed by it contained in the Contract, the City shall not have any obligation or liability to the Owners with respect to the Trust Agreement or the preparation, execution, delivery or transfer of the 2008 Certificates or the disbursement of the 2008 Payments by the Trustee to the Owners, or with respect to the performance by the Trustee of any right or obligation required to be performed by it contained herein.

Section 8.06. No Liability by the Trustee to the Owners. Except as expressly provided herein, the Trustee shall not have any obligation or liability to the Owners with respect to the

payment when due of the 2008 Payments by the City, or with respect to the performance by the City of the other agreements and covenants required to be performed by its contained in the Contract.

Section 8.07. Control of Remedies by Credit Enhancement Provider or Liquidity Facility Provider. Provided that the Credit Enhancement or the Liquidity Facility remain in effect, notwithstanding anything in this Trust Agreement to the contrary, the Credit Enhancement Provider shall have the right to direct all remedies upon the occurrence of an Event of Default. If the Credit Enhancement is no longer in effect or a default has occurred with respect to the Credit Enhancement, the Liquidity Facility Provider shall have the right to direct all remedies upon the occurrence of an Event of Default.

## ARTICLE IX

### DEFEASANCE

Section 9.01. Discharge of Trust Agreement. When the obligations of the City under the Contract shall cease pursuant to Article VI of the Contract (except for the right of the Trustee and the obligation of the City to have the money and Federal Securities mentioned therein applied to the payment of 2008 Payments as therein set forth) and (i) the 2008 Certificates are in Fixed Rate Mode at the time moneys or Federal Securities are deposited, (ii) the deposit of money and Federal Securities is sufficient to pay the 2008 Certificates at the Maximum Rate to the earlier of the first possible tender or redemption date, or (iii) the City shall have received a Rating Confirmation Notice on any 2008 Certificate that shall remain Outstanding following such redemption, then and in such case the obligations created by this Trust Agreement shall thereupon cease, terminate and become void except for the right of the Owners and the obligation of the Trustee to apply such moneys and Federal Securities to the payment of the 2008 Certificates as herein set forth and the right of the Trustee to collect any fees or expenses due hereunder and the Trustee shall turn over to the City, as an overpayment of 2008 Payments, all balances remaining in any other funds or accounts other than moneys and Federal Securities held for the payment of the 2008 Certificates at maturity or on prepayment, which moneys and Federal Securities shall continue to be held by the Trustee in trust for the benefit of the Owners and shall be applied by the Trustee to the payment, when due, of the principal and interest and premium if any represented by the 2008 Certificates, and after such payment, this Trust Agreement shall become void.

If moneys or Federal Securities are deposited with and held by the Trustee as hereinabove provided, the Trustee shall mail a notice, first-class postage prepaid, to the Owners at the addresses listed on the registration books kept by the Trustee pursuant to Section 2.08 hereof, stating that (a) moneys or Federal Securities are so held by it, and (b) that this Trust Agreement has been released in accordance with the provisions of this Section.

In connection with any defeasance of any of the 2008 Certificates pursuant to this Article, the 2008 Certificate Insurer shall receive (i) a Favorable Opinion of Special Counsel and (ii) an escrow agreement and an Opinion of Counsel regarding the validity and enforceability of the escrow agreement, such escrow agreement shall provide that: (1) any substitution of securities shall require a verification by an independent certified public accountant and the prior written

consent of the 2008 Certificate Insurer; (2) the Authority will not exercise any optional redemption of the 2008 Certificates secured by the escrow agreement or any other redemption other than mandatory sinking fund redemptions unless (a) the right to make any such redemption has been expressly reserved in the escrow agreement and such reservation has been disclosed in detail in the official statement for the refunding obligations, and (b) as a condition of any such redemption there shall be provided to the 2008 Certificate Insurer a verification of an independent certified public accountant as to the sufficiency of escrow receipts without reinvestment to meet the escrow requirements remaining following such redemption; and (3) the Authority shall not amend the escrow agreement or enter into a forward purchase agreement or other agreement with respect to rights in the escrow without the prior written consent of the 2008 Certificate Insurer.

Notice of discharge of the Trust Agreement under this Article IX shall be provided to the Rating Agencies by the Trustee.

Section 9.02. Deposit of Money or Securities with Trustee. Whenever in this Trust Agreement or the Contract it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities (certified to be sufficient by a report of an Independent Certified Public Accountant) in the necessary amount to pay or prepay any 2008 Certificates, the money or securities to be so deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Trust Agreement and shall be --

(a) lawful money of the United States of America in an amount equal to the principal amount represented by such 2008 Certificates and all unpaid interest represented thereby to maturity, except that, in the case of 2008 Certificates which are to be prepaid prior to maturity and in respect of which notice of such prepayment shall have been given as in Article II provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount plus accrued interest to such date of prepayment plus a prepayment premium, if any, represented by such 2008 Certificates; or

(b) Federal Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form) or municipal obligations which have been defeased under irrevocable escrow instructions with Federal Securities and which are rated in the highest rating category by the Rating Agencies, the principal of and interest on which when due will provide, in its opinion of an Independent Certified Public Accountant, delivered to the Trustee, money sufficient to pay the principal plus prepayment premium, if any, plus all accrued interest to maturity or to the prepayment date, as the case may be, represented by the 2008 Certificates to be paid or prepaid, as such amounts become due, provided that, in the case of 2008 Certificates which are to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article II provided or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of this Trust Agreement and the Contract or by Written Request of the City) to apply such money to

the payment of such principal plus prepayment premium, if any, plus interest represented by such 2008 Certificates.

Section 9.03. Unclaimed Money. Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of any of the 2008 Certificates which remains unclaimed for two years after the date when such 2008 Certificates have become due and payable, either at their stated Certificate Payment Dates or by call for prepayment prior to Certificate Payment Date, if such money was held by the Trustee at such date, or for two years after the date of deposit of such money if deposited with the Trustee after the date when such Certificates have become due and payable, shall be repaid by the Trustee to the City as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall look only to the City for the payment of the 2008 Payments evidenced and represented by such 2008 Certificates; provided, however, that before being required to make any such payment to the City, the Trustee shall, at the request of and at the expense of the City, cause to be mailed to all Owners and the Securities Depositories and the Information Services a notice that such money remains unclaimed and that, after a date named in such notice, which date shall not be less than 30 days after the date of the first publication of each such notice, the balance of such money then unclaimed will be returned to the City.

## ARTICLE X

### CERTIFICATE INSURANCE PROVISIONS

Section 10.01. Payment Under the 2008 Certificate Insurance Policy. The payment when due of the principal and interest with respect to the 2008 Certificates shall be insured by the 2008 Certificate Insurance Policy. As long as the 2008 Certificate Insurance Policy shall be in full force and effect, the Authority and the Trustee agree to comply with the following provisions with respect to the 2008 Certificates:

(a) In the event that, on the second Business Day, and again on the Business Day, prior to an interest payment date for the 2008 Certificates the Trustee has not received sufficient moneys to pay all of the principal and interest with respect to the 2008 Certificates due on the second following or following, as the case may be, Business Day, the Trustee shall promptly on such Business Day moneys are not received, notify the 2008 Certificate Insurer or its designee on the same Business Day by telephone, electronic mail or facsimile, confirmed in writing by registered or certified mail of the amount of the deficiency, the obligations which such deficiency is applicable and whether such obligations will be deficient as to principal or interest or both. If the deficiency is cured in whole or in part prior to or on the interest payment date, the Trustee shall so notify the 2008 Certificate Insurer or its designee.

(b) The Trustee shall, after giving notice to the 2008 Certificate Insurer, as provided above, make available to the 2008 Certificate Insurer and, at the 2008 Certificate Insurer's direction, to any fiscal agent, the registration books of the Authority maintained by the Trustee and all records relating to the funds maintained under the documentation.

(c) The Trustee shall provide the 2008 Certificate Insurer and any fiscal agent with a list of registered owners of the 2008 Certificates entitled to receive principal or interest payments from the 2008 Certificate Insurer under the terms of the 2008 Certificate Insurance Policy, and shall make arrangements with the 2008 Certificate Insurer, the fiscal agent or another designee of the 2008 Certificate Insurer to (i) mail checks or drafts to the registered owners of the 2008 Certificates entitled to receive full or partial interest payments from the 2008 Certificate Insurer and (ii) pay principal upon the 2008 Certificates surrendered to the 2008 Certificate Insurer, the fiscal agent or another designee of the 2008 Certificate Insurer by the registered owners of the 2008 Certificates entitled to receive full or partial principal payments from the 2008 Certificate Insurer.

(d) The Trustee shall, at the time it provides notice to the 2008 Certificate Insurer of any deficiency pursuant to clause (a) above, notify registered owners of the 2008 Certificates entitled to receive the payment of principal or interest thereon from the 2008 Certificate Insurer (i) as to such deficiency and its entitlement to receive principal or interest, as applicable, (ii) that the 2008 Certificate Insurer will remit to them all or a part of the interest payments due on the related payment date upon proof of its entitlement thereto and delivery to the 2008 Certificate Insurer or any fiscal agent, in form satisfactory to the 2008 Certificate Insurer, of an appropriate assignment of the registered owner's right to payment, (iii) that, if they are entitled to receive partial payment of principal from the 2008 Certificate Insurer, they must surrender the related the 2008 Certificates for payment first to the Trustee, which will note on such the 2008 Certificates the portion of the principal paid by the Trustee and second to the 2008 Certificate Insurer or its designee, together with an appropriate assignment, in form satisfactory to the 2008 Certificate Insurer, to permit ownership of the 2008 Certificates to be registered in the name of the 2008 Certificate Insurer, which will then pay the unpaid portion of principal, and (iv) that, if they are entitled to receive full payment of principal from the 2008 Certificate Insurer, they must surrender the 2008 Certificates for payment to the 2008 Certificate Insurer or its designee, rather than the Trustee, together with the an appropriate assignment, in form satisfactory to the 2008 Certificate Insurer, to permit ownership of the 2008 Certificates to be registered in the name of the 2008 Certificate Insurer.

(e) In addition, if the Trustee has written notice that any Owner of a 2008 Certificate has been required to disgorge payments of principal or interest with respect to the 2008 Certificates to the City or its trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes a voidable preference to such Owner within the meaning of any applicable bankruptcy laws, then the Trustee shall notify the 2008 Certificate Insurer or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

(f) The Trustee is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for Owners of the 2008 Certificates as follows:

(i) If and to the extent there is a deficiency in amounts required to fully pay interest on the 2008 Certificates, the Trustee shall (i) execute and deliver to the 2008 Certificate Insurer, in form satisfactory to the 2008 Certificate Insurer, an instrument appointing the 2008 Certificate Insurer as agent for such Owners in any legal proceeding related to the payment of such interest and an assignment to the 2008 Certificate Insurer

of the claims for interest to which such deficiency relates and which are paid by the 2008 Certificate Insurer, (ii) receive as designee of the respective Owners (and not as Trustee) in accordance with the tenor of the 2008 Certificate Insurance Policy payment from the 2008 Certificate Insurer with respect to the claims for interest so assigned and (iii) disburse the same to such respective Owners; and

(ii) If and to the extent of a deficiency in amounts required to pay principal with respect to the 2008 Certificates, the Trustee shall (i) execute and deliver to the 2008 Certificate Insurer, in form satisfactory to the 2008 Certificate Insurer, an instrument appointing the 2008 Certificate Insurer as agent for such Owner in any legal proceeding relating to the payment of such principal and an assignment to the 2008 Certificate Insurer of any of the 2008 Certificates surrendered to the 2008 Certificate Insurer of so much of the principal thereof as has not previously been paid or for which moneys are not held by the Trustee and available for such payment (but such assignment shall be effective only if payment from the 2008 Certificate Insurer is received), (ii) receive as designee of the respective Owners (and not as Trustee) in accordance with the tenor of the 2008 Certificate Insurance Policy payment therefor from the 2008 Certificate Insurer and (iii) disburse the same to such Owners.

(g) Payments with respect to claims for interest and principal with respect to the 2008 Certificates disbursed by the Trustee from proceeds of the 2008 Certificate Insurance Policy shall not be considered to discharge the obligation of the Authority with respect to such 2008 Certificates, and the 2008 Certificate Insurer shall become the Owner of such unpaid 2008 Certificates and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this Section 10.01 or otherwise.

(h) Irrespective of whether any such assignment is executed and delivered, the Authority and the Trustee hereby for the benefit of the 2008 Certificate Insurer that:

(i) to the extent the 2008 Certificate Insurer makes payments, directly or indirectly (as by paying through the Trustee), on account of the principal or interest with respect to the 2008 Certificates, the 2008 Certificate Insurer will be subrogated to the rights of the Owners of the 2008 Certificates to receive the amount of such principal and interest, with interest thereon as provided and solely from the sources stated in this Trust Agreement and the 2008 Certificates, and

(ii) they will accordingly pay to the 2008 Certificate Insurer the amount of such principal and interest, with interest thereon as provided in this Trust Agreement and the 2008 Certificates, but only from the sources and in the manner provided herein for the payment of the principal and interest with respect to the 2008 Certificates to Owners, and will otherwise treat the 2008 Certificate Insurer as the Owner of such rights to the amount of such principal and interest.

(i) The Authority hereby agrees to pay or reimburse the 2008 Certificate Insurer, to the extent permitted by law, (A) all amounts paid by the 2008 Certificate Insurer under the terms of the 2008 Certificate Insurance Policy, and (B) any and all charges, fees, costs and expenses which the 2008 Certificate Insurer may reasonably pay or incur, including, but not limited to,

fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the 2008 Certificate Insurance Policy, (ii) the administration, enforcement, defense or preservation of any rights in respect of this Trust Agreement or any other financing document, including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the Authority or any affiliate thereof) relating to this Trust Agreement or any other financing document, any party to this Trust Agreement or any other financing document or the transaction contemplated by this Trust Agreement or any other financing documents, (iii) the foreclosure against, sale or other disposition of any collateral securing any obligations under this Trust Agreement or any other financing document, or the pursuit of any remedies under this Trust Agreement or any other financing document, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition, or (iv) any amendment, waiver or other action with respect to, or related to, this Trust Agreement or any other financing document whether or not executed or completed; costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of the 2008 Certificate Insurer spent in connection with the actions described in clauses (ii) - (iv) above. In addition, the 2008 Certificate Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this Trust Agreement or any other financing document. The Authority will pay interest on the amounts owed in this paragraph from the date of any payment due or paid, at the per annum rate of interest publicly announced from time to time by JP Morgan Chase Bank, National Association at its principal office in New York, New York as its prime lending rate (any change in such prime rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank, National Association) plus three percent (3%) per annum (the "Reimbursement Rate"). The Reimbursement Rate shall be calculated on the basis of the actual number of days elapsed over a 360-day year. In the event JPMorgan Chase Bank ceases to announce its prime rate publicly, the prime rate shall be the publicly announced prime rate or base lending rate of such national bank, as the 2008 Certificate Insurer shall specify.

(j) In addition to any and all rights of reimbursement, subrogation and any other rights pursuant hereto or under law or in equity, the Authority agrees to pay or reimburse the 2008 Certificate Insurer, to the extent permitted by law, any and all charges, fees, costs, claims, losses, liabilities (including penalties), judgments, demands, damages, and expenses which the 2008 Certificate Insurer or its officers, directors, shareholders, employees, agents and each Person, if any, who controls the 2008 Certificate Insurer within the meaning of either Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended, may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, of any nature in connection with, in respect of or relating to the transactions contemplated by this Trust Agreement or any other financing document by reason of:

(a) any omission or action (other than of or by the 2008 Certificate Insurer) in connection with the offering, issuance, sale, remarketing or delivery of the 2008 Certificates;

(b) the negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of the Authority in

connection with any transaction arising from or relating to this Trust Agreement or any other financing document;

(c) the violation by the Authority of any law, rule or regulation, or any judgment, order or decree applicable to it;

(d) the breach by the Authority of any representation, warranty or covenant under this Trust Agreement or any other financing document or the occurrence, in respect of the Authority under this Trust Agreement or any other financing document of any "event of default" or any event which, with the giving of notice or lapse of time or both, would constitute any "event of default"; or

(e) any untrue statement or alleged untrue statement of a material fact contained in any official statement relating to the 2008 Certificates, if any, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such claims arise out of or are based upon any untrue statement or omission in information included in an official statement, if any, and furnished by the 2008 Certificate Insurer in writing expressly for use therein.

(k) The 2008 Certificate Insurer shall be entitled to pay principal of or interest on the 2008 Certificates that shall become Due for Payment but shall be unpaid by reason of Nonpayment (as such terms are defined in the 2008 Certificate Insurance Policy) and any amounts due on the 2008 Certificates as a result of acceleration of the maturity thereof in accordance with this Trust Agreement, whether or not the 2008 Certificate Insurer has received a Notice (as defined in the 2008 Certificate Insurance Policy) of Nonpayment or a claim upon the 2008 Certificate Insurance Policy.

(l) In addition, the 2008 Certificate Insurer shall, to the extent it makes any payment of principal or interest on the 2008 Certificates, become subrogated to the rights of the recipients of such payments in accordance with the terms of 2008 Certificate Insurance Policy, and to evidence such subrogation (i) in the case of claims for interest, the Trustee shall note the 2008 Certificate Insurer's rights as subrogee on the registration books of the Authority maintained by the Trustee, upon receipt of proof of payment of interest thereon to the registered holders of the 2008 Certificates, and (ii) in the case of claims for principal, the Trustee, if any, shall note the 2008 Certificate Insurer's rights as subrogee on the registration books of the Authority maintained by the Trustee, upon surrender of the 2008 Certificates together with receipt of proof of payment of principal thereof.

Section 10.02. Additional Provisions Related to the 2008 Certificate Insurance Policy.

(a) Notwithstanding anything in this Trust Agreement to the contrary so long as the 2008 Certificate Insurance Policy relating to the 2008 Certificates shall be in full force and effect and the 2008 Certificate Insurer shall not be in default of any of its obligations thereunder, the 2008 Certificate Insurer shall be deemed to be sole Owner of the 2008 Certificates it insures for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the 2008 Certificate Owners are entitled to take pursuant to this Trust

Agreement, including any consent to any modification, amendment or supplement to this Trust Agreement pursuant to Section 7.01 hereof.

(b) Copies of any amendments made to the documents executed in connection with the issuance of the 2008 Certificates which are consented to by the 2008 Certificate Insurer shall be sent to Standard & Poor's.

(c) The 2008 Certificate Insurer shall receive written notice of the resignation or removal of the Trustee and any Trustee for the 2008 Certificates and the appointment of a successor thereto.

(d) The 2008 Certificate Insurer shall receive written copies of all notices required to be delivered to Owners of 2008 Certificates.

(e) The 2008 Certificate Insurer shall have the right to receive such additional information as it may reasonably request.

(f) The Authority will permit the 2008 Certificate Insurer to discuss the affairs, finances and accounts of the Authority or any information the 2008 Certificate Insurer may reasonably request regarding the security for the 2008 Certificates with appropriate officers of the Authority, and will use best efforts to enable the 2008 Certificate Insurer to have access to the facilities, books and records of the Authority on any business day upon reasonable prior notice.

(g) The Trustee shall notify the 2008 Certificate Insurer of any failure of the Authority to provide notices, certificates and other information under the financing documents.

(h) If the Trustee receives any moneys from proceeds of the 2008 Certificate Insurance Policy, the Trustee shall hold such moneys separate and apart from all other moneys held by the Trustee under this Trust Agreement and shall apply such moneys only to the payment of the principal or prepayment price or interest with respect to the 2008 Certificates for which such payments were received.

(i) In the event that the principal and/or interest due on the 2008 Certificates shall be paid by the 2008 Certificate Insurer pursuant to 2008 Certificate Insurance Policy, the 2008 Certificates shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Authority, and the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Authority to the registered owners shall continue to exist and shall run to the benefit of the 2008 Certificate Insurer, and the 2008 Certificate Insurer shall be subrogated to the rights of such registered owners, including, without limitation, any rights that such owners may have in respect of securities law violations arising from the offer and sale of the 2008 Certificates.

(j) The 2008 Certificate Insurer shall be deemed to be the Owners of all of the 2008 Certificates for purposes of (a) exercising all remedies and directing the Trustee to take actions or for any other purposes following an Event of Default (as defined herein), and (b) granting any consent, direction or approval or taking any action permitted or required by the Owners of the 2008 Certificates.

(k) Notwithstanding anything in this Trust Agreement to the contrary so long as the 2008 Certificate Insurance Policy shall be in full force and effect and the 2008 Certificate Insurer shall not be in default of any of its obligations thereunder, upon the occurrence and continuance of an Event of Default, as defined herein, the Trustee may, with the consent of the 2008 Certificate Insurer, and shall at the direction of the 2008 Certificate Insurer or the Bondholders with the prior written consent of the 2008 Certificate Insurer, by written notice to the Authority and the 2008 Certificate Insurer, as applicable (i) declare the payments under the Contract representing the principal of the 2008 Certificates immediately due and payable, in accordance with the terms of the Contract or (ii) annul any declaration of acceleration.

(l) In the event of any reorganization or liquidation, the 2008 Certificate Insurer shall have the right to vote on behalf of all Owners of the 2008 Certificates guaranteed by the 2008 Certificate Insurer, absent a default by the 2008 Certificate Insurer under the 2008 Certificate Insurance Policy.

(m) Indemnification of the 2008 Certificate Insurer. The Authority, to the extent permitted by law, but solely from amounts payable under the Contract, to the extent such amounts are not required to pay the 2008 Certificates shall indemnify, defend and hold harmless the 2008 Certificate Insurer against any loss, damages, liability or expense incurred without negligence, default or willful misconduct on the part of the 2008 Certificate Insurer arising out of or in connection with (i) the exercise or performance of any of its powers or duties hereunder, or (ii) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of any of the 2008 Certificates, including costs and expenses (including attorneys' fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. The rights of the 2008 Certificate Insurer and the obligations of the Authority under this Section shall survive the discharge of the 2008 Certificates and this Trust Agreement. Notwithstanding the foregoing, the Authority will not be liable for any losses, costs or expenses resulting from the willful misconduct or negligence of the 2008 Certificate Insurer, or resulting from a misrepresentation or omission made by the 2008 Certificate Insurer in any offering document or other disclosure materials or filings (including any filings made with any insurance regulator, the Securities & Exchange Commission or any other government body) concerning the 2008 Certificate Insurer.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Benefits of this Trust Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the Authority, the Trustee, the 2008 Certificate Insurer and the Owners any right, remedy or claim under or by reason hereof. Any agreement or covenant required herein to be performed by or on behalf of the Authority or any member, officer or employee thereof shall be for the sole and exclusive benefit of the Trustee, the 2008 Certificate Insurer and the Owners. The 2008 Certificate Insurer shall be a third-party beneficiary of this Trust Agreement.

Section 11.02. Successor is Deemed Included In All References To Predecessor. Whenever herein either the Authority or any member, officer or employee thereof is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Authority or such member, officer or employee, and all agreements and covenants required hereby to be performed by or on behalf of the Authority or any member, officer or employee thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 11.03. Execution of Documents by Owners. Any declaration, request or other instrument which is permitted or required herein to be executed by Owners may be in one or more instruments of similar tenor and may be executed by Owners in person or by their attorneys appointed in writing. The fact and date of the execution by any Owner or his attorney of any declaration, request or other instrument or of any writing appointing such attorney may be proved by the certificate of any notary public or other officer authorized to make acknowledgments of deeds to be recorded in the state or territory in which he purports to act that the person signing such declaration, request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly-sworn to before such notary public or other officer. The ownership of any 2008 Certificates and the amount, Certificate Payment Date, number and date of holding the same may be proved by the registration books relating to the 2008 Certificates at the corporate trust office of the Trustee.

Any declaration, request or other instrument or writing of the Owner of any 2008 Certificate shall bind all future Owners of such Certificate with respect to anything done or suffered to be done by the Authority or the Trustee in good faith and in accordance therewith.

Section 11.04. Waiver of Personal Liability. No member, officer or employee of the Authority shall be individually or personally liable for the payment of the interest or principal or prepayment premiums, if any, evidenced and represented by the 2008 Certificates by reason of their issuance, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by applicable provisions of law or hereby.

Section 11.05. Content of Certificates of the Authority. Every Certificate of the Authority with respect to compliance with any agreement, condition, covenant or provision provided herein shall include (a) a statement that the person or persons making or giving such certificate have read such agreement, condition, covenant or provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or provision has been complied with; and (d) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or provision has been complied with.

Any Certificate of the Authority may be based, insofar as it relates to legal matters, upon an Opinion of Counsel unless the person making or giving such certificate knows that the Opinion of Counsel with respect to the matters upon which his certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same

was erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters or information with respect to which is in the possession of the Authority, upon a representation by an officer or officers of the Authority unless the counsel executing such Opinion of Counsel knows that the representation with respect to the matters upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

Section 11.06. Accounts and Funds; Business Days. The Trustee may establish such funds and accounts as it deems necessary and appropriate to perform its duties and obligations hereunder. Any account or fund required herein to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee either as an account or a fund, and may, for the purposes of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to all such accounts and funds shall at all times be maintained in accordance with sound corporate trust industry practice and with due regard for the protection of the security of the 2008 Certificates and the rights of the Owners. Any action required to occur hereunder on a day which is not a Business Day shall be required to occur on the next succeeding Business Day with the same effect as if made on such non-Business Day.

Section 11.07. Notices.

(a) All written notices to be given hereunder shall be given by facsimile transmission or other Electronic means or by first-class mail or hand delivery (unless such delivery method shall be otherwise specified herein) to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the Authority:

Modesto Public Financing Authority  
c/o City of Modesto  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, CA 95353  
Attention: Auditor and Treasurer  
Telephone No.: (209) 577-5371  
Facsimile No.: (209) 571-5880

If to the City:

City of Modesto  
1010 Tenth Street, Suite 5200  
Modesto, CA 95353  
Attention: Finance Director  
Telephone No.: (209) 577-5371  
Facsimile No.: (209) 571-5880

If to the Trustee:	The Bank of New York Trust Company, N.A. 555 Kearny Street, Suite 600 San Francisco, CA 94108 Attention: Corporate Trust Telephone No.: (415) 263-2418 Facsimile No.: (415) 399-1647
If to S&P:	Attn: Muni Structured Finance 55 Water Street, 38 <sup>th</sup> Floor New York, New York 10041 Telephone No.: (212) 438-2000 Email: Pubfin_structured@standardandpoors.com
If to Moody's:	Moody's Investors Services 7 World Financial Center New York, New York 10007 Attention: Public Finance Department Facsimile: (212) 553-4090
If to the 2008 Certificate Insurer:	Assured Guaranty Corp. 1325 Avenue of the Americas New York, New York 10019 Attention: General Counsel Facsimile: (212) 581-3268  Assured Guaranty 1325 Avenue of the Americas New York, New York 10019 Attention: Risk Management Department - Public Finance Surveillance Facsimile: (212) 581-3268

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (i) if personally served or delivered, upon delivery, (ii) if given by Electronic communication, whether by telex, telegram or telecopier, upon the sender's receipt of an appropriate answer back or other written acknowledgement or confirmation of receipt of the entire notice, approval, demand, report or other communication, (iii) if given by first class or registered or certified mail, return receipt requested, deposited the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (iv) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (v) if given by any other means, upon delivery at the address specified in this Section 11.07.

(b) The Trustee shall give notice to the Rating Agencies of the occurrence of any of the following with respect to the 2008 Certificates:

- (i) the removal, resignation or appointment of the Trustee or Remarketing Agent;
  - (ii) the execution of any amendment or supplement to the Trust Agreement, the Credit Enhancement, the Liquidity Facility or the Remarketing Agreement;
  - (iii) the expiration, termination, extension or substitution of the Liquidity Facility or Credit Enhancement;
  - (iv) the redemption in whole of the Outstanding 2008 Certificates;
  - (v) the acceleration of all Outstanding 2008 Certificates pursuant to Article VIII of the Trust Agreement;
  - (vi) the defeasance of all Outstanding 2008 Certificates; and
  - (vii) any change in Mode of the 2008 Certificates.
- (c) The Trustee shall give notice to the Holders of the expiration, termination, extension or substitution of the Liquidity Facility or Credit Enhancement;

Section 11.08. CUSIP Numbers. Neither the Authority nor the Trustee shall be liable for any defect or inaccuracy in the CUSIP number that appears on any 2008 Certificate or in any prepayment notice relating thereto. The Trustee may, in its discretion, include in any prepayment notice relating to any of the 2008 Certificates a statement to the effect that the CUSIP numbers on the 2008 Certificates have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the Authority nor the Trustee shall be liable for any defects or inaccuracies in such numbers.

Section 11.09. Article and Section Headings and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 11.10. Partial Invalidity. If any one or more of the agreements or covenants Trustee shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof or of the 2008 Certificates, and the Owners shall retain all the benefit, protection and security afforded to them under any applicable provisions of law. The Authority and the Trustee hereby declare that they would have executed and delivered this Trust Agreement and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the execution and delivery of the 2008 Certificates pursuant hereto irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or

phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

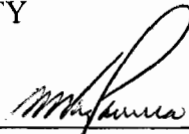
Section 11.11. Execution in Several Counterparts. This Trust Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 11.12. California Law. This Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

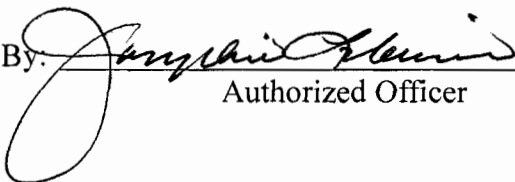
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IN WITNESS WHEREOF, the Modesto Public Financing Authority has caused this Trust Agreement to be signed in its name by its Auditor and Treasurer and The Bank of New York Trust Company, N.A., in token of its acceptance of the trusts created hereunder, has caused this Trust Agreement to be signed by one of the officers thereunder duly authorized, all as of the day and year first above written.

MODESTO PUBLIC FINANCING  
AUTHORITY

By:  \_\_\_\_\_  
Auditor and Treasurer

THE BANK OF NEW YORK TRUST  
COMPANY, N.A.,  
as Trustee

By:  \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**[FORM OF CERTIFICATE OF PARTICIPATION]**

**WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A**

**Evidencing and Representing a Proportionate Interest of the Owner Hereof  
in 2008 Payments to be made by the  
City of Modesto  
to the  
Modesto Public Financing Authority**

Unless this certificate is presented by an authorized representative of The Depository Trust Company a New York corporation (“DTC”), to the Trustee or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. R-1

\$47,625,000

<u>Interest Rate</u>	<u>Certificate Payment Date</u>	<u>Dated Date</u>	<u>CUSIP</u>
Variable	October 1, 2036	May 30, 2008	607804 AB7

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: FORTY SEVEN MILLION SIX HUNDRED TWENTY FIVE  
THOUSAND DOLLARS

THIS IS TO CERTIFY that the registered owner set forth above of this Water Refunding Revenue Certificate of Participation, 2008 Series A (this “Certificate”), is the owner of a proportionate interest in the 2008 Payments (as that term is defined in the Trust Agreement hereinafter mentioned) made under and pursuant to that certain Master Installment Purchase Contract executed and entered into as of November 1, 1997, as heretofore supplemented and as supplemented by that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, each by and between the City of Modesto, a charter city and municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of California (the “City”) and the Modesto Public Financing Authority, a joint exercise of powers agency duly organized and existing under and by virtue of the laws of the State of California (the “Authority”) (which Master Installment Purchase Contract as so supplemented is referred to herein as the “Contract”), all of which rights in the 2008 Payments have been assigned by the

Authority to The Bank of New York Trust Company, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, or any other bank or trust company which may at any time be substituted in place of the original trustee as provided in the Trust Agreement hereinafter mentioned (the "Trustee"). Capitalized terms used in this Certificate but not otherwise defined shall have the meanings assigned to them in the Trust Agreement.

The registered owner of this Certificate is entitled to receive, subject to the terms of the Contract and any right of prepayment prior thereto hereinafter provided for, on the Certificate Payment Date set forth above, upon surrender of this Certificate on such Certificate Payment Date or on the date of prepayment prior thereto at the corporate trust office of the Trustee, the principal sum set forth above, representing the registered owner's proportionate share of the 2008 Payments constituting principal installments with respect to Certificates becoming due and payable on such Certificate Payment Date or on the date of prepayment prior thereto, and to receive an interest installment on such principal installment on each Interest Payment Date to the respective Certificate Payment Date or date of prepayment prior thereto. While this Certificate is in a Daily Mode or a Weekly Mode, the Interest Payment Date shall be the first Business Day of the month. Payment of interest evidenced by this Certificate shall be made to the person appearing on the registration books of the Trustee as the Owner thereof as of the close of business on the applicable Record Date, such interest to be payable on each Interest Payment Date by the Trustee (i) by check mailed on such Interest Payment Date to such Owner's address as it appears on the registration books of the Trustee at the close of business on the Record Date or (ii) by wire transfer to any Owner of at least \$1,000,000 aggregate principal amount of Certificates according to the written instructions provided by such Owner on or prior to the applicable Record Date to the Trustee, which written instructions shall remain in effect until revised by such Owner by an instrument in writing delivered to the Trustee. Interest evidenced by this Certificate shall accrue from and including the Interest Accrual Date immediately preceding the date of authentication hereof, or, if such date of authentication shall be an Interest Accrual Date, from such Interest Accrual Date or, if such date of authentication shall be prior to the second Interest Accrual Date, from the Delivery Date.

This Certificate is one of the duly authorized certificates of participation aggregating \$47,625,000, which have been executed by the Trustee under and pursuant to the provisions of a Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), between the Authority and the Trustee. Copies of the Trust Agreement are on file at the corporate trust office of the Trustee in San Francisco, California and reference is hereby made to the Trust Agreement and to any and all amendments thereof and supplements thereto for a description of the covenants and pledges securing the 2008 Payments and the Certificates, for the nature, extent and manner of enforcement of such covenants and pledges, for the rights and remedies of the registered owners of the Certificates with respect thereto and for the other conditions and terms upon which the Certificates are executed and delivered thereunder.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto, but no such amendment shall (1) extend the Certificate Payment Date of this Certificate, or change the payment dates of, or reduce the rate of interest or principal or prepayment premium, if any, evidenced and represented hereby, without the express written consent of the registered owner

hereof, or (2) reduce the percentage of Certificates required for the written consent to any amendment, or (3) modify any rights or obligations of the Trustee without its prior written assent thereto.

The Certificates are delivered as fully registered Certificates in Authorized Denominations. This Certificate is being issued initially in a Weekly Mode and so long as this Certificate shall remain in a Weekly Mode, this Certificate shall bear interest at a Weekly Rate determined by the provisions of the Trust Agreement.

As provided in and subject to the terms and conditions of the Trust Agreement, the Certificates may, from time to time, be changed from a Weekly Mode to a Daily Mode, a Flexible Mode, a Term Rate Mode or a Fixed Rate Mode.

Except in the event of serialization of the Certificates in accordance with the provisions of the Trust Agreement, the Certificates are subject to mandatory prepayment from Sinking Fund Payments prior to their Maturity Date, in part by lot, on October 1 of each year on and after October 1, 2008, in accordance with the schedule set forth below upon notice as provided in the Trust Agreement, from and in the amount of the principal installment of the 2008 Payments due and payable on such dates, at a prepayment price equal to the sum of the principal amount evidenced and represented thereby plus accrued and unpaid interest evidenced and represented thereby to the Prepayment Date, without a prepayment premium.

Sinking Fund Payments

Mandatory Sinking Fund Payment Date (October 1)	Sinking Fund Payment	Mandatory Sinking Fund Payment Date (October 1)	Sinking Fund Payment
2008	\$290,000	2023	\$2,300,000
2009	285,000	2024	2,410,000
2010	285,000	2025	2,515,000
2011	285,000	2026	2,595,000
2012	310,000	2027	2,705,000
2013	310,000	2028	2,810,000
2014	340,000	2029	2,945,000
2015	340,000	2030	3,055,000
2016	365,000	2031	3,185,000
2017	365,000	2032	3,295,000
2018	395,000	2033	3,430,000
2019	395,000	2034	3,570,000
2020	395,000	2035	3,705,000
2021	425,000	2036	3,870,000
2022	450,000		

Additionally, if any portion of this Certificate has been optionally prepaid as described in the succeeding paragraph, the amounts of such Sinking Fund Payments shall be reduced as directed by the Authority, or if not so directed, proportionately in increments of Authorized

Denominations by the principal amount evidenced and represented by all such Certificates so optionally prepaid.

Each Certificate in a Daily Mode or a Weekly Mode shall be subject to prepayment at the option of the Authority, in whole or in part, in Authorized Denominations on any Business Day, at a prepayment price equal to 100% of the principal amount thereof, plus, accrued interest, if any, to the Prepayment Date, without premium.

Notice of prepayment of any Certificate selected for prepayment shall be given by first-class mail not less than 30 days nor more than 60 days before the prepayment date to the registered owner hereof, subject to and in accordance with provisions of the Trust Agreement with respect thereto. If notice of prepayment has been duly given and money for the payment of the prepayment price is held by the Trustee, then this Certificate shall, on the prepayment date designated in such notice, become due and payable, and from and after the date so designated interest evidenced and represented by this Certificate shall cease to accrue, and the registered owner of this Certificate shall have no rights with respect hereto except to receive payment of the prepayment price hereof.

This Certificate is transferable on the books to be kept for that purpose at the above-mentioned office of the Trustee by the registered owner hereof in person or by his duly authorized attorney upon payment of the charges provided in the Trust Agreement and upon surrender of this Certificate for cancellation accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Trustee, and thereupon a new Certificate or Certificates of the same Certificate Payment Date evidencing and representing a like aggregate principal amount in Authorized Denominations will be delivered to the transferee. This Certificate may be exchanged at the above-mentioned office of the Trustee upon payment of the charges provided in the Trust Agreement for a like aggregate principal amount of Certificates of the same Certificate Payment Date of other Authorized Denominations. The Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of the interest and principal evidenced and represented hereby and for all other purposes, whether this Certificate shall be overdue or not, and the Trustee shall not be affected by any notice or knowledge to the contrary; and payment of the interest and principal and prepayment premium, if any, evidenced and represented by this Certificate shall be made only to such registered owner, which payments shall be valid and effectual to satisfy and discharge liability on this Certificate to the extent of the sum or sums so paid.

The Certificates each evidence and represent a proportionate interest in the 2008 Payments in an amount equal to the aggregate principal amount of Certificates originally executed and delivered by the Trustee pursuant to the Trust Agreement and enjoy the benefits of a security interest in the moneys held in the funds established pursuant to the Trust Agreement, subject to the provisions of the Trust Agreement permitting the disbursement thereof for or to the purposes and on the conditions and terms set forth therein. The obligation of the City to make the 2008 Payments is a special obligation of the City payable solely from the Gross Revenues of the Water Utility System as provided in the Contract, and does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction. The City may incur other obligations payable on a parity with the 2008 Payments in accordance with the Contract.

The Trustee has no obligation or liability to the Certificate owners for the payment of the interest or principal or the prepayment premiums, if any, evidenced and represented by the Certificates; but rather the Trustee's sole obligations are to administer, for the benefit of the City and the Certificate owners, the various funds established under the Trust Agreement.

No member, officer or employee of the Authority shall be individually or personally liable for the payment of the interest or principal or prepayment premiums, if any, evidenced and represented by the Certificates by reason of their delivery, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by applicable provisions of law or hereby.

The Trust Agreement prescribes the manner in which it may be discharged and after which the Certificates shall no longer be secured by or entitled to the benefits of the Trust Agreement.

IN WITNESS WHEREOF, this Certificate has been executed by the manual signature of an authorized signatory of the Trustee as of the date below.

EXECUTION DATE: May 30, 2008

THE BANK OF NEW YORK TRUST  
COMPANY, N.A.,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Taxpayer Identification Number: \_\_\_\_\_) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

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

Note: The signature to this Assignment must correspond with the name as written on the face of the Certificate in every particular, without alteration or enlargement or any change whatever.

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

Notice: Signature must be guaranteed by an eligible guarantor institution.

## STATEMENT OF INSURANCE

Assured Guaranty Corp. (“Assured Guaranty”), a Maryland-domiciled insurance company, has delivered its financial guaranty insurance policy (the “Policy”) with respect to the scheduled payments of principal of and interest on this Certificate to The Bank of New York Trust Company, N.A., as paying agent on behalf of the holders of the Certificates (the “Paying Agent”). Such Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from Assured Guaranty or the Paying Agent. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this Certificate acknowledges and consents to the subrogation rights of Assured Guaranty as more fully set forth in the Policy.

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE REGARDING MASTER CONTRACT, 1997 CONTRACT,  
2006 CONTRACT, 2008 CONTRACT AND 1997 TRUST AGREEMENT

I, Stephanie Lopez, hereby certify that I am the Secretary of the Commission of the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority organized under the laws of the State of California, and the City Clerk of the City of Modesto (the "City"), a charter city and municipal corporation duly organized under the Constitution and the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the Authority and the City.

I hereby further certify that there is attached hereto full, true and correct copies of the following documents:

1. Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), by and between the City and the Authority;
2. 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Contract"), by and between the City and the Authority;
3. 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006 (the "2006 Contract"), by and between the City and the Authority, and consented to by The Bank of New York Trust Company, N.A, as trustee (the "Trustee") and Financial Guaranty Insurance Company as 1997 Insurer;
4. 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Contract"), by and between the City and the Authority; and
5. 1997 Trust Agreement, dated November 1, 1997 (the "1997 Trust Agreement"), by and between the Authority and the Trustee.

I hereby further certify that, except as such Master Contract has been amended or modified by the 1997 Contract, the 2006 Contract and the 2008 Contract, being delivered on the date hereof, and that said Master Contract, 1997 Contract, 2006 Contract, 2008 Contract and the 1997 Trust Agreement have not otherwise been amended or modified since the date of their respective execution, and are now in full force and effect.

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Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By: Stephanie Lopez  
Stephanie Lopez  
Secretary

CITY OF MODESTO

By: Stephanie Lopez  
Stephanie Lopez  
City Clerk

EXECUTION COPY

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MASTER INSTALLMENT PURCHASE CONTRACT

by and between the

CITY OF MODESTO

and the

MODESTO PUBLIC FINANCING AUTHORITY

Executed and Entered Into as of November 1, 1997

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TABLE OF CONTENTS

	<u>Page</u>
PARTIES .....	1
RECITALS .....	1

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions .....	1
---------------------------------	---

ARTICLE II

ACQUISITION, CONSTRUCTION AND SALE OF PROJECTS; FUNDS

SECTION 2.01. Acquisition, Construction and Sale of Projects .....	17
SECTION 2.02. Improvement Fund .....	18
SECTION 2.03. Rate Stabilization Fund .....	18
SECTION 2.04. Pledge of Gross Revenues; Revenue Fund .....	18
SECTION 2.05. Investments .....	20

ARTICLE III

EXECUTION OF PARITY OBLIGATIONS AND OTHER OBLIGATIONS

SECTION 3.01. Conditions for the Execution of Parity Obligations .....	20
SECTION 3.02. Procedure for the Execution of Parity Obligations .....	21
SECTION 3.03. Other Obligations .....	22

ARTICLE IV

COVENANTS OF THE CITY

SECTION 4.01. Compliance with Contracts .....	22
SECTION 4.02. Use of Proceeds .....	23
SECTION 4.03. Against Encumbrances .....	23
SECTION 4.04. Sale or Other Disposition of Property .....	23
SECTION 4.05. Prompt Acquisition and Construction of the Projects .....	23
SECTION 4.06. Maintenance and Operation of the Water Utility System; Budgets .....	23
SECTION 4.07. Compliance with Contracts for Use of the Water Utility System .....	24

SECTION 4.08. Insurance	24
SECTION 4.09. Accounting Records; Financial Statements and Other Reports	24
SECTION 4.10. Protection of Security and Rights of the Authority	25
SECTION 4.11. Payment of Taxes and Compliance with Governmental Regulations	25
SECTION 4.12. Amount of Rates, Fees and Charges	25
SECTION 4.13. Collection of Rates, Fees and Charges	25
SECTION 4.14. Eminent Domain and Insurance Proceeds	25
SECTION 4.15. Further Assurances	25

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. Events of Default and Acceleration of Principal	26
SECTION 5.02. Application of Gross Revenues upon Acceleration	27
SECTION 5.03. Other Remedies	27
SECTION 5.04. Non-Waiver	27
SECTION 5.05. Remedies Not Exclusive	28

## ARTICLE VI

### DISCHARGE OF OBLIGATIONS

SECTION 6.01. Discharge of Obligations	28
--	----

## ARTICLE VII

### MISCELLANEOUS

SECTION 7.01. Liability of City Limited to Gross Revenues	29
SECTION 7.02. Benefits of Contracts Limited to Parties	29
SECTION 7.03. Successor Is Deemed Included in all References to Predecessor	29
SECTION 7.04. Waiver of Personal Liability	30
SECTION 7.05. Article and Section Headings, Gender and References	30
SECTION 7.06. Partial Invalidity	30
SECTION 7.07. Net Contract	30
SECTION 7.08. California Law	30
SECTION 7.09. Indemnification	30
SECTION 7.10. Funds	31
SECTION 7.11. Notices	31
SECTION 7.12. Effective Date	32
SECTION 7.13. Execution in Counterpart	32

## MASTER INSTALLMENT PURCHASE CONTRACT

This Master Installment Purchase Contract (the "Master Contract"), executed and entered into as of November 1, 1997, by and between the City of Modesto, California, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), and the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority");

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

WHEREAS, the City has determined that the financing and refinancing of the costs of acquisition and construction from time to time of various additions, betterments, extensions and improvements to its municipal water system is necessary and proper for City purposes under the terms of applicable law and is for the common benefit of the City as a whole; and

WHEREAS, the City has determined to enter into installment purchase contracts with the Authority for the financing and refinancing of the costs of acquisition and construction of such additions, betterments, extensions and improvements; and

WHEREAS, the City and the Authority have determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of the Master Contract do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into the Master Contract;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

### ARTICLE I

#### DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any opinion or report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

### Accountant's Report

"Accountant's Report" means a report signed by an Independent Certified Public Accountant.

### Adjusted Annual Debt Service

"Adjusted Annual Debt Service" means, for any Fiscal Year or any designated twelve (12) month period in question, the Annual Debt Service for such Fiscal Year or twelve (12) month period minus the sum of (i) for the purposes of Section 4.12 only, the earnings from the investments in the Parity Reserve Fund deposited in the Revenue Fund in such Fiscal Year or twelve (12) month period, and (ii) the amount of the Annual Debt Service paid from the proceeds of Parity Obligations or interest earned thereon (other than from Parity Reserve Fund), all as set forth in a Certificate of the City.

### Adjusted Annual Gross Revenues

"Adjusted Annual Gross Revenues" means, for any Fiscal Year or any designated twelve (12) month period in question, the Gross Revenues during such Fiscal Year or twelve (12) month period, plus deposits to the Revenue Fund from amounts on deposit in the Rate Stabilization Fund, but only as and to the extent specified in Section 2.03; minus, (y) amounts transferred from the Revenue Fund to the Rate Stabilization Fund in accordance with Section 2.03 and, (z) for the purposes of determining compliance with Section 4.12 only, earnings from the investments in the Parity Reserve Fund that are deposited in the Revenue Fund in such Fiscal Year or twelve (12) month period.

### Adjusted Annual Net Revenues

"Adjusted Annual Net Revenues" means, for any Fiscal Year or any designated twelve (12) month period in question, the Adjusted Annual Gross Revenues during such Fiscal Year or twelve (12) month period less the Maintenance and Operation Costs during such Fiscal Year or twelve (12) month period.

### Annual Debt Service

"Annual Debt Service" means, for any Fiscal Year or any designated twelve (12) month period in question, the required payments to be made with respect to all Outstanding Parity Obligations in such Fiscal Year or twelve (12) month period; provided, that for purposes of determining compliance with Section 4.12, the Reserve Fund Requirement and conditions for the execution of Parity Obligations:

(A) Generally. Except as otherwise provided by subparagraph (B) with respect to Variable Interest Rate Parity Obligations and by subparagraph (C) with respect to Parity Obligations with respect to which a Payment Agreement is in force, interest on any Parity Obligation shall be calculated based on the actual amount of interest that is payable under that Parity Obligation;

(B) Interest on Variable Interest Rate Parity Obligations. The amount of interest deemed to be payable on any Variable Interest Rate Parity Obligation shall be calculated on the assumption that the interest rate on that Parity Obligation would be equal to the rate (the "assumed RBI-based rate") that is ninety percent (90%) of the average RBI during the twelve (12) calendar month period immediately preceding the date in which the calculation is made;

(C) Interest on Parity Obligations with respect to which a Payment Agreement is in force. The amount of interest deemed to be payable on any Parity Obligations with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be based on the net economic effect on the City expected to be produced by the terms of such Parity Obligation and such Payment Agreement, including but not limited to the effects that (i) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a Variable Interest Rate instead shall be treated as an obligation bearing interest at a fixed interest rate, and (ii) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a fixed interest rate instead shall be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Parity Obligation with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Parity Obligation plus the Payment Agreement Payments minus the Payment Agreement Receipts, and for the purpose of calculating Payment Agreement Receipts and Payment Agreement Payments under such Payment Agreement, the following assumptions shall be made:

(1) Counterparty Obligated to Pay Actual Variable Interest Rate on Variable Interest Rate Parity Obligations. If the Payment Agreement obligates a Qualified Counterparty to make payments to the City based on the actual Variable Interest Rate on a Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation and obligates the City to make payments to the Qualified Counterparty based on a fixed rate, payments by the City to the Qualified Counterparty shall be assumed to be made at the fixed rate specified by the Payment Agreement and payments by the Qualified Counterparty to the City shall be assumed to be made at the actual Variable Interest Rate on such Parity Obligation, without regard to the occurrence of any event that, under the provisions of the Payment Agreement, would permit the Qualified Counterparty to make payments on any basis other than the actual Variable Interest Rate on such Parity Obligation, and such Parity Obligation shall set forth a debt service schedule based on that assumption;

(2) Variable Interest Rate Parity Obligations and Payment Agreements Having the Same Variable Interest Rate Component. If both a Payment Agreement and the related Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation, include a variable interest rate payment component that is required to be calculated on the same basis (including, without limitation, on the basis of the same variable interest rate index), it shall be assumed that the variable interest rate payment component payable pursuant to the Payment Agreement

is equal in amount to the variable interest rate component payable on such Parity Obligation;

(3) Variable Interest Rate Parity Obligations and Payment Agreements Having Different Variable Interest Rate Components. If a Payment Agreement obligates either the City or the Qualified Counterparty to make payments of a variable interest rate component on a basis that is different (including, without limitation, on a different variable interest rate index) from the basis that is required to be used to calculate interest on the Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation it shall be assumed:

(a) City Obligated to Make Payments Based on Variable Interest Rate Index. If payments by the City under the Payment Agreement are based on a variable interest rate index and payments by the Qualified Counterparty are based on a fixed interest rate, payments by the City to the Qualified Counterparty will be based upon an interest rate equal to the assumed RBI-based rate, and payments by the Qualified Counterparty to the City will be based on the fixed rate specified by the Payment Agreement; and

(b) City Obligated to Make Payments Based on Fixed Interest Rate. If payments by the City under the Payment Agreement are based on a fixed interest rate and payments by the Qualified Counterparty are based on a variable interest rate index, payments by the City to the Qualified Counterparty will be based on an interest rate equal to the rate (the "assumed fixed payor rate") that is one hundred and five percent (105%) of the fixed interest rate specified by the Payment Agreement to be paid by the City, and payments by the Qualified Counterparty to the City will be based on a rate equal to the actual variable interest rate on the Variable Interest Rate Parity Obligation.

(4) Certain Payment Agreements May be Disregarded. Notwithstanding the provisions of subparagraphs (C)(1), (2) and (3) of this definition, the City shall not be required to (but may at its option) take into account as set forth in subparagraph (C) of this definition (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(D) Debt Service on Parity Payment Agreements. No interest shall be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on a related Parity Obligation under subparagraph (C) of this definition; provided, that for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any Parity Obligation because the Parity Payment Agreement is not then related to any Parity Obligation, interest on that Parity Payment Agreement shall be taken into account by assuming:

(1) City Obligated to Make Payments Based on Fixed Interest Rate. If the City is obligated to make Payment Agreement Payments based on a fixed interest rate and the

Qualified Counterparty is obligated to make payments based on a variable interest rate index, payments by the City will be based on the assumed fixed payor rate, and payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the quarter preceding the quarter in which the calculation is made; and

(2) City Obligated to Make Payments Based on Variable Interest Rate Index. If the City is obligated to make Payment Agreement Payments based on a variable interest rate index and the Qualified Counterparty is obligated to make payments based on a fixed interest rate, payments by the City will be based on an interest rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the quarter preceding the quarter in which the calculation is made, and the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement; and

(3) Certain Payment Agreements May be Disregarded. Notwithstanding the provisions of subparagraphs (D)(1) and (2) of this definition, the City shall not be required to (but may at its option) take into account (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(E) Balloon Parity Obligations. For purposes of calculating Annual Debt Service on any Balloon Parity Obligations, it shall be assumed that the principal of those Balloon Parity Obligations, together with interest thereon at a rate equal to the assumed RBI-based rate, will be amortized in equal annual installments over a term of thirty (30) years from the date of issuance. For purposes of this subsection (E), the term Balloon Parity Obligations shall include the City's payments under the Treatment and Delivery Agreement with respect to the Series 1992B Water Bonds maturing in 2002, which obligations are assumed to be amortized in equal annual installments over a term of ten (10) years.

#### Authority

"Authority", means the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California.

#### Average Annual Debt Service

"Average Annual Debt Service" means the sum of the Annual Debt Service for all Fiscal Years during the period commencing with the Fiscal Year in which such calculation is made (or if appropriate, the first full Fiscal Year following the issuance of Parity Obligations) and terminating with the last Fiscal Year in which payments are due under Outstanding Parity Obligations, divided by the number of such Fiscal Years.

Balloon Parity Obligation

"Balloon Parity Obligation" means any Parity Obligation described as such in such Parity Obligation.

Business Day

"Business Day" means any day (other than a Saturday or a Sunday) on which banks in New York, New York, are open for business and on which the Trustee is open for business at its corporate trust office in San Francisco, California.

Certificate of the City

"Certificate of the City" means an instrument in writing signed by the City Manager, the Interim Director of Finance/Treasurer, or any other officer of the City duly authorized by the City Council for that purpose.

CDWR Loan

"CDWR Loan" means the loan to the City from the State of California Department of Water Resources in the principal amount of \$3,895,000, which obligation is payable from Gross Revenues on a parity with the Payments hereunder.

City

"City" means the City of Modesto, a charter city and municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State of California.

Code

"Code" means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code shall be deemed to be a reference to any successor to any such section.

Connection Fees

"Connection Fees" means all fees and charges payable to the City for the privilege of connecting to the Water Utility System.

Consultant's Report

"Consultant's Report" means a report signed by an Independent Consultant.

Contracts

"Contracts" means the Master Contract and all Supplemental Contracts.

Event of Default

"Event of Default" means an event described in Section 5.01.

Federal Securities

"Federal Securities" means United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations for which the full faith and credit of the United States of America are pledged for the payment of interest and principal, or securities evidencing ownership interests in such obligations or in specified portions of the interest on or principal of such obligations.

Interim Director of Finance/Treasurer

"Interim Director of Finance/Treasurer" means the Interim Director of Finance/Treasurer of the City.

Fiscal Year

"Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the City Council of the City as the Fiscal Year of the City.

Generally Accepted Accounting Principles

"Generally Accepted Accounting Principles" means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures selected by the City, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

Gross Revenues

"Gross Revenues" means all gross income and revenue received or receivable by the City from the ownership or operation of the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges (including all Connection Fees, contributions in aid of construction, and charges and standby water availability charges legally available for debt service) received by the City for the Water Service and the other services and facilities of the Water Utility System and all net proceeds of insurance covering business interruption loss relating to the Water Utility System and all other income and revenue howsoever derived by the City from the ownership or operation of the Water Utility

System or arising from the Water Utility System, and including all Payment Agreement Receipts, and including all income from the deposit or investment of any money in the Revenue Fund or, to the extent deposited in the Revenue Fund, in the Parity Reserve Fund, but excluding in all cases any proceeds of taxes and any refundable deposits made to establish credit and advances.

#### Improvement Fund

"Improvement Fund" means the City of Modesto Water Utility System Improvement Fund established pursuant to Section 2.02.

#### Independent Certified Public Accountant

"Independent Certified Public Accountant" means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State of California, appointed and paid by the City, and who, or each of whom --

- (1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the City;
- (2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and
- (3) is not connected with the City as a director, officer or employee of the City, but who may be regularly retained to audit the accounting records of and make reports thereon to the City.

#### Independent Consultant

"Independent Consultant" means any registered engineer or firm of registered engineers of national reputation generally recognized to be well qualified in engineering matters relating to water systems, or any other financial consultant or firm of financial consultants generally recognized to be well qualified in matters relating to water systems, appointed and paid by the City, and who or each of whom --

- (1) is in fact independent and not under the domination of the City;
- (2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and
- (3) is not connected with the City as a director, officer or employee of the City, but may be regularly retained to make reports to the City.

#### Maintenance and Operation Costs

"Maintenance and Operation Costs" means the costs paid or incurred by the City for maintaining and operating the Water Utility System, determined in accordance with Generally

Accepted Accounting Principles, including, but not limited to, (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water Utility System in good repair and working order, (b) all costs of water purchased by the City, including all costs under the Treatment and Delivery Agreement which do not constitute debt service thereunder, (c) all administrative costs of the City that are charged directly or apportioned to the operation of the Water Utility System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, payments into pension funds, and (d) all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms hereof or of any resolution authorizing the execution of any Parity Obligation or of such Parity Obligation, such as compensation, reimbursement and indemnification of the trustee or remarketing agent for any such Parity Obligation, letter of credit fees for any such Parity Obligations and fees and expenses of Independent Certified Public Accountants and Independent Consultants; but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, premiums and discounts, (2) interest expense, (3) amounts paid from funds of the City other than Gross Revenues, and (4) in-lieu transfers or recoupment of contributed capital to the City's general fund.

#### Master Contract

"Master Contract" means this Master Installment Purchase Contract executed and entered into as of November 1, 1997, by and between the City and the Authority, as the same may be amended or supplemented from time to time.

#### Maximum Annual Debt Service

"Maximum Annual Debt Service" means the greatest Annual Debt Service payable on Parity Obligations in any Fiscal Year during the period commencing with the Fiscal Year in which the determination is being made and terminating with the last Fiscal Year in which payments are due under Outstanding Parity Obligations.

#### Maximum Annual Payments

"Maximum Annual Payments" means the greatest total Payments payable in any Fiscal Year during the period commencing with the then current Fiscal Year and terminating with the last Fiscal Year in which payments are due under Outstanding Parity Obligations.

#### Moody's

"Moody's" means Moody's Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then "Moody's" shall be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

### Net Proceeds

"Net Proceeds" means, when used with respect to any condemnation award or with respect to any insurance proceeds, the amount of such condemnation award or such insurance proceeds remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such award or such proceeds.

### 1997 Trust Agreement

"1997 Trust Agreement" means that certain Trust Agreement, dated as of November 1, 1997, between the Authority and the Trustee.

### Opinion of Counsel

"Opinion of Counsel" means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, retained by the City.

### Outstanding

"Outstanding," when used as of any particular time with reference to Parity Obligations, means all Parity Obligations which have not been paid or otherwise satisfied as provided in Article VI.

### Parity Bank Agreements

"Parity Bank Agreements" means an agreement with a bank or other financial institution relating to an irrevocable letter of credit, guarantee or other credit enhancement device providing liquidity or irrevocable credit or security for the payment of Parity Obligations.

### Parity Obligation Payment Fund

"Parity Obligation Payment Fund" means the City of Modesto Water Utility System Parity Obligation Payment Fund established pursuant to Section 2.04.

### Parity Obligations

"Parity Obligations" means the payment obligations under the Treatment and Delivery Agreement which constitute debt service, the payment obligations under the CDWR Loan Agreement, and all Supplemental Contracts and all other obligations hereafter incurred by the City the payment of which constitutes a charge and lien on the Gross Revenues equal to and on a parity with the charge and lien upon the Gross Revenues for the payment of the Payments, other than (i) Parity Payment Agreements and (ii) Parity Bank Agreements; provided that no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City.

Parity Payment Agreement

"Parity Payment Agreement" means a Payment Agreement which is a Parity Obligation.

Parity Reserve Fund

"Parity Reserve Fund" means the City of Modesto Water Utility System Parity Reserve Fund established pursuant to Section 3.04 of the 1997 Trust Agreement.

Payment Agreement

"Payment Agreement" means a written agreement for the purpose of managing or reducing the City's exposure to fluctuations in interest rates or for any other interest rate, investment, cash flow, asset or liability managing purposes, entered into either on a current or forward basis by the City and a Qualified Counterparty in connection with, or incidental to, the entering into of any Parity Obligation, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, cash flows, options on such payments, or any combination thereof or any similar device.

Payment Agreement Payments

"Payment Agreement Payments" means the amounts required to be paid periodically by the City to the Qualified Counterparty pursuant to a Payment Agreement.

Payment Agreement Receipts

"Payment Agreement Receipts" means the amounts required to be paid periodically by the Qualified Counterparty to the City pursuant to a Payment Agreement.

Payment Date

"Payment Date" means any date on which Payments are scheduled to be paid by the City under and pursuant to any Supplemental Contract.

Payments

"Payments" means the installment payments scheduled to be paid by the City under and pursuant to the Contracts.

Permitted Investments

"Permitted Investments" means any of the following obligations if and to the extent that they are permissible investments of funds of the City as stated in its current investment policy (copies of which the City shall provide on a current basis to the Trustee) and to the extent then permitted by law:

(1) Federal Securities;

(2) Obligations issued by the Resolution Funding Corporation and the Student Loan Marketing Association, or obligations, participations, or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Government National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal);

(3) Bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or any of its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System and which are drawn on any bank the short-term obligations of which are rated in the highest letter and numerical rating category as provided by Moody's and by S&P; provided, that purchases of eligible bankers acceptances may not exceed two hundred seventy (270) days' maturity;

(4) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating category as provided by Moody's and by S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars (\$500,000,000) and that have an "A" or higher rating for the issuer's unsecured debentures, other than commercial paper, as provided by Moody's and by S&P; provided, that purchases of eligible commercial paper may not exceed one hundred eighty (180) days' maturity nor represent more than ten percent (10%) of the outstanding commercial paper of an issuing corporation;

(5) Non-negotiable certificates of deposit issued by a state or national bank (including the Trustee or any of its affiliates) that have maturities of not more than three hundred sixty-five (365) days and that are fully insured by the Federal Deposit Insurance Corporation or the short-term obligations of which state or national bank are rated no lower than "A1" by Moody's and "A+" by S&P;

(6) Any repurchase agreement of any securities enumerated in subdivisions (1) and (2) with any state or national bank (including the Trustee or any of its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than "A1" by Moody's and "A+" by S&P or whose commercial paper is rated no lower than "P-1" by Moody's and no lower than "A-1" by S&P; (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; provided, that (a) the term of such repurchase agreement is less than one (1) year or due on demand; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the market value of the collateral (as determined at least once in every fourteen (14) days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody's and to S&P; (d) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; and (e) the repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with retail customers which falls under the jurisdiction of the Securities Investors Protection

Corporation; provided, that: (a) the market value of the collateral (as determined at least once in every fourteen (14) days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody's and to S&P; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the Trustee has a perfected first priority security interest in the collateral; (d) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (e) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;

(7) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State of California or any local agencies therein which are rated in the highest short-term rating category or within one of the three highest long-term rating categories by Moody's and by S&P (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);

(8) For amounts less than one hundred thousand dollars (\$100,000), interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof, and of which an aggregate total of one hundred thousand dollars (\$100,000) is not exceeded in any one financial institution;

(9) Investments in units of a money-market fund portfolio that is rated in the highest letter and numerical rating category by Moody's and by S&P (including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services) and that is composed of direct obligations of, or on obligations guaranteed by, the full faith and credit of the United States of America or repurchase agreements collateralized by such obligations;

(10) a guaranteed investment contract with a financial institution or insurance company (or guaranteed by a financial institution or insurance company) which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated within the two highest rating categories of any Rating Agency;

(11) Obligations approved in writing by Moody's and by S&P;

(12) The Local Agency Investment Fund or similar pooled fund operated by or on behalf of the State of California and which is authorized to accept investments by or on behalf of the City of the moneys held by the Trustee in any of the accounts or funds established pursuant hereto; and

(13) The California Asset Management Program (CAMP).

Project

"Project" means any additions, betterments, extensions or improvements to the Water Utility System designated by the City Council of the City as a Project, the acquisition and construction of which (together with the incidental costs and expenses related thereto) is to be financed or refinanced by the proceeds of any Parity Obligation as provided therein.

Qualified Counterparty

"Qualified Counterparty" means a party (other than the City) who is the other party to a Payment Agreement and (1) (a) whose senior debt obligations are rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating any Parity Obligations (without regard to any gradations within a rating category), or (b) whose obligations under the Payment Agreement are guaranteed for the entire term of the Payment Agreement by a bond insurer or other institution which has been, or whose debt service obligations have been, assigned a credit rating in one of the three highest rating categories of each of the Rating Agencies then rating any Parity Obligations, and (2) who is otherwise qualified to act as the other party to a Payment Agreement with the City under any applicable laws.

Rate Stabilization Fund

"Rate Stabilization Fund" means the fund by that name established pursuant to Section 2.03.

Rating Agencies

"Rating Agencies" means Moody's and S&P, and their respective successors or assigns, or any other nationally recognized securities rating agency or agencies rating any Parity Obligations at the Request of the City.

RBI

"RBI" means the Bond Buyer Revenue Bond Index or comparable index of long-term municipal obligations chosen by the City, or, if no comparable index can be obtained, eighty percent (80%) of the interest rate on actively traded thirty (30) year United States Treasury obligations.

Request of the City

"Request of the City" means an instrument in writing signed by the City Manger of the City, the Interim Director of Finance/Treasurer, or any other officer of the City duly authorized by the City Council for that purpose.

### Reserve Fund Requirement

"Reserve Fund Requirement" means, as of any date of determination and excluding any Parity Obligations which are not Supplemental Contracts and the debt service thereon, the least of (a) ten percent (10%) of the initial offering price to the public of the Parity Obligations as determined under the Code, or (b) the Maximum Annual Debt Service, or (c) one hundred twenty-five percent (125%) of the Average Annual Debt Service, all as computed and determined by the City and specified in writing to the Trustee; provided, that such requirement (or any portion thereof) may be provided by one or more policies of municipal bond insurance or surety bonds issued by a municipal bond insurer or by a letter of credit issued by a bank or other institution if the obligations insured by such insurer or issued by such bank or other institution, as the case may be, have ratings at the time of issuance of such policy or surety bond or letter of credit equal to "Aa" or higher assigned by Moody's (if Moody's is then rating any of the Parity Obligations) and "AA" or higher assigned by S&P (if S&P is then rating any of the Parity Obligations) and that maintain at all times ratings at least equal to the lowest ratings (without giving effect to municipal bond insurance or other credit enhancement) on any of the Parity Obligations provided by Moody's (if Moody's is then rating any of the Parity Obligations) and by S&P (if S&P is then rating any of the Parity Obligations). If at any time, obligations insured by any such municipal bond insurer issuing a policy of municipal bond insurance or surety bond or a bank or other institution issuing a letter of credit as permitted by this definition shall no longer maintain such ratings as required in accordance with the immediately preceding sentence, the City shall provide or cause to be provided cash or a substitute municipal bond insurance policy or surety bond or a letter of credit meeting such requirements.

### Revenue Fund

"Revenue Fund" means the City of Modesto Water Utility System Revenue Fund established pursuant to Section 2.04.

### S&P

"S&P" means Standard & Poor's Ratings Services, a division of the McGraw Hill Companies, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors or assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then "S&P" shall be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

### State

"State" means the State of California.

### Subordinate Obligations

"Subordinate Obligations" means obligations of the City authorized and executed by the City under applicable law, the payments under and pursuant to which are payable from Gross

Revenues, subject and subordinate to payments under and pursuant to Parity Obligations and are payable from any fund established for the purpose of paying debt service on such Subordinate Obligations.

#### Supplemental Contracts

"Supplemental Contracts" means all installment purchase contracts of the City supplemental to the Master Contract and authorized and executed by the City under and pursuant to the Master Contract and applicable law, the installment payments under and pursuant to which are payable from Gross Revenues.

#### Treatment and Delivery Agreement

The term "Treatment and Delivery Agreement" means the Treatment and Delivery Agreement, by and among the City of Modesto, the Del Este Water Company, and the Modesto Irrigation District, which obligation is payable from the Gross Revenues on a parity with the Payments hereunder.

#### Trust Agreements

"Trust Agreements" means all trust agreements or indentures which are executed and delivered in connection with Parity Obligations, including the 1997 Trust Agreement.

#### Trustee

"Trustee" means State Street Bank and Trust Company of California, N.A., a national banking association duly organized and existing under the laws of the United States of America, or any association or corporation which may at any time be substituted in its place, as provided in the Trust Agreements.

#### Variable Interest Rate

"Variable Interest Rate" means any variable interest rate or rates to be paid under any Parity Obligations, the method of computing which variable interest rate shall be as specified in the applicable Parity Obligation, which Parity Obligation shall also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate shall remain in effect, and (ii) the time or times based upon which any change in such variable interest rate shall become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

#### Variable Interest Rate Parity Obligations

"Variable Interest Rate Parity Obligations" means, for any period of time, any Parity Obligations that bear a Variable Interest Rate during such period, except that Parity Obligations shall not be treated as Variable Interest Rate Parity Obligations if the net economic effect of

interest rates on particular Payments or Parity Obligations and interest rates on other Payments of the same Supplemental Contract or Parity Obligations, as set forth in such Supplemental Contract or Parity Obligations, or the net economic effect of a Payment Agreement with respect to particular Parity Obligations, in either case is to produce obligations that bear interest at a fixed interest rate, and Supplemental Contracts with respect to which a Payment Agreement is in force shall be treated as Variable Interest Rate Parity Obligations if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate, all in accordance with the definition of "Annual Debt Service" set forth in this Section 1.01.

#### Water Service

"Water Service" means the service furnished, made available or provided by the Water Utility System.

#### Water Utility System

"Water Utility System" means (i) all property rights, contractual rights and facilities of the City relating to water, including all facilities, properties, structures or works for the treatment, conservation, storage, transmission or distribution of water now owned by the City; and (ii) all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

## ARTICLE II

### ACQUISITION, CONSTRUCTION AND SALE OF PROJECTS; FUNDS

SECTION 2.01. Acquisition, Construction and Sale of Projects. The Authority hereby agrees to finance and refinance the costs of the acquisition and construction of the Projects for and to sell the Projects to the City, and in order to implement this provision, the Authority hereby appoints the City as its agent for the purpose of such acquisition and construction, and the City hereby agrees to enter into such construction contracts and purchase orders as may be necessary, as agent for the Authority, to provide for the complete acquisition and construction of the Projects.

The City hereby agrees that as such agent it will cause the acquisition and construction of the Projects to be diligently completed after the deposit of funds in the Improvement Fund for such purpose pursuant to Section 2.02, and that it will use its best efforts to cause the acquisition and construction of the Projects to be completed in a timely fashion, unforeseeable delays beyond the reasonable control of the City only excepted, and the Authority hereby agrees to and hereby sells the Projects to the City. Notwithstanding the foregoing, it is hereby expressly understood and agreed that the Authority shall be under no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the City for the acquisition and construction of the Projects and that all such costs and expenses shall be paid by the City, regardless of whether the funds deposited in the Improvement Fund are sufficient to cover all such costs.

SECTION 2.02. Improvement Fund. There is hereby established the City of Modesto Water Utility System Improvement Fund, which fund the City hereby agrees to maintain until the completion of the acquisition and construction of the Projects to be funded from the separate accounts to be established in such fund as provided in the Supplemental Contracts. All money in the Improvement Fund shall be used and withdrawn by the City to pay the costs of the acquisition and construction of the Projects (or to reimburse the City for such costs) upon receipt of a Request of the City. The City shall maintain on file a record of all expenditures from the Improvement Fund, including appropriate Requests of the City evidencing the person to whom payment is to be made, the amount of money to be paid, the purpose for which the obligation to be paid was incurred and that such payment was a proper charge against the Improvement Fund and has not been the subject of a previous Request of the City. After the completion of the acquisition and construction of each Project to be funded from the Improvement Fund, any remaining balance in the Improvement Fund allocable to such Project shall be transferred by the City to the Revenue Fund.

SECTION 2.03. Rate Stabilization Fund. There is hereby established a City of Modesto Water Utility System Rate Stabilization Fund, which fund the City hereby agrees to maintain so long as any Parity Obligations remain unpaid. The City shall deposit in the Rate Stabilization Fund on the date of delivery of the Certificates of Participation authorized to be delivered under the 1997 Trust Agreement, the sum of \$3,000,000. The City may deposit in the Rate Stabilization Fund any Gross Revenues, after providing for the payment of Parity Obligations and Maintenance and Operation Costs, and any other money received and available to be used therefor, provided that deposits from such Gross Revenues for each Fiscal Year may be made until (but not after) 180 days after the end of such Fiscal Year. The City may withdraw amounts from the Rate Stabilization Fund only for inclusion in Adjusted Annual Net Revenues, such withdrawal to be made until (but not after) 180 days after the end of such Fiscal Year. All interest or other earnings upon deposits in the Rate Stabilization Fund shall be accounted for as Gross Revenues. Notwithstanding the foregoing, no Gross Revenues shall be deposited in the Rate Stabilization Fund to the extent that such amount was included by the City in Adjusted Annual Net Revenues for purposes of determining compliance with Section 3.01 or Section 4.12 and deduction of the amounts to be deposited in the Rate Stabilization Fund would have caused noncompliance with such section.

SECTION 2.04. Pledge of Gross Revenues; Revenue Fund. (a) All Gross Revenues of the Water Utility System are hereby irrevocably pledged to the payment of the Payments, all payments required to be made by the City under all other Parity Obligations and the Maintenance and Operation Costs as provided herein, and the Gross Revenues of the Water Utility System shall not be used for any other purpose while any of the Payments remain unpaid; provided, however, that out of Gross Revenues there may be apportioned such sums for such purposes as are expressly permitted hereby. This pledge shall constitute a first pledge of and charge and lien upon the Gross Revenues of the Water Utility System for the payment of amounts due with respect to the Contracts, all other Parity Obligations and Maintenance and Operation Costs in accordance with the terms hereof.

(b) In order to carry out and effectuate the obligation of the City contained herein and in all Supplemental Contracts to pay the Payments, the City agrees and covenants that all Gross

Revenues received by it shall be deposited when and as received in the City of Modesto Water Utility System Revenue Fund, which fund is hereby established and which fund the City agrees and covenants to maintain separate and apart from other moneys of the City (subject to Section 2.05 hereof) so long as any Parity Obligations remain unpaid, and all money on deposit in the Revenue Fund shall be applied and used as follows. The City shall pay at the following times in the following order of priority:

(1) Maintenance and Operation Costs and Parity Obligation Payment Fund Payments. The City shall, from the money in the Revenue Fund, without preference or priority, and the event of any insufficiency of such moneys, ratably, without preference or priority, (i) pay charges for Maintenance and Operation Costs of the Water Utility System (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not immediately required) as such charges are due and payable, and (ii) deposit in the City of Modesto Water Utility System Parity Obligation Payment Fund, which fund is hereby established and which fund the City agrees and covenants to maintain separate and apart from other moneys of the City (subject to Section 2.05 hereof) so long as any Parity Obligations remain unpaid, on the last Business Day of each month (1) an amount equal to the interest which has accrued or will accrue under all Parity Obligations during the next succeeding month calculated as if such interest has accrued or will accrue on a daily basis during such period, and (2) an amount equal to the principal which has accrued or will accrue (as a result of maturity, mandatory sinking fund payments or mandatory prepayment or otherwise) under all Parity Obligations during the next succeeding month calculated as if such principal has accrued or will accrue on a daily basis during such period, plus (3) the net payments due or which will be due on all Parity Payment Agreements calculated as if such net payments accrued or will accrue on a daily basis during such period, except that no such deposit need be made if the City then holds money in the Parity Obligation Payment Fund at least equal to the amount of interest and principal due or becoming due and payable under all Parity Obligations on the next succeeding date on which interest or principal becomes due and payable under any Parity Obligation plus the net payments due on all Parity Payment Agreements on such next succeeding due date therefor. Moneys on deposit in the Parity Obligation Payment Fund shall be transferred by the City to make and satisfy the payments due on the next applicable date on which interest or principal becomes due and payable under any Parity Obligation or any net payment becomes due and payable by the City under any Parity Payment Agreement at least one Business Day prior to such next applicable due date.

(2) Parity Reserve Fund Deposits. On or before the last Business Day of each month, the City shall, from the remaining money on deposit in the Revenue Fund after deposits and transfers pursuant to paragraph (1) above, transfer to the Trustee for deposit in the Parity Reserve Fund that sum, if any, necessary to restore the Parity Reserve Fund to an amount equal to the Reserve Fund Requirement. The City shall also, from such remaining moneys in the Revenue Fund, transfer or cause to be transferred to the applicable reserve fund or account for any Parity Obligations for which a separate reserve has been funded pursuant to Section 3.02(5)(b), without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of

any insufficiency of such moneys ratably without any discrimination or preference, the sum or sums, if any, equal to the amount required to be deposited therein pursuant to such Parity Obligations.

After making the foregoing deposits and transfers hereinabove required to be made, the City may apply any remaining money in the Revenue Fund for any lawful purpose of the City, including for the payment of any Subordinate Obligations in accordance with the instruments authorizing such Subordinate Obligations.

SECTION 2.05. Investments. Any moneys held in the Revenue Fund or the Parity Obligation Payment Fund shall be invested in Permitted Investments which will, as nearly as practicable, mature on or before the dates when such moneys are anticipated to be needed for disbursement hereunder. Any moneys held in the Rate Stabilization Fund shall be invested in Permitted Investments which shall mature at such dates as the City shall determine but prior to the final date on which payments are due under any Outstanding Parity Obligation. All investment earnings from moneys or deposits in the Revenue Fund, the Parity Obligation Payment Fund and the Rate Stabilization Fund shall be retained in such fund.

The City may commingle any of the funds or accounts (except for funds held in any rebate fund, which shall be held separately) established pursuant hereto into a separate fund or funds for investment purposes only; provided however, that all funds or accounts held by the City hereunder shall be accounted for separately notwithstanding such commingling. For the purpose of determining the amount in any such fund or account, all Permitted Investments credited to such fund or account shall, except as otherwise provided herein, be valued at the lower of cost or market value (inclusive of all interest accrued but not paid).

### ARTICLE III

#### EXECUTION OF PARITY OBLIGATIONS AND OTHER OBLIGATIONS

SECTION 3.01. Conditions for the Execution of Parity Obligations. The City may at any time execute any Parity Obligations the payments under and pursuant to which are payable from the Gross Revenues on a parity with the Payments due under all Supplemental Contracts; provided there shall be on file with the Trustee either:

(1) A Certificate of the City demonstrating that during any twelve (12) consecutive calendar months out of the immediately preceding eighteen (18) calendar month period, the Adjusted Annual Net Revenues were at least equal to one hundred twenty-five percent (125%) of the Maximum Annual Debt Service for all existing Parity Obligations plus the Parity Obligations proposed to be executed; provided, that for the purpose of providing this Certificate, the City may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from each new connection to the Water Utility System that was

made prior to the execution of such Parity Obligations but which, during all or any part of said twelve (12) month period, was not in existence, in an amount equal to the estimated additional Gross Revenues that would have been derived from each such connection if it had been made prior to the beginning of said twelve (12) month period, and

(ii) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges fixed and prescribed for Water Service which became effective prior to the execution of such Parity Obligations but which, during all or any part of said twelve (12) month period, was not in effect, in an amount equal to the estimated additional Gross Revenues that would have been derived from such increase in rates, fees and charges if it had been in effect prior to the beginning of said twelve (12) month period; or

(2) A Consultant's Report showing that the Adjusted Annual Net Revenues for the Fiscal Year next following the end of the period during which interest on the Parity Obligations proposed to be executed is to be capitalized or, if no interest is capitalized, the Fiscal Year in which the Parity Obligations proposed to be executed are executed, will be at least equal one hundred twenty-five percent (125%) of the Maximum Annual Debt Service; provided, that for the purpose of providing such Consultant's Report, the Independent Consultant may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges prescribed for Water Service in effect and being charged, or rates, fees and charges for Water Service that are expected to be charged in accordance with a program of specific rates, fees, charges, rate levels or increases in overall Gross Revenues approved by a resolution of the City Council; and

(ii) An allowance for Gross Revenues from customers of the Water Utility System anticipated to be served by the facilities or improvements financed in substantial part by the Parity Obligations proposed to be executed together with any additional Parity Obligations expected to be executed prior to the Fiscal Year of determination.

Notwithstanding the foregoing provisions, there shall be no limitations on the ability of the City to execute any Parity Obligation at any time to refund any Outstanding Parity Obligation.

**SECTION 3.02. Procedure for the Execution of Parity Obligations.** Before the execution of any Parity Obligation, there shall first be delivered to the City and the Trustee, which shall serve as trustee in respect to each and every Parity Obligation, the following documents or money or securities:

(1) An executed counterpart of the Supplemental Contract or other Parity Obligation;

(2) A Request of the City as to the delivery of such Parity Obligation;

(3) An Opinion of Counsel substantially to the effect that (a) the City has the right and power under applicable law to execute and deliver the Parity Obligation, and the Parity Obligation has been duly and lawfully executed and delivered by the City, is in full force and effect and is a valid and binding special obligation of the City and enforceable in accordance with its terms (except as enforcement may be limited by bankruptcy, moratorium, insolvency, reorganization, fraudulent conveyance and other similar laws relating to the enforcement of creditors' rights), and (b) such Parity Obligation has been duly and validly authorized and issued in accordance herewith;

(4) A Certificate of the City or an Engineer's Report as required by Section 3.01;

(5) Either(a) if such Parity Obligation is a Supplemental Contract, an amount of money to be deposited in the Parity Reserve Fund so as to increase the amount on deposit therein to the Reserve Fund Requirement, or (b) if such Parity Obligation is other than a Supplemental Contract, a certificate of the City certifying that a separate reserve has been established for such Parity Obligation and that provision has been made to fund such reserve or that no reserve is required by the terms of such Parity Obligation;

(6) Such further documents, money and securities as are required by the provisions hereof and the resolution, indenture, contract or other obligation providing for the issuance of such Parity Obligation; and

(7) With respect to any Parity Obligation issued in connection with a Payment Agreement, evidence that the incurrence of such Parity Obligation and Payment Agreement will not in and of itself cause a downgrade of the ratings issued by the Rating Agencies then rating Parity Obligations.

SECTION 3.03. Other Obligations. The City may incur Subordinate Obligations without meeting any of the tests set forth in Section 3.01.

## ARTICLE IV

### COVENANTS OF THE CITY

SECTION 4.01. Compliance with Contracts. The City will punctually pay the Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate the Contracts or fail to make any Payment required by a Contract for any cause including, without limiting the generality of the foregoing, any acts or

circumstances that may constitute failure of consideration, destruction of or damage to the Projects or the Water Utility System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Authority to observe or perform any agreement, condition, covenant or term contained in the Contracts required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected with any Contract or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Authority or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

SECTION 4.02. Use of Proceeds. The Authority and the City agree that the proceeds of the Contracts will be used by the City, as agent for the Authority, to pay the costs of financing or refinancing the acquisition and construction of the Projects and to pay the incidental costs and expenses related thereto as provided herein and therein.

SECTION 4.03. Against Encumbrances. The City will pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished, or alleged to have been furnished, to or for the City in, upon, about or relating to the Water Utility System and will keep the Water Utility System free of any and all liens against any portion of the Water Utility System. In the event any such lien attaches to or is filed against any portion of the Water Utility System, the City will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so if contesting such lien will not materially impair operation of the Water Utility System. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City will forthwith pay or cause to be paid and discharged such judgment. The City will, to the maximum extent permitted by law, indemnify and hold the Authority harmless from, and defend it against, any claim, demand, loss, damage, liability or expense (including attorneys' fees) as a result of any such lien or claim of lien against any portion of the Water Utility System.

SECTION 4.04. Sale or Other Disposition of Property. The City will not sell, transfer or otherwise dispose of any of the works, plant, properties, facilities or other part of the Water Utility System or any real or personal property comprising a part of the Water Utility System if such sale, transfer or disposition would cause the City to be unable to meet the requirements of Section 4.12.

SECTION 4.05. Prompt Acquisition and Construction of the Projects. The City will take all necessary and appropriate steps to acquire and construct the Projects, with all practicable dispatch and in an expeditious manner and in conformity with law so as to complete the same in a timely fashion.

SECTION 4.06. Maintenance and Operation of the Water Utility System; Budgets. The City will maintain and preserve the Water Utility System in good repair and working order at all

times and will operate the Water Utility System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable. The City will adopt and file with the Authority, not later than October 1 of each year, a budget approved by the City Council setting forth the estimated Maintenance and Operation Costs for the then current Fiscal Year and will take such action as may be necessary to include all Payments required to be made hereunder in its annual budget; provided, that any such budget may be amended at any time during any Fiscal Year and such amended budget shall be filed by the City with the Authority.

SECTION 4.07. Compliance with Contracts for Use of the Water Utility System. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Water Utility System and all other contracts affecting or involving the Water Utility System to the extent that the City is a party thereto.

SECTION 4.08. Insurance. The City will procure and maintain such insurance relating to the Water Utility System which it shall deem advisable or necessary to protect its interests and the interests of the Authority, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with water systems similar to the Water Utility System; provided, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner as is, in the opinion of an accredited actuary, actuarially sound. All policies of insurance required to be maintained herein shall provide that the Authority shall be given thirty (30) days, written notice of any intended cancellation thereof or reduction of coverage provided thereby.

SECTION 4.09. Accounting Records; Financial Statements and Other Reports.

(a) The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Water Utility System, which records shall be available for inspection by the Authority at reasonable hours and under reasonable conditions.

(b) The City will prepare and file with the Authority annually within one hundred eighty (180) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 1997) --

(1) financial statements of the City for such Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon and a special report prepared by the Independent Certified Public Accountant who examined such financial statements stating that nothing came to its attention in connection with such examination that caused it to believe that the City was not in compliance with any of the agreements or covenants contained herein; and

(2) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the City with respect to the Water Utility System as of the close of such Fiscal Year, including the names of the insurers which have issued the policies and the amounts thereof and the property or risks covered thereby.

SECTION 4.10. Protection of Security and Rights of the Authority. The City will preserve and protect the security of the Payments under the Contracts and the rights of the Authority to the Payments under the Contracts and will warrant and defend such rights against all claims and demands of all persons.

SECTION 4.11. Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Water Utility System or any part thereof when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water Utility System or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith and contesting such validity or application will not materially impair operation of the Water Utility System.

SECTION 4.12. Amount of Rates, Fees and Charges. The City will at all times fix, prescribe and collect rates, fees and charges for the Water Service during each Fiscal Year which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield Adjusted Annual Net Revenues for such Fiscal Year equal to at least 125% of Annual Debt Service to be paid during the Fiscal Year.

SECTION 4.13. Collection of Rates, Fees and Charges. The City will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Water Utility System to pay the rates, fees and charges applicable to the Water Service to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The City will not permit any part of the Water Utility System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof); provided, that the City may without charge use the Water Service.

SECTION 4.14. Eminent Domain and Insurance Proceeds. If all or any part of the Water Utility System shall be taken by eminent domain proceedings, or if the City receives any insurance proceeds resulting from a casualty loss to the Water Utility System, the Net Proceeds thereof, at the option of the City, shall be applied either to the proportional prepayment of Outstanding Parity Obligations or shall be used to substitute other components for the condemned or destroyed components of the Water Utility System.

SECTION 4.15. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of the Contracts and for the better assuring and confirming unto the Authority of the rights and benefits provided to it in the Contracts.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. Events of Default and Acceleration of Principal. If one or more of the following Events of Default shall happen, that is to say --

- (1) if default shall be made in the due and punctual payment of any payment on any Parity Obligation when and as the same shall become due and payable;
- (2) if default shall be made by the City in the performance of any of the agreements or covenants contained herein or in any Parity Obligation required to be performed by it, and such default shall have continued for a period of sixty (60) days after the City shall have been given notice in writing of such default by the Authority; or
- (3) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default specified in clause (1) above, the Authority shall, and for any other such Event of Default the Authority may, by notice in writing to the City, declare the entire principal amount of the unpaid Payments and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding. This subsection is subject to the condition, however, that if at any time after the entire principal amount of the unpaid Payments and the accrued interest thereon shall have been so declared due and payable and before any judgment or decree for the payment of the money due shall have been obtained or entered the City shall deposit with the Authority a sum sufficient to pay the unpaid principal amount of the Payments or the unpaid principal amount of any payments under any Parity Obligation referred to in clause (i) above due and payable prior to such declaration and the accrued interest thereon, with interest on such overdue installments at the rate or rates applicable to such unpaid principal amounts of the Payments if paid in accordance with their terms, and the reasonable expenses of the Authority, and any and all other defaults known to the Authority (other than in the payment of the entire principal amount of the unpaid Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Authority or provision deemed by the Authority to be adequate shall have been made therefor, then and in every such case the Authority, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

**SECTION 5.02. Application of Gross Revenues upon Acceleration.** All Gross Revenues upon the date of the declaration of acceleration by the Authority as provided in Section 5.01 and all Gross Revenues thereafter received shall be applied in the following order --

**First**, to the payment of the costs and expenses of the Authority, if any, in carrying out the provisions of this article, including reasonable compensation to its agents, accountants and counsel and including any indemnification expenses; and

**Second**, to the payment of the Maintenance and Operation Costs of the Water Utility System and the payment of the entire principal amount of the unpaid Parity Obligations, and the accrued interest thereon, with interest on the overdue principal and interest amounts of the unpaid Parity Obligations at the rate or rates of interest then applicable to such Parity Obligations if paid in accordance with their terms, provided that if the amount available shall not be sufficient to pay in full all such amounts then due and payable, then to the payment thereof ratably, according to the amounts due thereon without any discrimination or preference.

Gross Revenues may also be applied to make payments required under any Parity Payment Agreement on a parity with the payments under paragraph **Second** above, to the extent and in the manner provided by the terms of such Parity Obligation relating to such Parity Payment Agreement.

**SECTION 5.03. Other Remedies.** The Authority shall have the right --

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform and carry out its or his duties under the law and the agreements and covenants required to be performed by it or him contained in the Contracts;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Authority; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its directors, officers and employees to account as the trustee of an express trust.

**SECTION 5.04. Non-Waiver.** Nothing in this article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Payments from the Gross Revenues to the Authority at the respective due dates or upon acceleration or prepayment, or shall affect or impair the right of the Authority, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied in the Contracts.

A waiver of any default or breach of duty or contract by the Authority shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair

any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the City and the Authority shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

SECTION 5.05. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

## ARTICLE VI

### DISCHARGE OF OBLIGATIONS

#### SECTION 6.01. Discharge of Obligations.

(a) If the City shall pay or cause to be paid all the Payments at the times and in the manner provided herein, the right, title and interest of the Authority herein and the obligations of the City hereunder and under all Supplemental Contracts shall cease, terminate, become void and be completely discharged and satisfied.

(b) Any unpaid principal installment of any of the Payments shall on its payment date or date of prepayment be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this section if the City makes payment of such Payment and the prepayment premium, if applicable, in the manner provided herein.

(c) All or any portion of unpaid principal installments of the Payments shall, prior to their payment dates or dates of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) of this section if (i) there shall have been deposited with the Trustee either money in an amount which shall be sufficient, or Federal Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form) or municipal obligations which have been defeased under irrevocable escrow instructions with Federal Securities and which are rated in the highest rating category by the Rating Agencies, the interest on and principal of which when paid will provide money which, together with money, if any, deposited with the Trustee, shall be sufficient (as evidenced by a report of an Independent Certified Public Accountant regarding such sufficiency) to pay when due the principal installments of such Payments or such portions thereof on their payment dates or their dates of prepayment, as the case may be, the interest installments of such Payments due on and prior to such payment dates or dates of

prepayment, and the prepayment premiums, if any, applicable thereto, and (ii) an Opinion of Counsel is filed with the Trustee to the effect that the action taken pursuant to this subsection will not cause the interest installments of such Payments so paid to be includable in gross income under the Code for federal income tax purposes.

(d) After the payment of all Payments and prepayment premiums, if any, as provided in this section, and payment in full of all fees and expenses of the Authority, the Authority, upon request of the City, shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and the Authority, and shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such total discharge and satisfaction of the Contracts, and the Authority shall pay over and deliver to the City, as an overpayment of Payments, all such money or investments held by it pursuant hereto other than such money and such investments as are required for the payment or prepayment of the Payments and interest installments of such Payments and the prepayment premiums, if any, applicable thereto, which money and investments shall continue to be held in trust for the payment of the Payments.

## ARTICLE VII

### MISCELLANEOUS

SECTION 7.01. Liability of City Limited to Gross Revenues. Notwithstanding anything contained herein, the City shall not be required to advance any moneys derived from any source of income other than the Gross Revenues for the payment of the Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The City may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Payments is a special obligation of the City payable solely from the Gross Revenues as provided herein. The general fund of the City is not liable, and neither the credit nor taxing power of the City is pledged, for the payment of the Payments under the Contracts or any other payments required to be made by the City under other Parity Obligations.

SECTION 7.02. Benefits of Contracts Limited to Parties. Nothing contained in any Contract, expressed or implied, is intended to give to any person other than the Authority (and the Trustee, as the assignee of the Authority's rights hereunder) or the City any right, remedy or claim under or pursuant thereto, and any agreement or covenant required herein to be performed by or on behalf of the Authority (and the Trustee, as the assignee of the Authority's rights hereunder) or the City shall be for the sole and exclusive benefit of the other party; provided, that with respect to enforcing the Trustee's rights hereunder, the Trustee shall be a third party beneficiary hereof and shall have the right to enforce the obligations of the City hereunder.

SECTION 7.03. Successor Is Deemed Included in all References to Predecessor. Whenever either the Authority or the City is named or referred to herein, such reference shall be

deemed to include the successor to the powers, duties and functions that are presently vested in the Authority or the City, and all agreements and covenants required hereby to be performed by or on behalf of the Authority or the City shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

SECTION 7.04. Waiver of Personal Liability. No director, officer or employee of the City shall be individually or personally liable for the payment of the Payments, but nothing contained herein shall relieve any director, officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or by the terms of the Contracts.

SECTION 7.05. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections," "Exhibits" and other subdivisions or clauses are to the corresponding articles, sections, exhibits, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to the Master Contract as a whole and not to any particular article, section, exhibit, subdivision or clause hereof.

SECTION 7.06. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Authority or the City shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Authority and the City hereby declare that they would have executed the Master Contract, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 7.07. Net Contract. The Contracts shall be deemed and construed to be net contracts, and the City shall pay absolutely net during the term hereof the Payments and all other payments required under the Contracts, free of any deductions and without abatement, diminution or set-off whatsoever.

SECTION 7.08. California Law. The Contracts shall be construed and governed in accordance with the laws of the State of California.

SECTION 7.09. Indemnification. The City shall, to the full extent then permitted by law, indemnify, protect, hold harmless, save and keep harmless the Authority and the Trustee and their directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of (i) the entering into of the Contracts, the acquisition, construction, installation and

use of any of the Projects and each portion thereof or any accident in connection with the operation, use, condition or possession of any of the Projects or any portion thereof resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the City or the Authority, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim arising out of strict liability in tort, (iv) without negligence or wilful misconduct, the Trustee's acceptance or administration of the trust under the Trust Agreements, or the exercise or performance of any of its powers or duties thereunder or hereunder; or (v) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of any bonds or other evidences of indebtedness issued under the Trust Agreements. The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations hereunder or the termination hereof for any reason. The City agrees not to withhold or abate any portion of the payments required pursuant hereto by reason of any defects, malfunctions, breakdowns or infirmities of any of the Projects. The City and the Authority mutually agree to promptly give notice to each other of any claim or liability hereby indemnified against following either's learning thereof. The rights to indemnification from the City hereunder shall survive the termination hereof or the resignation or removal of the Trustee.

SECTION 7.10. Funds. Any fund required to be established and maintained herein by the City may be established and maintained in the accounting records of the City either as an account or a fund and may, for the purpose of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to any such fund shall at all times be maintained in accordance with sound accounting practice.

SECTION 7.11. Notices. All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City:

City of Modesto  
Finance Department  
City Hall  
1012 "I" Street  
Modesto, CA 95354  
Attention: Interim Director of Finance/Treasurer

If to the Authority:


Modesto Public Financing Authority  
c/o City of Modesto  
1012 "I" Street  
Modesto, CA 95354  
Attention: Executive Director

SECTION 7.12. Effective Date. All Contracts shall become effective upon their execution and delivery, and shall terminate when the Payments provided therein shall have been fully paid (or provision for the payment thereof shall have been made pursuant to Article VII).

SECTION 7.13. Execution in Counterpart. The Master Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and attested the Master Installment Purchase Contract by their officers thereunto duly authorized as of the day and year first written above.


CITY OF MODESTO

By  \_\_\_\_\_  
Interim Director of Finance/Treasurer

Attest:

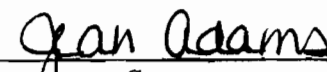
 \_\_\_\_\_  
City Clerk

MODESTO PUBLIC FINANCING AUTHORITY

By  \_\_\_\_\_  
Auditor and Treasurer

(SEAL)

Attest:

 \_\_\_\_\_  
Secretary

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE REGARDING MASTER CONTRACT, 1997 CONTRACT,  
2006 CONTRACT, 2008 CONTRACT AND 1997 TRUST AGREEMENT

I, Stephanie Lopez, hereby certify that I am the Secretary of the Commission of the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority organized under the laws of the State of California, and the City Clerk of the City of Modesto (the "City"), a charter city and municipal corporation duly organized under the Constitution and the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the Authority and the City.

I hereby further certify that there is attached hereto full, true and correct copies of the following documents:

1. Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), by and between the City and the Authority;
2. 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Contract"), by and between the City and the Authority;
3. 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006 (the "2006 Contract"), by and between the City and the Authority, and consented to by The Bank of New York Trust Company, N.A, as trustee (the "Trustee") and Financial Guaranty Insurance Company as 1997 Insurer;
4. 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Contract"), by and between the City and the Authority; and
5. 1997 Trust Agreement, dated November 1, 1997 (the "1997 Trust Agreement"), by and between the Authority and the Trustee.

I hereby further certify that, except as such Master Contract has been amended or modified by the 1997 Contract, the 2006 Contract and the 2008 Contract, being delivered on the date hereof, and that said Master Contract, 1997 Contract, 2006 Contract, 2008 Contract and the 1997 Trust Agreement have not otherwise been amended or modified since the date of their respective execution, and are now in full force and effect.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By: Stephanie Lopez  
Stephanie Lopez  
Secretary

CITY OF MODESTO

By: Stephanie Lopez  
Stephanie Lopez  
City Clerk

EXECUTION COPY

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1997 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT

by and between the

CITY OF MODESTO

and the

MODESTO PUBLIC FINANCING AUTHORITY

Executed and Entered Into as of November 1, 1997

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TABLE OF CONTENTS

	<u>Page</u>
PARTIES .....	1
PREAMBLES .....	1

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions .....	1
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ARTICLE II

TERMS OF THE 1997 SUPPLEMENTAL CONTRACT

SECTION 2.01. Authority for the 1997 Supplemental Contract .....	3
SECTION 2.02. Purpose of the 1997 Supplemental Contract .....	3
SECTION 2.03. Payment of the 1997 Supplemental Contract .....	4
SECTION 2.04. Payment of 1997 Payments .....	4
SECTION 2.05. Prepayment of 1997 Payments .....	5
SECTION 2.06. 1997 Rebate Fund .....	5
SECTION 2.07. Tax Covenants .....	7
SECTION 2.08. Continuing Disclosure .....	8
SECTION 2.09. Terms of the 1997 Supplemental Contract Subject to the Master Contract	8
SECTION 2.10. Assignment of the 1997 Supplemental Contract .....	8
SECTION 2.11. Provisions Related to the 1997 Certificate Insurance Policy .....	8
SECTION 2.12. California Law .....	10
EXECUTION .....	10
EXHIBIT A: Schedule of 1997 Payments .....	A-1
EXHIBIT B: Description of 1997 Project .....	B-1

## 1997 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT

The 1997 Supplemental Installment Purchase Contract (the "1997 Supplemental Contract"), dated as of November 1, 1997, by and between the City of Modesto, California, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), and the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority");

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

WHEREAS, the City and the Authority have executed and entered into a Master Installment Purchase Contract (the "Master Contract"), dated as of November 1, 1997, to refinance various additions, betterments, extensions and improvements to the water utility system of the City (the "1997 Project"); and

WHEREAS, the City has determined that the foregoing is necessary and proper for the City; and

WHEREAS, the City and the Authority have determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of the 1997 Supplemental Contract do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into the 1997 Supplemental Contract;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

### ARTICLE I

#### DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in Section 1.01 of the Master Contract or in this section shall for all purposes hereof and of any opinion or report or other document mentioned herein or therein have the meanings defined herein or therein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

Escrow Agent

"Escrow Agent" means State Street Bank and Trust Company of California, N.A., as escrow agent under the Escrow Agreement.

Escrow Agreement

"Escrow Agreement" means the Escrow Agreement, dated as of November 1, 1997, by and among the City, the Authority and the Escrow Agent.

1992 Agreement

"1992 Agreement" means the Installment Sale Agreement, dated as of November 1, 1992, by and between the Authority and the City.

1997 Certificates

"1997 Certificates" means the Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project), evidencing and representing proportionate interests of the owners thereof in the 1997 Payments to be made by the City, executed and delivered pursuant to the 1997 Trust Agreement.

1997 Payment Dates

"1997 Payment Dates" means April 1 and October 1 of each year, commencing April 1, 1998.

1997 Payments

"1997 Payments" means the Payments scheduled to be paid by the City under and pursuant to the terms hereof.

1997 Project

"1997 Project" means the improvements to the Water Utility System to be refinanced with the proceeds of the 1997 Certificates, as shown on Exhibit B hereto.

1997 Rebate Fund

"1997 Rebate Fund" means the City of Modesto Water Utility System 1997 Rebate Fund established pursuant to Section 2.06.

1997 Supplemental Contract

"1997 Supplemental Contract" means this 1997 Supplemental Installment Purchase Contract, executed and entered into as of November 1, 1997, by and between the City and the

Authority, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

1997 Supplemental Contract Payment Account

"1997 Supplemental Contract Payment Account" means the account by that name within the Parity Obligation Payment Fund established pursuant to Section 2.03 hereof.

1997 Tax Certificate

"1997 Tax Certificate" means the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the 1997 Certificates executed and delivered by the City on the date of initial issuance and delivery of the 1997 Certificates, including any and all exhibits attached thereto.

1997 Trust Agreement

"1997 Trust Agreement" means that certain Trust Agreement, dated as of November 1, 1997, by and between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented in accordance with its terms.

ARTICLE II

TERMS OF THE 1997 SUPPLEMENTAL CONTRACT

SECTION 2.01. Authority for the 1997 Supplemental Contract. The City has reviewed all proceedings heretofore taken relative to the authorization of the 1997 Supplemental Contract and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required by law to exist, happen or be performed precedent to and in connection with the execution hereof do exist, have happened and have been performed in due time, form and manner as required by law, and the City is now duly authorized, pursuant to each and every requirement of law, to execute and enter into the 1997 Supplemental Contract in the manner and form provided herein for the refinancing of the costs of the 1997 Project.

SECTION 2.02. Purpose of the 1997 Supplemental Contract. The City hereby transfers to the Authority the 1997 Project for the purpose of acquiring the 1997 Project from the Authority hereunder. The City agrees to immediately acquire the 1997 Project from the Authority under and pursuant to the terms hereof and of the Master Contract and to provide for the defeasance of all payments due under the 1992 Agreement in accordance with the terms thereof and of the Escrow Agreement. Upon payment of the purchase price for the 1997 Project as provided in Section 2.04 hereof, all right, title, and interest in and to the 1997 Project shall transfer to the City from the Authority without any further action by the City or the Authority.

The City and the Authority do hereby agree that upon the payment of the purchase price as provided in Section 2.04 hereof and the deposit of the proceeds thereof with the Escrow Agent

under the terms of the Escrow Agreement, the obligations of the City under the 1992 Agreement shall cease and terminate in accordance with Section 10.05 of the 1992 Agreement, except the obligation of the City to make or cause to be made the 1992 Installment Payments (as defined in the 1992 Agreement) from such amounts deposited pursuant to the Escrow Agreement as and when the same comes due.

SECTION 2.03. Payment of the 1997 Supplemental Contract. There is hereby established within the Parity Obligation Payment Fund the 1997 Supplemental Contract Payment Account. On or before the third Business Day immediately preceding each 1997 Payment Date, the City shall, from the money in the Revenue Fund, deposit in the 1997 Supplemental Contract Payment Account a sum equal to the amount of the interest and principal components of the 1997 Payments becoming due and payable under the 1997 Supplemental Contract on the next succeeding 1997 Payment Date, except that no such deposit need be made if the amount then on deposit in the 1997 Supplemental Contract Payment Account is at least equal to the amount of the interest and principal components of the 1997 Payments becoming due and payable under the 1997 Supplemental Contract on the next succeeding 1997 Payment Date; and all money on deposit in the 1997 Supplemental Contract Payment Account shall be transferred by the City to the Trustee on the Business Day immediately preceding each 1997 Payment Date to make and satisfy the 1997 Payment due on such 1997 Payment Date in accordance with the Master Contract. On or before the third Business Day preceding each 1997 Payment Date, the City shall from the money in the Revenue Fund, transfer to the Trustee for deposit in the Parity Reserve Fund that sum, if any, necessary to restore the amount in the Parity Reserve Fund to the Reserve Fund Requirement, except no such deposit need be made if the amount then on deposit in the Parity Reserve Fund is at least equal to the Reserve Fund Requirement.

SECTION 2.04. Payment of 1997 Payments. The City shall, subject to any rights of prepayment provided in Section 2.05 hereof, pay the Authority as the purchase price for the 1997 Project the sum of \$25,585,000, without offset or deduction of any kind, by paying the principal installments of the 1997 Payments annually on October 1 in each year in accordance with Exhibit A attached hereto and incorporated herein, together with interest installments of the 1997 Payments, which interest installments shall be paid semiannually in the amounts and on the 1997 Payment Dates in accordance with Section 2.03 hereof and Exhibit A attached hereto and incorporated herein and which interest shall constitute interest paid on the principal amount of the City's obligation hereunder.

The obligation of the City to pay the 1997 Payments is, subject to Section 7.01 of the Master Contract, absolute and unconditional, and until such time as the 1997 Payments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article VI of the Master Contract), the City will not discontinue or suspend any 1997 Payments required to be paid by it under this section when due, whether or not the Water Utility System or any part thereof (including the 1997 Project) is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset, abatement or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

The City shall receive a credit against its obligation to pay 1997 Payments that constitute Sinking Fund Payments under the 1997 Trust Agreement if, during the 12-month period immediately preceding the Sinking Fund Payment date with respect to such Sinking Fund Payment, the City or the Authority has deposited Term Certificates with the Trustee (together with a request of the Authority or the City to apply such Certificates so deposited to the Sinking Fund Payment due on said Sinking Fund Payment date) and the full principal amount evidenced and represented thereby has been applied to reduce said Sinking Fund Payment in accordance with Section 2.02 of the 1997 Trust Agreement.

SECTION 2.05. Prepayment of 1997 Payments. The City may prepay from any source of available funds on any date on or after October 1, 2008, all or any part of the principal amount of the unpaid 1997 Payments becoming due and payable on or after October 1, 2007, in such order of prepayment as the City may determine, at the following prepayment price (expressed as a percentage of the principal amount of the 1997 Payments to be prepaid), plus accrued interest to the date of prepayment, namely:

<u>Prepayment Period</u> (both dates inclusive)	<u>Prepayment Price</u>
October 1, 2007, through September 30, 2008	101%
October 1, 2008, through September 30, 2009	100.5
October 1, 2009, and thereafter	100

Before making any prepayment pursuant to this section, the City shall give written notice to the Authority specifying the date on which the prepayment will be paid and the order thereof, which date shall be not less than 50 days from the date such notice is given; provided, that notwithstanding any such prepayment, the City shall not be relieved of its obligations hereunder, including specifically its obligations under this article, until the 1997 Payments shall have been fully paid (or provision for payment thereof shall have been made pursuant to Article VI of the Master Contract).

SECTION 2.06. 1997 Rebate Fund. The City hereby agrees to establish and maintain, so long as any 1997 Certificates remain Outstanding, a fund separate from any other fund established and maintained hereunder designated the "City of Modesto Water Utility System 1997 Rebate Fund." All amounts at any time on deposit in the 1997 Rebate Fund shall be held by the City to the extent required to satisfy the requirement to make rebate payments to the United States (the "Rebate Requirement") pursuant to Section 148 of the Code and the Treasury Regulations promulgated thereunder (the "Treasury Regulations"). Such amounts shall be free and clear of any lien under the Master Contract and the 1997 Supplemental Contract and shall be governed by this section and by the 1997 Tax Certificate.

(1) Within 45 days of the end of each Certificate Year (as such term is defined in the 1997 Tax Certificate), or such other period ending no later than 60 days after the end of the fifth Certificate Year, (i) the City shall calculate or cause to be calculated with respect to the 1997 Supplemental Contract the amount that would be considered the "rebate amount" within the meaning of Section 1.148-3 of the Treasury Regulations, using as the "computation date" for this

purpose the end of such Certificate Year, and (ii) the City shall deposit to the 1997 Rebate Fund from amounts on deposit in the Revenue Fund or other amounts received by the City, if and to the extent required, amounts sufficient to cause the balance in the 1997 Rebate Fund to be equal to the "rebate amount" so calculated.

The City shall not be required to deposit any amount to the 1997 Rebate Fund in accordance with preceding sentence if the amount on deposit in the 1997 Rebate Fund prior to the deposit required to be made under this paragraph (1) equals or exceeds the "rebate amount" calculated in accordance with the preceding sentence. Such excess may be withdrawn from the 1997 Rebate Fund to the extent permitted under paragraph (2) of this section.

The City shall not be required to calculate the "rebate amount," and shall not be required to deposit any amount to the 1997 Rebate Fund in accordance with this paragraph (1), with respect to all or a portion of the proceeds of the 1997 Certificates (including amounts treated as proceeds of the 1997 Certificates) (i) to the extent such proceeds satisfy the expenditure requirements of Section 148(f)(4)(g) or Section 148(f)(4)(C) of the Code or Section 1.148-7(d) of the Treasury Regulations, whichever is applicable, and otherwise qualify for the exception to the Rebate Requirement pursuant to whichever of said sections is applicable, (ii) to the extent such proceeds are subject to an election by the City under Section 148(f)(4)(C)(vii) of the Code to pay a 1½% penalty in lieu of arbitrage rebate in the event any of the percentage expenditure requirements of Section 148(f)(4)(C) are not satisfied, or (iii) to the extent such proceeds qualify for the exception to arbitrage rebate under Section 148(f)(4)(A)(ii) of the Code for amounts in a "bona fide debt service fund."

(2) Any funds remaining in the 1997 Rebate Fund after payment of all the 1997 Payments hereunder and any amounts described in clause (ii) of paragraph (3) of this section, or provision made therefor, including accrued interest, shall be transferred by the City to the Revenue Fund.

(3) Subject to the exceptions contained in paragraph (1) of this section to the requirement to calculate the "rebate amount" and make deposits to the 1997 Rebate Fund, the City shall pay to the United States, from amounts on deposit in the 1997 Rebate Fund,

(i) not later than 60 days after the end of (A) the fifth Certificate Year, and (B) each fifth Certificate Year thereafter, an amount that, together with all previous rebate payments, is equal to at least 90% of the "rebate amount" calculated as of the end of such Certificate Year in accordance with Section 1.148-3 of the Treasury Regulations; and

(ii) not later than 60 days after the payment of all 1997 Certificates, an amount equal to 100% of the "rebate amount" calculated as of the date of such payment (and any income attributable to the "rebate amount" determined to be due and payable) in accordance with Section 1.148-3 of the Treasury Regulations.

(4) Each payment required to be made pursuant to paragraph (3) of this section shall be made to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255 on or

before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be completed by or on behalf of the City.

(5) In the event that, prior to the time any payment is required to be made from the 1997 Rebate Fund, the amount in the 1997 Rebate Fund is not sufficient to make such payment when such payment is due, the City shall calculate the amount of such deficiency and deposit an amount equal to such deficiency into the 1997 Rebate Fund prior to the time such payment is due.

(6) In the event that immediately following the calculation required by paragraph (1) of this section, but prior to any deposit made under said subsection, the amount on deposit in the 1997 Rebate Fund exceeds the "rebate amount" calculated in accordance with said subsection, the City shall transfer the excess from the 1997 Rebate Fund to the Revenue Fund.

(7) The City shall retain records of all determinations made hereunder until six years after the final payment or discharge of all 1997 Certificates.

(8) Notwithstanding anything in the Master Contract or the 1997 Supplemental Contract to the contrary, the Rebate Requirement shall survive the payment in full or discharge of the 1997 Certificates and the 1997 Payments.

**SECTION 2.07. Tax Covenants.** The City hereby covenants it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the portion of the 1997 Payments constituting interest under Section 103 of the Code. The City shall not, directly or indirectly, use or permit the use of proceeds of the 1997 Supplemental Contract or any of the property financed or refinanced with proceeds of the 1997 Supplemental Contract, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 1997 Payments constituting interest.

The City shall not take any action, or fail to take any action, if any such action or failure to take action would cause any obligations delivered in connection with the 1997 Supplemental Contract to be "private activity bonds" within the meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the 1997 Supplemental Contract or any of the property financed or refinanced with proceeds of the 1997 Supplemental Contract, or any portion thereof, or any other funds of the City, that would cause any of the 1997 Certificates on other obligations delivered in connection with the 1997 Supplemental Contract to be "private activity bonds" within the meaning of Section 141 of the Code. To that end, so long as any 1997 Payments are unpaid, the City, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Internal Revenue Code of 1954, as amended (the "1954 Code"), to the extent such requirements are, at the time, applicable and in effect. The City shall establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code (or, if applicable, the 1954 Code) and

the continued qualification of any obligations delivered in connection with the 1997 Supplemental Contract as "governmental bonds."

The City shall not, directly or indirectly, use or permit the use of any proceeds of the 1997 Supplemental Contract, or of any property financed or refinanced thereby, or other funds of the City, or take or omit to take any action, that would cause any obligations delivered in connection with the 1997 Supplemental Contract to be "arbitrage bonds" within the meaning of Section 148 of the Code. To that end, the City shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the 1997 Supplemental Contract.

The City shall not make any use of the proceeds of the 1997 Supplemental Contract or any other funds of the City, or take or omit to take any other action, that would cause the 1997 Supplemental Contract to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

In furtherance of the foregoing tax covenants, the City covenants that it will comply with the provisions of the 1997 Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or discharge of the 1997 Certificates and the 1997 Payments.

SECTION 2.08. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of its obligations under the Continuing Disclosure Agreement by and between the City and the Dissemination Agent named therein in connection with the execution and delivery of the 1997 Certificates. Notwithstanding any other provision of the Master Contract or hereof, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default under the Master Contract or hereunder.

SECTION 2.09. Terms of the 1997 Supplemental Contract Subject to the Master Contract. Every term and condition contained in the Master Contract shall apply to the 1997 Supplemental Contract with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to the 1997 Supplemental Contract.

SECTION 2.10. Assignment of the 1997 Supplemental Contract. The City hereby acknowledges that the Authority, for good and valuable consideration, has transferred, assigned and sent over to the Trustee, pursuant to the provisions of the 1997 Trust Agreement, all of the 1997 Payments and any and all rights and privileges it has under the Master Contract and hereunder. The Trustee shall not assume any responsibilities for any duties or covenants or warranties of the Authority hereunder.

SECTION 2.11. Provisions Related to the 1997 Certificate Insurance Policy and the 1997 Certificate Reserve Policy. For so long as, and only during such time as, the 1997 Certificate Insurance Policy or the 1997 Certificate Reserve Policy are in effect and the 1997 Certificate Insurer is not in default under such agreements, the following provisions shall be in effect, and

any conflict between the provisions of this Section and the provisions of any other Section hereof shall be governed by the provisions of this Section:

(a) The City shall provide the 1997 Certificate Insurer with the following information, such notice to be delivered at the address for the 1997 Certificate Insurer set forth in the 1997 Trust Agreement:

- (i) Within 180 days after the end of each of the City's Fiscal Years, or as soon thereafter as the specified information is available, the City's budget for the new Fiscal Year, annual audited financial statements for such Fiscal Year, a statement of the amount on deposit in the Parity Reserve Fund as of the last valuation, and, if not presented in the audited financial statements, a statement of the revenues pledged to payment of the 1997 Payments in each such Fiscal Year;
- (ii) Official statement or other disclosure, if any, prepared in connection with the issuance of additional debt, whether or not it is on parity with the Certificates, within 30 days after the sale thereof;
- (iii) Simultaneously with the delivery of the annual audited financial statements:
  - (A) The number of Water Utility System users as of the end of the Fiscal Year;
  - (B) Notification of the withdrawal of any Water Utility System user comprising 5% or more of Water Utility System sales measured in terms of revenue dollars since the last reporting date;
  - (C) Any significant plant retirements or expansions planned or undertaken since the last reporting date;
  - (D) Maximum and average daily usage for the fiscal year;
  - (E) Updated capital plans for expansion and improvement projects;
  - (F) Results of annual engineering inspections, if any, occurring at the end of the fiscal year; and
- (iv) Such additional information as the 1997 Certificate Insurer may reasonably request from time to time.

(b) The City shall, to the extent there are no other funds available to pay 1997 Payments, use the remaining funds in the Improvement Fund to pay such 1997 Payments.

(c) In determining whether a payment default has occurred hereunder, or whether a 1997 Payment has been made hereunder, no effect shall be given to payments made under the 1997 Certificate Insurance Policy.

(d) Any acceleration of the unpaid 1997 Payments pursuant to Section 5.01 of the Contract or any annulment thereof shall be subject to the prior written consent of the 1997 Certificate Insurer.

(e) Any amendment of or supplement to the Contract shall be subject to the prior written consent of the 1997 Certificate Insurer. Any rating agency rating the Certificates must receive notice of each amendment or supplement and a copy thereof at least 15 days in advance of its execution or adoption. The 1997 Certificate Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.

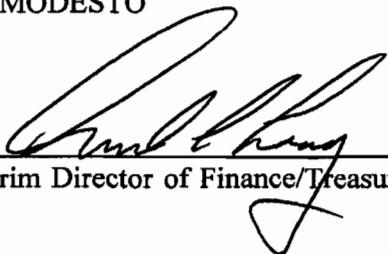
(f) In the event the City shall fail to pay any amounts under the Debt Service Reserve Fund Policy Agreement, the Certificate Insurer shall be entitled to exercise any and all remedies available at law under the Trust Agreement and this 1997 Supplemental Contract other than (i) acceleration of the Certificates or (ii) remedies which would adversely affect Certificateholders.

SECTION 2.12. California Law. This 1997 Supplemental Installment Purchase Contract shall be construed and governed in accordance with the laws of the State of California.

SECTION 2.12. California Law. This 1997 Supplemental Installment Purchase Contract shall be construed and governed in accordance with the laws of the State of California.

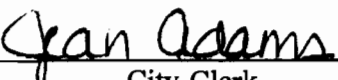
IN WITNESS WHEREOF, the parties hereto have executed and attested the 1997 Supplemental Installment Purchase Contract by their officers thereunto duly authorized as of the day and year first written above.

CITY OF MODESTO

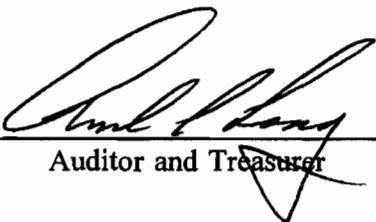
By  \_\_\_\_\_  
Interim Director of Finance/Treasurer

(SEAL)

Attest:

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

MODESTO PUBLIC FINANCING AUTHORITY

By  \_\_\_\_\_  
Auditor and Treasurer

Attest:

 \_\_\_\_\_  
Secretary

EXHIBIT A

Schedule of 1997 Payments

<u>1997 Payment Date</u>	<u>Interest Installment</u>	<u>Principal Installment</u>	<u>Total 1997 Payments</u>
Apr. 1, 1998	\$527,611.46		\$ 527,611.46
Oct. 1, 1998	633,133.75	\$685,000.00	1,318,133.75
Apr. 1, 1999	617,721.25		617,721.25
Oct. 1, 1999	617,721.25	545,000.00	1,162,721.25
Apr. 1, 2000	605,458.75		605,458.75
Oct. 1, 2000	605,458.75	570,000.00	1,175,458.75
Apr. 1, 2001	592,633.75		592,633.75
Oct. 1, 2001	592,633.75	600,000.00	1,192,633.75
Apr. 1, 2002	579,133.75		579,133.75
Oct. 1, 2002	579,133.75	630,000.00	1,209,133.75
Apr. 1, 2003	564,958.75		564,958.75
Oct. 1, 2003	564,958.75	665,000.00	1,229,958.75
Apr. 1, 2004	550,328.75		550,328.75
Oct. 1, 2004	550,328.75	700,000.00	1,250,328.75
Apr. 1, 2005	534,578.75		534,578.75
Oct. 1, 2005	534,578.75	740,000.00	1,274,578.75
Apr. 1, 2006	516,078.75		516,078.75
Oct. 1, 2006	516,078.75	780,000.00	1,296,078.75
Apr. 1, 2007	498,041.25		498,041.25
Oct. 1, 2007	498,041.25	815,000.00	1,313,041.25
Apr. 1, 2008	478,888.75		478,888.75
Oct. 1, 2008	478,888.75	855,000.00	1,333,888.75
Apr. 1, 2009	458,368.75		458,368.75
Oct. 1, 2009	458,368.75	900,000.00	1,358,368.75
Apr. 1, 2010	436,318.75		436,318.75
Oct. 1, 2010	436,318.75	945,000.00	1,381,318.75
Apr. 1, 2011	412,693.75		412,693.75
Oct. 1, 2011	412,693.75	995,000.00	1,407,693.75
Apr. 1, 2012	387,818.75		387,818.75
Oct. 1, 2012	387,818.75	1,050,000.00	1,437,818.75
Apr. 1, 2013	361,568.75		361,568.75
Oct. 1, 2013	361,568.75	1,105,000.00	1,466,568.75
Apr. 1, 2014	333,253.13		333,253.13
Oct. 1, 2014	333,253.13	1,165,000.00	1,498,253.13
Apr. 1, 2015	303,400.00		303,400.00
Oct. 1, 2015	303,400.00	1,225,000.00	1,528,400.00
Apr. 1, 2016	272,009.38		272,009.38
Oct. 1, 2016	272,009.38	1,290,000.00	1,562,009.38
Apr. 1, 2017	238,953.13		238,953.13
Oct. 1, 2017	238,953.13	1,360,000.00	1,598,953.13
Apr. 1, 2018	204,103.13		204,103.13
Oct. 1, 2018	204,103.13	1,430,000.00	1,634,103.13
Apr. 1, 2019	167,459.38		167,459.38
Oct. 1, 2019	167,459.38	1,505,000.00	1,672,459.38
Apr. 1, 2020	128,893.75		128,893.75
Oct. 1, 2020	128,893.75	1,590,000.00	1,718,893.75
Apr. 1, 2021	88,150.00		88,150.00
Oct. 1, 2021	88,150.00	1,675,000.00	1,763,150.00
Apr. 1, 2022	45,228.13		45,228.13
Oct. 1, 2022	45,228.13	1,765,000.00	1,810,228.13

## EXHIBIT B

### Description of the 1997 Project

Upgrades to the Water Utility System, including the installation of larger mains to increase pressure, improve fire flows and decrease maintenance problems; main loops to increase circulation; and the expansion of the annexed Village I area which consists of approximately 1,700 acres.

The acquisition of land to construct water storage facilities to improve the water supply and pressure in the Northeast area of the City of Modesto.

Improvements to increase capacity and efficiency of water delivery from the City's wells.

Various City of Modesto Water Department buildings including: a Water Building housing the Water Department's personnel and a Water Quality Control Plant Building housing the Water Supervisory Control and Data Acquisition (SCADA) System equipment.

The installation of meters, hydrants and miscellaneous water equipment.

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE REGARDING MASTER CONTRACT, 1997 CONTRACT,  
2006 CONTRACT, 2008 CONTRACT AND 1997 TRUST AGREEMENT

I, Stephanie Lopez, hereby certify that I am the Secretary of the Commission of the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority organized under the laws of the State of California, and the City Clerk of the City of Modesto (the "City"), a charter city and municipal corporation duly organized under the Constitution and the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the Authority and the City.

I hereby further certify that there is attached hereto full, true and correct copies of the following documents:

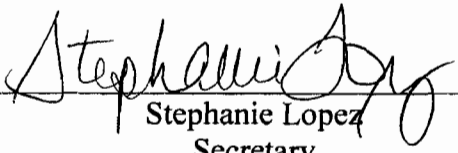
1. Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), by and between the City and the Authority;
2. 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Contract"), by and between the City and the Authority;
3. 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006 (the "2006 Contract"), by and between the City and the Authority, and consented to by The Bank of New York Trust Company, N.A, as trustee (the "Trustee") and Financial Guaranty Insurance Company as 1997 Insurer;
4. 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Contract"), by and between the City and the Authority; and
5. 1997 Trust Agreement, dated November 1, 1997 (the "1997 Trust Agreement"), by and between the Authority and the Trustee.

I hereby further certify that, except as such Master Contract has been amended or modified by the 1997 Contract, the 2006 Contract and the 2008 Contract, being delivered on the date hereof, and that said Master Contract, 1997 Contract, 2006 Contract, 2008 Contract and the 1997 Trust Agreement have not otherwise been amended or modified since the date of their respective execution, and are now in full force and effect.

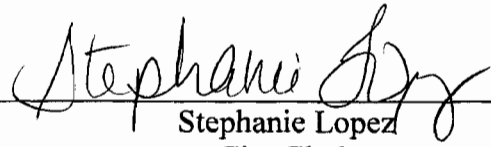
[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By:   
Stephanie Lopez  
Secretary

CITY OF MODESTO

By:   
Stephanie Lopez  
City Clerk

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2006 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT

by and between the

CITY OF MODESTO

and the

MODESTO PUBLIC FINANCING AUTHORITY

Dated as of November 1, 2006

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TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

Section 1.01. Definitions..... 3  
Section 1.02. Clarification and Definitions in Master Contract and 2006 Trust Agreement..... 4

ARTICLE II

TERMS OF THE 2006 SUPPLEMENTAL CONTRACT

Section 2.01. Authority for the 2006 Supplemental Contract..... 5  
Section 2.02. Purpose of the 2006 Supplemental Contract..... 5  
Section 2.03. 2006 Supplemental Contract Payment Account ..... 5  
Section 2.04. Payment of 2006 Payments..... 6  
Section 2.05. Prepayment of 2006 Payments..... 7  
Section 2.06. Establishment of 2006 Funds and Accounts..... 7  
Section 2.07. Tax Covenants ..... 10  
Section 2.08. Continuing Disclosure ..... 11  
Section 2.09. Provisions Related to the 2006 Certificate Insurance Policy ..... 11  
Section 2.10. 2006 Interest Rate Swap Agreement..... 12  
Section 2.11. Maintaining Liquidity Facility..... 12

ARTICLE III

MISCELLANEOUS

Section 3.01. Amendment of 1997 Supplemental Contract..... 13  
Section 3.02. Terms of the 2006 Supplemental Contract Subject to the Master Contract ..... 13  
Section 3.03. Assignment of the 2006 Supplemental Contract ..... 13  
Section 3.04. California Law ..... 13  
  
EXHIBIT A – Schedule of Principal Installments Relating to 2006 Payments ..... A-1  
EXHIBIT B – Description of the 2006 Project ..... B-1

## **2006 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT**

The 2006 Supplemental Installment Purchase Contract (the "2006 Supplemental Contract"), dated as of November 1, 2006, by and between the City of Modesto, California, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), and the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority");

### **WITNESSETH:**

WHEREAS, the City and the Authority have executed and entered into a Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), for the acquisition from time to time of various additions, betterments, extensions and improvements to the Water Utility System of the City; and

WHEREAS, the City previously refinanced certain improvements to its Water Utility System (the "1997 Project") pursuant to the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Supplemental Contract"), by and between the Authority and the City, supplementing the Master Contract, under which the City is obligated to make certain payments (the "1997 Payments") to the Authority as payment of the purchase price for the 1997 Project; and

WHEREAS, pursuant to Article III of the Master Contract, the City may incur additional Parity Obligations, including pursuant to a Supplemental Contract to the Master Contract, subject to the terms and conditions set forth therein; and

WHEREAS, the City now desires to finance the costs of various additional improvements (the "2006 Project") to the Water Utility System, and in connection therewith to enter into this 2006 Supplemental Installment Purchase Contract (the "2006 Supplemental Contract") with the Authority, supplementing the Master Contract, pursuant to which the City will obligate itself to make certain payments (the "2006 Payments") to the Authority as payment of the purchase price of the 2006 Project; and

WHEREAS, pursuant to the 2006 Trust Agreement (as defined herein), the Authority has assigned to The Bank of New York Trust Company, N.A., as trustee (the "Trustee") under the 2006 Trust Agreement, certain of its rights under the 2006 Supplemental Contract, including its right to receive the 2006 Payments to be made by the City under this 2006 Supplemental Contract; and

WHEREAS, in consideration of such assignment and the execution and entering into of the 2006 Trust Agreement by the Trustee and the Authority, the Trustee has agreed to execute and deliver \$46,275,000 Water Revenue Certificates of Participation, 2006 Series A (the "2006 Certificates"), evidencing and representing proportionate interests in the 2006 Payments payable hereunder; and

WHEREAS, the City has determined that the foregoing is necessary and proper for the City; and

WHEREAS, the City and the Authority have determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of the 2006 Supplemental Contract do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into the 2006 Supplemental Contract;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Except as provided in Section 1.02 hereof or unless the context otherwise requires, the terms defined in this Section shall for all purposes hereof and of any opinion or report or other document mentioned herein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement, dated November 2, 2006, by and between the City and the Trustee, delivered in connection with the execution and delivery of the 2006 Certificates.

“Rebate Requirement” shall have the meaning given such term in Section 2.06(b) hereof.

“Special Counsel” shall have the meaning given such term in the 2006 Trust Agreement.

“2006 Certificate Insurance Policy” means the municipal bond insurance policy issued by the 2006 Certificate Insurer guaranteeing the scheduled payment of principal of and interest evidenced and represented by the 2006 Certificates.

“2006 Certificate Insurer” means MBIA Insurance Corporation, its successors and assigns.

“2006 Certificates” means the City of Modesto Water Revenue Certificates of Participation, 2006 Series A, evidencing and representing proportionate interests of the owners thereof in the 2006 Payments to be made by the City, executed and delivered pursuant to the 2006 Trust Agreement.

“2006 Insurance Agreement” means the Insurance and Reimbursement Agreement, dated as of November 1, 2006, by and among the City, the Authority, the Trustee and the 2006 Certificate Insurer, which 2006 Insurance Agreement shall constitute a Parity Bank Agreement for purposes of the Master Contract and hereof.

“2006 Interest Rate Swap Agreement” means, collectively, the ISDA Master Agreement (Local Currency–Single Jurisdiction 1992), the U.S. Municipal Counterparty Schedule thereto, a Credit Support Annex, each dated as of September 27, 2006, and a Confirmation, entered into on September 27, 2006, between Bank of America, N.A., as a Qualified Counterparty, and the City.

“2006 Payment Date” means each Interest Payment Date and each day on which payments of principal evidenced and represented by the 2006 Certificates become due (whether at maturity or because of prepayment or acceleration).

“2006 Payments” means the Payments scheduled to be paid by the City under and pursuant to the terms hereof.

“2006 Project” means the improvements to the Water Utility System to be financed with the proceeds of the 2006 Certificates, as shown on Exhibit B hereto.

“2006 Project Account” means the account of the Improvement Fund established pursuant to Section 2.06(a) hereof.

“2006 Rebate Fund” means the City of Modesto Water Utility System 2006 Rebate Fund established pursuant to Section 2.06(b) hereof.

“2006 Supplemental Contract” means this 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006, by and between the City and the Authority, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

“2006 Supplemental Contract Payment Account” means the account by that name within the Parity Obligation Payment Fund established pursuant to Section 2.04 hereof.

“2006 Swap Insurance Policy” the interest rate swap insurance policy issued by the 2006 Certificate Insurer guaranteeing certain payments due by the City under the 2006 Interest Rate Swap Agreement.

“2006 Tax Certificate” means the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the 2006 Certificates executed and delivered by the City on the date of initial delivery of the 2006 Certificates, including any and all exhibits attached thereto.

“2006 Trust Agreement” means that certain Trust Agreement, dated as of November 1, 2006, by and between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented in accordance with its terms.

Section 1.02. Clarification and Definitions in Master Contract and 2006 Trust Agreement.

(a) To cure a possible ambiguity therein, the definition of “Parity Obligations” contained in Section 1.01 of the Master Contract is hereby clarified to read as follows:

“Parity Obligations” means the payment obligations under the Treatment and Delivery Agreement which constitute debt service, the payment obligations under the CDWR Loan Agreement, and all Supplemental Contracts and all other obligations hereafter incurred by the City the payment of which constitutes a charge and lien on the Gross Revenues equal to and on a parity with the charge and lien upon the Gross Revenues for the payment of the Payments, other than (i) such portion of the payment obligations (including certain payments due upon an early termination thereof) under any Parity Payment Agreement to the extent such obligations are expressly subordinate to Parity Obligations pursuant to the terms of such Parity Payment Agreement and (ii) Parity Bank Agreements; provided that no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City.

(b) Except as otherwise herein defined or unless the context otherwise requires, the terms defined in the Master Contract or the 2006 Trust Agreement shall for all purposes hereof

and of any amendment hereof or supplement hereto and of any report or other document mentioned herein have the meanings defined therein, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined therein. With respect to any defined term which is given a different meaning under this 2006 Supplemental Contract than under the Master Contract or the 2006 Trust Agreement, as used herein it shall have the meaning given herein.

## ARTICLE II

### TERMS OF THE 2006 SUPPLEMENTAL CONTRACT

Section 2.01. Authority for the 2006 Supplemental Contract. The City has reviewed all proceedings heretofore taken relative to the authorization of this 2006 Supplemental Contract and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required by law to exist, happen or be performed precedent to and in connection with the execution hereof do exist, have happened and have been performed in due time, form and manner as required by law, and the City is now duly authorized, pursuant to each and every requirement of law, to execute and enter into the 2006 Supplemental Contract in the manner and form provided herein for the financing of the costs of the 2006 Project.

Section 2.02. Purpose of the 2006 Supplemental Contract. In accordance with Section 2.01 of the Master Contract, the Authority hereby agrees to finance the costs of acquisition and construction of the 2006 Project and to sell the 2006 Project to the City. The City agrees to acquire the 2006 Project from the Authority pursuant to the terms hereof, to cause the acquisition and construction of the 2006 Project as agent for the Authority in accordance with Section 2.01 of the Master Contract and in accordance with the terms hereof and of the 2006 Trust Agreement. Immediately upon completion of each separately acquirable component of the 2006 Project, all right, title and interest in and to each such component of the 2006 Project shall transfer to the City from the Authority without any further action by the City or the Authority.

Section 2.03. 2006 Supplemental Contract Payment Account. There is hereby established within the Parity Obligation Payment Fund the 2006 Supplemental Contract Payment Account. On or before the third Business Day immediately preceding each 2006 Payment Date or the date on which any net scheduled payment or insured termination payment is due under the 2006 Interest Rate Swap Agreement, the City shall, from the money in the Parity Obligation Payment Fund, deposit in the 2006 Supplemental Contract Payment Account (i) a sum equal to the amount of the interest and principal components of the 2006 Payments becoming due and payable under the 2006 Supplemental Contract on the next succeeding 2006 Payment Date and (ii) the net scheduled payments and any insured termination payment, if applicable, due under the 2006 Interest Rate Swap Agreement, except that no such deposit need be made if the amount then on deposit in the 2006 Supplemental Contract Payment Account is at least equal to the amount of the interest and principal components of the 2006 Payments becoming due and payable under the 2006 Supplemental Contract on the next succeeding 2006 Payment Date plus the net scheduled payments and any insured termination payment, if applicable, due under the 2006 Interest Rate Swap Agreement on such next succeeding due date therefor. Moneys on deposit in the 2006 Supplemental Contract Payment Account shall (i) be transferred by the City to the Trustee on the Business Day immediately preceding each 2006 Payment Date to make and

satisfy the 2006 Payment due on such 2006 Payment Date and (ii) be transferred by the City to the Trustee on the due date therefor to satisfy the net scheduled payment and any insured termination payment, if applicable, due under the 2006 Interest Rate Swap Agreement, all in accordance with the Master Contract and the 2006 Trust Agreement.

Section 2.04. Payment of 2006 Payments. The City shall, subject to any rights of prepayment provided in Section 2.05 hereof, pay the Authority as the purchase price for the 2006 Project the sum of \$46,275,000, without offset or deduction of any kind, by paying the principal installments of the 2006 Payments annually on October 1 in each year in accordance with Exhibit A attached hereto and incorporated herein, together with interest installments of the 2006 Payments, which interest installments shall be payable in accordance with Section 2.03 hereof in the amounts and on the 2006 Payment Dates so as to enable interest evidenced by the 2006 Certificates to be paid on a timely basis, and which interest shall constitute interest paid on the principal amount of the City's obligation hereunder.

The obligation of the City to pay the 2006 Payments is, subject to Section 7.01 of the Master Contract, absolute and unconditional, and until such time as the 2006 Payments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article VI of the Master Contract), the City will not discontinue or suspend any 2006 Payments required to be paid by it under this Section 2.04 when due, whether or not the Water Utility System or any part thereof (including the 2006 Project) is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset, abatement or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

The City shall receive a credit against its obligation to pay 2006 Payments that constitute Sinking Fund Payments under the 2006 Trust Agreement if, during the 12-month period immediately preceding the Sinking Fund Payment date with respect to such Sinking Fund Payment, the City or the Authority has deposited Term Certificates with the Trustee (together with a request of the Authority or the City to apply such Certificates so deposited to the Sinking Fund Payment due on said Sinking Fund Payment date) and the full principal amount evidenced and represented thereby has been applied to reduce said Sinking Fund Payment in accordance with Section 2.03 of the 2006 Trust Agreement.

In addition to the 2006 Payments, the City shall also pay such amounts ("Additional Payments") as shall be required for the payment of all fees and administrative costs of the Authority and the Trustee under the 2006 Trust Agreement or otherwise relating to the 2006 Certificates, including, without limitation, payments required to satisfy the Rebate Requirement, all expenses, compensation and indemnification of the Authority and the Trustee payable hereunder and under the 2006 Trust Agreement, fees of auction agents, broker-dealers, remarketing agents, auditors, accountants, attorneys or engineers, and all other necessary administrative costs of the Authority or charges required to be paid by it to comply with the terms of this 2006 Supplemental Contract, the 2006 Certificates, the 2006 Certificate Insurance Policy, and the 2006 Trust Agreement.

Section 2.05. Prepayment of 2006 Payments.

(a) The City may optionally prepay 2006 Payments as follows:

(1) The City may prepay all or a portion of the 2006 Payments in accordance with Section 6.01(c) of the Master Contract by depositing cash or Federal Securities with the Trustee subject to the terms and conditions set forth in Article IX of the 2006 Trust Agreement, sufficient to pay the principal of, premium, if any, and interest evidenced by the 2006 Certificates to be paid or prepaid with such 2006 Payments; or

(2) The City may prepay all or a portion of the 2006 Payments from any source of available funds, on any date on which 2006 Certificates may be optionally prepaid, by paying (A) all or a portion (in an amount equal to an Authorized Denomination under the 2006 Trust Agreement), as elected by the City, of such 2006 Payments, (B) an amount equal to the accrued but unpaid interest on the 2006 Certificates to be prepaid from the proceeds of such prepaid 2006 Payments to the date of such prepayment, and (C) an amount equal to any premium to be paid upon the optional prepayment of the 2006 Certificates to be prepaid from the proceeds of such prepaid 2006 Payments.

(b) The 2006 Payments shall be subject to mandatory prepayment to the extent required to effect the mandatory prepayment of Liquidity Provider Certificates in accordance with Section 2.03(b) of the 2006 Trust Agreement.

(c) If less than all of the 2006 Payments are prepaid pursuant to this Section 2.05 then, as of the date of such prepayment pursuant to this Section, the schedule of 2006 Payments attached as Exhibit B hereto shall be recalculated by the City in order to take such prepayment into account. The City shall deliver a copy of such revised schedule to the Trustee and such revised schedule shall automatically supersede and replace the previous form of Exhibit B.

(d) Before making any prepayment pursuant to this Section, the City shall give written notice to the Authority specifying the date on which the prepayment will be paid and the order thereof, which date shall be not less than 50 days from the date such notice is given; provided, that notwithstanding any such prepayment, the City shall not be relieved of its obligations hereunder, including specifically its obligations under this article, until the 2006 Payments and all amounts due under the 2006 Insurance Agreement shall have been fully paid (or provision for payment thereof shall have been made pursuant to Article VI of the Master Contract).

Section 2.06. Establishment of 2006 Funds and Accounts.

(a) 2006 Project Account. There is hereby established the "2006 Project Account" within the Improvement Fund, which account the City agrees to maintain until the completion of the acquisition and construction of the 2006 Project. As provided in the Master Contract, all money in the 2006 Project Account of the Improvement Fund shall be used and withdrawn by the City to pay the costs of the acquisition and construction of the 2006 Project (or to reimburse the City for such costs) upon receipt of a Request of the City. The City shall maintain on file a record of all expenditures from the 2006 Project Account of the Improvement Fund, including

appropriate Requests of the City evidencing the person to whom payment is to be made, the amount of money to be paid, the purpose for which the obligation to be paid was incurred and that such payment was a proper charge against the 2006 Project Account of the Improvement Fund and has not been the subject of a previous Request of the City. All investment earnings from moneys on deposit in the 2006 Project Account shall be retained in such account. When the acquisition and construction of the 2006 Project has been completed to the satisfaction of the City, any remaining balance in the 2006 Project Account allocable to the 2006 Project shall be transferred by the City to the Revenue Fund.

(b) 2006 Rebate Fund. The City hereby agrees to establish and maintain, so long as any 2006 Certificates remain Outstanding, a fund separate from any other fund established and maintained hereunder designated the "City of Modesto Water Utility System 2006 Rebate Fund." All amounts at any time on deposit in the 2006 Rebate Fund shall be held by the City to the extent required to satisfy the requirement to make rebate payments to the United States (the "Rebate Requirement") pursuant to Section 148 of the Code and the Treasury Regulations promulgated thereunder (the "Treasury Regulations"). Such amounts shall be free and clear of any lien under the Master Contract and the 2006 Supplemental Contract and shall be governed by this Section 2.06(b) and by the 2006 Tax Certificate.

(1) Within 60 days of the end of each Certificate Year (as such term is defined in the 2006 Tax Certificate), or such other period ending no later than 60 days after the end of the fifth Certificate Year, (i) the City shall calculate or cause to be calculated with respect to the 2006 Supplemental Contract the amount that would be considered the "rebate amount" within the meaning of Section 1.148-3 of the Treasury Regulations, using as the "computation date" for this purpose the end of such Certificate Year, and (ii) the City shall deposit to the 2006 Rebate Fund from amounts on deposit in the Revenue Fund or other amounts received by the City, if and to the extent required, amounts sufficient to cause the balance in the 2006 Rebate Fund to be equal to the "rebate amount" so calculated.

The City shall not be required to deposit any amount to the 2006 Rebate Fund in accordance with preceding sentence if the amount on deposit in the 2006 Rebate Fund prior to the deposit required to be made under this paragraph (1) equals or exceeds the "rebate amount" calculated in accordance with the preceding sentence. Such excess may be withdrawn from the 2006 Rebate Fund to the extent permitted under paragraph (2) of this Section.

The City shall not be required to calculate the "rebate amount," and shall not be required to deposit any amount to the 2006 Rebate Fund in accordance with this paragraph (1), with respect to all or a portion of the proceeds of the 2006 Certificates (including amounts treated as proceeds of the 2006 Certificates) (i) to the extent such proceeds satisfy the expenditure requirements of Section 148(f)(4)(g) or Section 148(f)(4)(C) of the Code or Section 1.148-7(d) of the Treasury Regulations, whichever is applicable, and otherwise qualify for the exception to the Rebate Requirement pursuant to whichever of said sections is applicable, (ii) to the extent such proceeds are subject to an election by the City under Section 148(f)(4)(C)(vii) of the Code to pay a 1 1/2% penalty in lieu of arbitrage rebate in the event any of the percentage

expenditure requirements of Section 148(f)(4)(C) are not satisfied, or (iii) to the extent such proceeds qualify for the exception to arbitrage rebate under Section 148(f)(4)(A)(ii) of the Code for amounts in a “bona fide debt service fund.”

(2) Any funds remaining in the 2006 Rebate Fund after payment of all the 2006 Payments hereunder and any amounts described in clause (ii) of paragraph (3) of this Section, or provision made therefor, including accrued interest, shall be transferred by the City to the Revenue Fund.

(3) Subject to the exceptions contained in paragraph (1) of this Section to the requirement to calculate the “rebate amount” and make deposits to the 2006 Rebate Fund, the City shall pay to the United States, from amounts on deposit in the 2006 Rebate Fund,

(i) not later than 60 days after the end of (A) the fifth Certificate Year, and (B) each fifth Certificate Year thereafter, an amount that, together with all previous rebate payments, is equal to at least 90% of the “rebate amount” calculated as of the end of such Certificate Year in accordance with Section 1.148-3 of the Treasury Regulations; and

(ii) not later than 60 days after the payment of all 2006 Certificates, an amount equal to 100% of the “rebate amount” calculated as of the date of such payment (and any income attributable to the “rebate amount” determined to be due and payable) in accordance with Section 1.148-3 of the Treasury Regulations.

(4) Each payment required to be made pursuant to paragraph (3) of this Section shall be made to the Internal Revenue Service on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be completed by or on behalf of the City.

(5) In the event that, prior to the time any payment is required to be made from the 2006 Rebate Fund, the amount in the 2006 Rebate Fund is not sufficient to make such payment when such payment is due, the City shall calculate the amount of such deficiency and deposit an amount equal to such deficiency into the 2006 Rebate Fund prior to the time such payment is due.

(6) In the event that immediately following the calculation required by paragraph (1) of this Section, but prior to any deposit made under said subsection, the amount on deposit in the 2006 Rebate Fund exceeds the “rebate amount” calculated in accordance with said subsection, the City shall transfer the excess from the 2006 Rebate Fund to the Revenue Fund.

(7) The City shall retain records of all determinations made hereunder until six years after the final payment or discharge of all 2006 Certificates.

(8) Notwithstanding anything in the Master Contract or the 2006 Supplemental Contract to the contrary, the Rebate Requirement shall survive the payment in full or discharge of the 2006 Certificates and the 2006 Payments.

Section 2.07. Tax Covenants. The City hereby covenants it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the portion of the 2006 Payments constituting interest under Section 103 of the Code. The City shall not, directly or indirectly, use or permit the use of proceeds of the 2006 Supplemental Contract or any of the property financed or refinanced with proceeds of the 2006 Supplemental Contract, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 2006 Payments constituting interest.

The City shall not take any action, or fail to take any action, if any such action or failure to take action would cause any obligations delivered in connection with the 2006 Supplemental Contract to be "private activity bonds" within the meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the 2006 Supplemental Contract or any of the property financed or refinanced with proceeds of the 2006 Supplemental Contract, or any portion thereof, or any other funds of the City, that would cause any of the 2006 Certificates on other obligations delivered in connection with the 2006 Supplemental Contract to be "private activity bonds" within the meaning of Section 141 of the Code. To that end, so long as any 2006 Payments are unpaid, the City, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, applicable and in effect. The City shall establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of any obligations delivered in connection with the 2006 Supplemental Contract as "governmental bonds."

The City shall not, directly or indirectly, use or permit the use of any proceeds of the 2006 Supplemental Contract, or of any property financed or refinanced thereby, or other funds of the City, or take or omit to take any action, that would cause any obligations delivered in connection with the 2006 Supplemental Contract to be "arbitrage bonds" within the meaning of Section 148 of the Code. To that end, the City shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the 2006 Supplemental Contract.

The City shall not make any use of the proceeds of the 2006 Supplemental Contract or any other funds of the City, or take or omit to take any other action, that would cause the 2006 Supplemental Contract to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

In furtherance of the foregoing tax covenants, the City covenants that it will comply with the provisions of the 2006 Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or discharge of the 2006 Certificates and the 2006 Payments.

The Authority and the City covenant that, in the event of any change in the 2006 Trust Agreement, this 2006 Supplemental Contract or other relevant documents relating to the 2006

Certificates, or any other actions taken or omitted by the City or the Authority, upon the advice or with the approving opinion of Special Counsel other than Sidley Austin LLP, Special Counsel in connection with the original execution and delivery of the 2006 Certificates, the Authority and the City will, upon the making of any such change, or the taking or omission of any such other action, cause to be delivered an opinion of Special Counsel (together with a reliance letter thereon addressed to the 2006 Certificate Insurer and the Trustee) nationally recognized in the area of municipal bonds to the effect that the portion of each 2006 Payment due under this 2006 Supplemental Contract designated as and comprising interest with respect to the 2006 Certificates is excluded from gross income for federal income tax purposes.

Section 2.08. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of its obligations under the Continuing Disclosure Agreement delivered in connection with the execution and delivery of the 2006 Certificates. Notwithstanding any other provision of the Master Contract or hereof, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default under the Master Contract or hereunder.

Section 2.09. Provisions Related to the 2006 Certificate Insurance Policy. For so long as, and only during such time as, the 2006 Certificate Insurance Policy is in effect and the 2005 Certificate Insurer is not in default thereunder, the following provisions shall be in effect, and any conflict between the provisions of this Section 2.09 and the provisions of any other Section hereof shall be governed by the provisions of this Section 2.09:

(a) In determining whether a payment default has occurred hereunder, or whether a 2006 Payment has been made hereunder, no effect shall be given to payments made under the 2006 Certificate Insurance Policy.

(b) Any acceleration of the unpaid 2006 Payments pursuant to Section 5.01 of the Contract or any annulment thereof shall be subject to the prior written consent of the 2006 Certificate Insurer.

(c) Neither the City nor the Authority will use the 2006 Certificate Insurer's name in any public document including, without limitation, a press release or presentation, announcement or forum without the 2006 Certificate Insurer's prior consent; provided, however, such prohibition on the use of the 2006 Certificate Insurer's name shall not relate to the use of the 2006 Certificate Insurer's standard approved form of disclosure in public documents issued in connection with the 2006 Certificates to be issued in accordance with the terms of the 2006 Certificate Insurer's commitment letter; and provided further such prohibition shall not apply to the use of the 2006 Certificate Insurer's name in order to comply with public notice, public meeting or public reporting requirements.

(d) The 2006 Certificate Insurer shall be a third-party beneficiary of this 2006 Supplemental Contract.

(e) The Authority and the City shall provide the 2006 Certificate Insurer with a copy of any notice required to be given by such party hereunder, such notice to be delivered at the address for the 2006 Certificate Insurer set forth in the 2006 Trust Agreement.

Section 2.10. 2006 Interest Rate Swap Agreement. The City and the Authority hereby agree and acknowledge that the 2006 Interest Rate Swap Agreement (excluding the obligations thereunder to post collateral under certain circumstances and to make termination payments upon any early termination event or event of default except to the extent such termination payment is insured under the terms of the 2006 Swap Insurance Policy) constitutes a Parity Payment Agreement and a Parity Obligation payable solely from and secured by a pledge of Gross Revenues on a parity with all other existing and future Parity Obligations. The City and the Authority hereby agree and acknowledge that obligations under the 2006 Interest Rate Swap Agreement to post collateral under certain circumstances or to make termination payments upon an early termination event or event of default under the 2006 Interest Rate Swap Agreement (other than to the extent such termination payment is insured under the terms of the 2006 Swap Insurance Policy) are Subordinate Obligations payable solely from and secured by a pledge of Gross Revenues on a subordinate basis to the Parity Obligations. Amounts payable by the City as a termination payment under the 2006 Interest Rate Swap Agreement upon an event of default with respect to the City thereunder and the designation of an early termination by the 2006 Certificate Insurer pursuant to the terms of the 2006 Interest Rate Swap Agreement (which payments are insured under the terms of the 2006 Swap Insurance Policy) constitute a Parity Obligation payable solely from and secured by a pledge of Gross Revenues on a parity with all other existing and future Parity Obligations. In the event any obligation of the City to post collateral or to make payments upon an early termination or event of default under the 2006 Interest Rate Swap Agreement constituting a Subordinate Obligation shall arise, the City shall establish a fund as necessary for the purpose of satisfying such obligation. As provided and on the dates under Section 2.04 of the Master Contract and Section 2.03 hereof, the City shall from the money in the Revenue Fund deposit in the 2006 Supplemental Contract Payment Account of the Parity Obligation Payment Fund a sum equal to the scheduled payments next due on the 2006 Interest Rate Swap Agreement. The City shall not be required to advance any moneys derived from any source of income other than the Gross Revenues for the payments due under the 2006 Interest Rate Swap Agreement or for the performance of any agreements or covenants required to be performed by it contained in the 2006 Interest Rate Swap Agreement. The general fund of the City is not liable, and neither the faith and credit nor the taxing power of the City is pledged, for the payments under the 2006 Interest Rate Swap Agreement.

Section 2.11. Maintaining Liquidity Facility. The City agrees that at any time when the 2006 Certificates bear interest in a Daily Mode, a Weekly Mode, a Flexible Mode or a Term Mode, it will maintain a Liquidity Facility, as required by Section 3.11 of the 2006 Trust Agreement, acceptable to the 2006 Certificate Insurer, in the Required Stated Amount or in such other amount as may be required by the 2006 Certificate Insurer and the Rating Agencies then rating the 2006 Certificates. The City shall replace such Liquidity Facility if the Liquidity Facility's rating is withdrawn, suspended or lowered below a rating that is acceptable to the 2006 Certificate Insurer. The City covenants that it will not voluntarily terminate a Liquidity Facility then in effect without either: (i) providing for an Alternate Liquidity Facility prior to the effective date of the termination; or (ii) converting the Daily Mode, Weekly Mode, Flexible Mode or Term Mode to a Fixed Rate Mode. If 2006 Certificates bearing interest in the Daily Mode, the Weekly Mode, the Flexible Mode or the Term Mode are then Outstanding, the Trustee shall not release the applicable Liquidity Facility until it has received the Alternate Liquidity Facility. The City shall give, or cause to be given pursuant to Section 3.11(c) of the 2006 Trust Agreement, written notice of its intention to terminate a Liquidity Facility and exercise its option

to provide an Alternate Liquidity Facility to the Trustee and each of the other Notice Parties thirty (30) days before the proposed termination date of the Liquidity Facility and the effective date of such Alternate Liquidity Facility. The City shall provide notice of any expiration, termination, extension or substitution of the Liquidity Facility to the Rating Agencies.

### ARTICLE III

#### MISCELLANEOUS

Section 3.01. Amendment of 1997 Supplemental Contract. Section 2.11(e) of the 1997 Supplemental Contract is hereby amended to read as follows:

“(e) Except for any Supplemental Contract delivered for the purpose of providing for the execution of Parity Obligations in compliance with Article III of the Contract, any amendment of or supplement to the Contract shall be subject to the prior written consent of the 1997 Certificate Insurer as if and to the extent the 1997 Certificate Insurer shall be deemed the sole Owner of the 1997 Certificates for purposes of obtaining the required consent of the Owners of the 1997 Certificates thereto pursuant to Section 4.06 of the 1997 Trust Agreement. Any rating agency rating the Certificates must receive notice of each such amendment or supplement and a copy thereof at least 15 days in advance of its execution or adoption. The 1997 Certificate Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.”

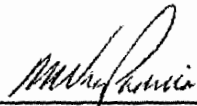
Section 3.02. Terms of the 2006 Supplemental Contract Subject to the Master Contract. This 2006 Supplemental Contract constitutes a Parity Obligation and a Supplemental Contract under the Master Contract and, as such, shall be subject to the provisions of the Master Contract and shall have all of the advantages, benefits, interests and security afforded Parity Obligations and Supplemental Contracts pursuant to the Master Contract. Every term and condition contained in the Master Contract shall apply to the 2006 Supplemental Contract with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to the 2006 Supplemental Contract.

Section 3.03. Assignment of the 2006 Supplemental Contract. The City hereby acknowledges that the Authority, for good and valuable consideration, has transferred, assigned and sent over to the Trustee, pursuant to the provisions of the 2006 Trust Agreement, all of the 2006 Payments and any and all rights and privileges it has under the Master Contract and hereunder. The Trustee shall not assume any responsibilities for any duties or covenants or warranties of the Authority hereunder.

Section 3.04. California Law. This 2006 Supplemental Installment Purchase Contract shall be construed and governed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed and attested the 2006 Supplemental Installment Purchase Contract by their officers thereunto duly authorized as of the day and year first written above.


CITY OF MODESTO

By   
Finance Director/Treasurer

Attest:

  
City Clerk

MODESTO PUBLIC FINANCING AUTHORITY

By   
Auditor and Treasurer

Attest:

  
Secretary

CONSENT OF INSURER

BY EXECUTION HEREOF, Financial Guaranty Insurance Company, as 1997 Certificate Insurer of the outstanding 1997 Certificates, pursuant to Section 2.11 of the 1997 Supplemental Installment Purchase Contract hereby consents to the foregoing 2006 Supplemental Installment Purchase Contract and the amendments to the Contracts effected thereby.

FINANCIAL GUARANTY  
INSURANCE COMPANY

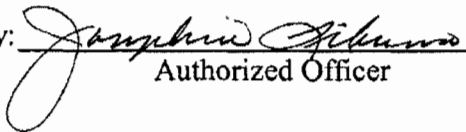
By:  \_\_\_\_\_

Name: Timothy Tattam  
Authorized Representative

TRUSTEE CONSENT

BY EXECUTION HEREOF, The Bank of New York Trust Company, N.A. as Trustee for the outstanding 1997 Certificates and 2006 Certificates hereby consents to the foregoing 2006 Supplemental Installment Purchase Contract and the amendments to the Contracts effected thereby.

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

By:  \_\_\_\_\_  
Authorized Officer

## EXHIBIT A

### Schedule of Principal Installments Relating to 2006 Payments

Principal Payment Date (October 1)	Principal Installment
2007	\$ 250,000
2008	275,000
2009	275,000
2010	275,000
2012	300,000
2013	300,000
2014	325,000
2015	325,000
2016	350,000
2017	350,000
2018	375,000
2019	375,000
2020	375,000
2021	400,000
2022	425,000
2023	2,275,000
2024	2,375,000
2025	2,475,000
2026	2,550,000
2027	2,650,000
2028	2,750,000
2029	2,875,000
2030	2,975,000
2031	3,100,000
2032	3,200,000
2033	3,325,000
2034	3,450,000
2035	3,575,000
2036	3,725,000
	<u>\$46,275,000</u>

Pursuant to Section 2.03 of the 2006 Supplemental Contract, the 2006 Payments should be made no later than three (3) Business Days preceding the due date therefor. In addition to the foregoing principal payments, the 2006 Payments shall include interest payable on each Interest Payment Date under the 2006 Trust Agreement in an amount equal to the interest due on the 2006 Certificates on each Interest Payment Date.

## **EXHIBIT B**

### **Description of the 2006 Project**

The City of Modesto (City) is proposing to fund the costs of improvements required to be made by the City in connection with the expansion of the Modesto Regional Water Treatment Plant (MRWTP), including the construction of several new downstream water facilities, and various water distribution system improvements to the Water System to ensure the reliability of water supply to both existing and future customers. The 2006 Project will include the acquisition of land and right-of-way, and design and construction costs related to the new facilities and improvements. The facilities include the acquisition, construction and installation of three storage tanks and connecting transmission facilities, construction and improvement of transmission/distribution mains and associated pump stations, and installation of motor-operated control valves which will control the flow of treated surface water from the MRWTP to the City system. The 2006 Project facilities and improvements will help replace lost reliable groundwater production capacity, improve the City's ability to maintain desired system operational pressures during high demand periods and meet other operational criteria. These facilities will also improve system distribution capabilities to future customers.

Proceeds of the 2006 Certificates may also be used for other improvements to the Water Utility System approved by the City Council.

**EXHIBIT C**

**FORM OF 2006 PROJECT ACCOUNT REQUEST**

Request of the City  
Requisition From 2006 Project Account of the Improvement Fund

TO: City Treasurer of the City of Modesto

RE: Disbursement from the 2006 Project Account of the Improvement Fund pursuant to Section 2.06(a) of the 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006 (the "2006 Supplemental Contract"), by and between the City of Modesto (the "City"), and the Modesto Public Financing Authority (the "Authority")

REQUEST NO. \_\_\_\_\_

You are hereby instructed to pay to the parties listed on Schedule A hereto the sum listed opposite such parties names as a payment of the cost of the projects (collectively, the "2006 Project") for the items listed on the Schedule attached hereto and the expenses incidental thereto (which may include reimbursement to the City for certain of such costs or expenses) from the 2006 Project Account of the Improvement Fund as provided in Section 2.06(a) of the 2006 Supplemental Contract. This cost has been properly incurred, is a proper charge under the 2006 Supplemental Contract against payment of the costs of the 2006 Project (as defined in the 2006 Supplemental Contract) and has not been the basis of any previous disbursements. The amount remaining in the 2006 Project Account of the Improvement Fund, together with interest earnings thereon will, after payment of the amount set forth in this requisition, be sufficient to pay all remaining costs of the 2006 Project as presently estimated.

I hereby certify that:

(i) an obligation in the stated amount has been properly incurred under and pursuant to the 2006 Supplemental Contract and each such obligation is a proper charge against the Improvement Fund and has not been subject of any previous Request of the City;

(ii) there has not been filed with or served upon the City or the Authority a stop notice or any other notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the money payable to the person named in this Request of the City which has not been released or will not be released with the payment of such obligation, other than materialmen's or mechanics' liens accruing by mere operation of laws;

(iii) in the case of each payment made under any contract for installation or construction, insofar as such obligation was incurred for work, materials, equipment or supplies, such work was actually performed or such materials, equipment or supplies were actually installed in furtherance of the 2006 Project or delivered at the site for that purpose or delivered for storage or fabrication at a place or places approved by the City;

(iv) in the case of increased costs of the 2006 Project, the amount of such increase has been made available by the City; and

(v) no event of default under the Contract has occurred and is continuing.

Very truly yours,

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[City Representative]

DISBURSEMENT INSTRUCTIONS

2006 PROJECT ACCOUNT OF IMPROVEMENT FUND

<u>PAYEE</u>	<u>DESCRIPTION</u>	<u>AMOUNT (\$)</u>
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2008 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT

by and between the

CITY OF MODESTO

and the

MODESTO PUBLIC FINANCING AUTHORITY

Dated as of May 1, 2008

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TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

Section 1.01. Definitions..... 3  
Section 1.02. Definitions in Master Contract and 2008 Trust Agreement..... 4

ARTICLE II

TERMS OF THE 2008 SUPPLEMENTAL CONTRACT

Section 2.01. Authority for the 2008 Supplemental Contract..... 5  
Section 2.02. Purpose of the 2008 Supplemental Contract..... 5  
Section 2.03. 2008 Supplemental Contract Payment Account ..... 5  
Section 2.04. Payment of 2008 Payments..... 6  
Section 2.05. Prepayment of 2008 Payments..... 7  
Section 2.06. Establishment of 2008 Rebate Fund ..... 7  
Section 2.07. Tax Covenants ..... 9  
Section 2.08. Continuing Disclosure ..... 10  
Section 2.09. Provisions Related to the 2008 Certificate Insurance Policy..... 11  
Section 2.10. 2008 Interest Rate Swap Agreement..... 11  
Section 2.11. Maintaining Liquidity Facility..... 13

ARTICLE III

MISCELLANEOUS

Section 3.01. Terms of the 2008 Supplemental Contract Subject to the Master Contract ..... 13  
Section 3.02. Assignment of the 2008 Supplemental Contract ..... 13  
Section 3.03. 2006 Amendments ..... 13  
Section 3.04. California Law ..... 13

EXHIBIT A –Description of the 2008 Project ..... A-1  
EXHIBIT B –Schedule of Principal Installments Relating to 2008 Payments .....B-1

## **2008 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT**

This 2008 Supplemental Installment Purchase Contract (the "2008 Supplemental Contract"), dated as of May 1, 2008, is between the City of Modesto, California, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), and the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Authority").

### **WITNESSETH:**

WHEREAS, the City and the Authority have executed and entered into a Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), for the acquisition from time to time of various additions, betterments, extensions and improvements to the Water Utility System of the City;

WHEREAS, the City previously refinanced certain improvements to its Water Utility System (the "1997 Project") pursuant to the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Supplemental Contract"), by and between the Authority and the City, supplementing the Master Contract, under which the City is obligated to make certain payments (the "1997 Payments") to the Authority as payment of the purchase price for the 1997 Project;

WHEREAS, the City previously financed the costs of various additional improvements (the "2006 Project") to the Water Utility System, and in connection therewith to enter into the 2006 Supplemental Installment Purchase Contract (the "2006 Supplemental Contract") with the Authority, supplementing the Master Contract, pursuant to which the City will obligate itself to make certain payments (the "2006 Payments") to the Authority as payment of the purchase price of the 2006 Project;

WHEREAS, pursuant to Article III of the Master Contract, the City may incur additional Parity Obligations pursuant to a Supplemental Contract to the Master Contract to refund any Outstanding Parity Obligation;

WHEREAS, the City now desires to refinance the 2006 Project (the "2008 Project"), and in connection therewith to enter into this 2008 Supplemental Contract, supplementing the Master Contract, pursuant to which the City will obligate itself to make certain payments (the "2008 Payments") to the Authority as payment of the purchase price of the 2008 Project;

WHEREAS, pursuant to the 2008 Trust Agreement (as defined herein), the Authority has assigned to The Bank of New York Trust Company, N.A., as trustee (the "Trustee") under the 2008 Trust Agreement, certain of its rights under the 2008 Supplemental Contract, including its right to receive the 2008 Payments to be made by the City under this 2008 Supplemental Contract;

WHEREAS, in consideration of such assignment and the execution and entering into of the 2008 Trust Agreement by the Trustee and the Authority, the Trustee has agreed to execute and deliver \$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A

(the "2008 Certificates"), evidencing and representing proportionate interests in the 2008 Payments payable hereunder;

WHEREAS, the City has determined that the foregoing is necessary and proper for the City;

WHEREAS, the City and the Authority have determined that all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of the 2008 Supplemental Contract do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into the 2008 Supplemental Contract.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. Except as provided in Section 1.02 hereof or unless the context otherwise requires, the terms defined in this Section shall for all purposes hereof and of any opinion or report or other document mentioned herein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

“Continuing Disclosure Agreement” means any continuing disclosure agreement, by and between the City and the Trustee, delivered pursuant to Section 2.08 herein.

“Rebate Requirement” shall have the meaning given such term in Section 2.06(b) hereof.

“Special Counsel” shall have the meaning given such term in the 2008 Trust Agreement.

“2006 Certificates” means the Water Revenue Certificates of Participation 2006 Series A.

“2006 Supplemental Contract” means the 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006, by and between the City and the Authority, and consented to by the Trustee and Financial Guaranty Insurance Company.

“2006 Trust Agreement” means that certain Trust Agreement, dated as of November 1, 2006, by and between the Authority and the Trustee, delivered in connection with the 2006 Certificates.

“2008 Certificate Insurance Policy” means the municipal bond insurance policy issued by the 2008 Certificate Insurer guaranteeing the scheduled payment of principal of and interest evidenced and represented by the 2008 Certificates.

“2008 Certificate Insurer” means Assured Guaranty Corp., its successors and assigns.

“2008 Certificates” means the City of Modesto Water Refunding Revenue Certificates of Participation, 2008 Series A, evidencing and representing proportionate interests of the owners thereof in the 2008 Payments to be made by the City, executed and delivered pursuant to the 2008 Trust Agreement.

“2008 Interest Rate Swap Agreement” means, collectively, the ISDA Master Agreement (Local Currency–Single Jurisdiction 1992), the U.S. Municipal Counterparty Schedule thereto, a Credit Support Annex, and a confirmation each dated as of May 29, 2008, between Bank of America, N.A., as a Qualified Counterparty, and the City.

“2008 Payment Date” means each Interest Payment Date and each day on which payments of principal evidenced and represented by the 2008 Certificates become due (whether at maturity or because of prepayment or acceleration).

“2008 Payments” means the Payments scheduled to be paid by the City under and pursuant to the terms hereof.

“2008 Project” means the improvements to the Water Utility System to be refinanced with the proceeds of the 2008 Certificates, as shown on Exhibit A hereto.

“2008 Rebate Fund” means the City of Modesto Water Utility System 2008 Rebate Fund established pursuant to Section 2.06(b) hereof.

“2008 Reimbursement Agreement” means the Reimbursement Agreement (Reserve Fund Surety), dated as of May 1, 2008, by and among the City, the Authority, the Trustee and the 2008 Certificate Insurer, which 2008 Reimbursement Agreement shall constitute a Parity Bank Agreement for purposes of the Master Contract and hereof.

“2008 Supplemental Contract” means this 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, between the City and the Authority, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

“2008 Supplemental Contract Payment Account” means the account by that name within the Parity Obligation Payment Fund established pursuant to Section 2.04 hereof.

“2008 Swap Insurance Policy” the interest rate swap insurance policy issued by the 2008 Certificate Insurer guaranteeing certain payments due by the City under the 2008 Interest Rate Swap Agreement.

“2008 Tax Certificate” means the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the 2008 Certificates executed and delivered by the City on the date of initial delivery of the 2008 Certificates, including any and all exhibits attached thereto.

“2008 Trust Agreement” means that certain Trust Agreement, dated as of May 1, 2008, by and between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented in accordance with its terms.

Section 1.02. Definitions in Master Contract and 2008 Trust Agreement. Except as otherwise herein defined or unless the context otherwise requires, the terms defined in the Master Contract or the 2008 Trust Agreement shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein have the meanings defined therein, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined therein. With respect to any defined term which is given a different meaning under this 2008 Supplemental Contract than under the Master Contract or the 2008 Trust Agreement, as used herein it shall have the meaning given herein.

## ARTICLE II

### TERMS OF THE 2008 SUPPLEMENTAL CONTRACT

Section 2.01. Authority for the 2008 Supplemental Contract. The City has reviewed all proceedings heretofore taken relative to the authorization of this 2008 Supplemental Contract and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required by law to exist, happen or be performed precedent to and in connection with the execution hereof do exist, have happened and have been performed in due time, form and manner as required by law, and the City is now duly authorized, pursuant to each and every requirement of law, to execute and enter into the 2008 Supplemental Contract in the manner and form provided herein for the financing of the costs of the 2008 Project.

Section 2.02. Purpose of the 2008 Supplemental Contract. The City hereby transfers to the Authority the 2006 Project for the purpose of refinancing and acquiring as the 2008 Project from the Authority hereunder. The City agrees to immediately acquire the 2008 Project from the Authority pursuant to the terms hereof and Section 2.01 of the Master Contract and to provide for the prepayment of all payments due under the 2006 Supplemental Contract in accordance with the terms thereof. Immediately upon payment of the purchase price for the 2008 Project, all right, title and interest in and to each such component of the 2008 Project shall transfer to the City from the Authority without any further action by the City or the Authority.

The City and the Authority do hereby agree that upon the payment of the purchase price as provided in Section 2.04 hereof and the deposit of the proceeds thereof with the Trustee under the 2006 Trust Agreement, the obligations of the City under the 2006 Supplemental Contract shall cease and terminate in accordance with Article VI of the Master Contract, except (i) the obligation of the City to make or cause to be made the 2006 Payments from such amounts deposited pursuant to the 2006 Trust Agreement as and when the same comes due and (ii) the amendments to the Master Contract contained in the 2006 Supplemental Contract remain in full force and effect.

Section 2.03. 2008 Supplemental Contract Payment Account. There is hereby established, within the Parity Obligation Payment Fund, the 2008 Supplemental Contract Payment Account. On or before the third Business Day immediately preceding each 2008 Payment Date or the date on which any net scheduled payment or insured termination payment is due under the 2008 Interest Rate Swap Agreement, the City shall, from the money in the Parity Obligation Payment Fund, deposit in the 2008 Supplemental Contract Payment Account (i) a sum equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Supplemental Contract on the next succeeding 2006 Payment Date and (ii) the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement, except that no such deposit need be made if the amount then on deposit in the 2008 Supplemental Contract Payment Account is at least equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Supplemental Contract on the next succeeding 2008 Payment Date plus the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement on such next succeeding due date therefor. Moneys on deposit in the 2008 Supplemental Contract Payment Account shall (i) be

transferred by the City to the Trustee on the Business Day immediately preceding each 2008 Payment Date to make and satisfy the 2008 Payment due on such 2008 Payment Date and (ii) be transferred by the City to the Trustee on the due date therefor to satisfy the net scheduled payment and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement, all in accordance with the Master Contract and the 2008 Trust Agreement.

Section 2.04. Payment of 2008 Payments. The City shall, subject to any rights of prepayment provided in Section 2.05 hereof, pay the Authority as the purchase price for the 2008 Project the sum of \$47,625,000, without offset or deduction of any kind, by paying the principal installments of the 2008 Payments annually on October 1 in each year in accordance with Exhibit B attached hereto and incorporated herein, together with interest installments of the 2008 Payments, which interest installments shall be payable in accordance with Section 2.03 hereof in the amounts and on the 2008 Payment Dates so as to enable interest evidenced by the 2008 Certificates to be paid on a timely basis, and which interest shall constitute interest paid on the principal amount of the City's obligation hereunder.

The obligation of the City to pay the 2008 Payments is, subject to Section 7.01 of the Master Contract, absolute and unconditional, and until such time as the 2008 Payments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article VI of the Master Contract), the City will not discontinue or suspend any 2008 Payments required to be paid by it under this Section 2.04 when due, whether or not the Water Utility System or any part thereof (including the 2008 Project) is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset, abatement or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

The City shall receive a credit against its obligation to pay 2008 Payments that constitute Sinking Fund Payments under the 2008 Trust Agreement if, during the 12-month period immediately preceding the Sinking Fund Payment date with respect to such Sinking Fund Payment, the City or the Authority has deposited Term Certificates with the Trustee (together with a request of the Authority or the City to apply such Certificates so deposited to the Sinking Fund Payment due on said Sinking Fund Payment date) and the full principal amount evidenced and represented thereby has been applied to reduce said Sinking Fund Payment in accordance with Section 2.03 of the 2008 Trust Agreement.

In addition to the 2008 Payments, the City shall also pay such amounts ("Additional Payments") as shall be required for the payment of all fees and administrative costs of the Authority and the Trustee under the 2008 Trust Agreement or otherwise relating to the 2008 Certificates, including, without limitation, payments required to satisfy the Rebate Requirement, all expenses, compensation and indemnification of the Authority, the 2008 Certificate Insurer and the Trustee payable hereunder and under the 2008 Trust Agreement, fees of remarketing agents, auditors, accountants, attorneys or engineers, and all other necessary administrative costs of the Authority or charges required to be paid by it to comply with the terms of this 2008 Supplemental Contract, the 2008 Certificates, the 2008 Certificate Insurance Policy, and the 2008 Trust Agreement.

Section 2.05. Prepayment of 2008 Payments.

(a) The City may optionally prepay 2008 Payments as follows:

(1) The City may prepay all or a portion of the 2008 Payments in accordance with Section 6.01(c) of the Master Contract by depositing cash or Federal Securities with the Trustee subject to the terms and conditions set forth in Article IX of the 2008 Trust Agreement, sufficient to pay the principal of, premium, if any, and interest evidenced by the 2008 Certificates to be paid or prepaid with such 2008 Payments; or

(2) The City may prepay all or a portion of the 2008 Payments from any source of available funds, on any date on which 2008 Certificates may be optionally prepaid, by paying (A) all or a portion (in an amount equal to an Authorized Denomination under the 2008 Trust Agreement), as elected by the City, of such 2008 Payments, (B) an amount equal to the accrued but unpaid interest on the 2008 Certificates to be prepaid from the proceeds of such prepaid 2008 Payments to the date of such prepayment, and (C) an amount equal to any premium to be paid upon the optional prepayment of the 2008 Certificates to be prepaid from the proceeds of such prepaid 2008 Payments.

(b) The 2008 Payments shall be subject to mandatory prepayment to the extent required to effect the mandatory prepayment of Liquidity Provider Certificates in accordance with Section 2.03(b) of the 2008 Trust Agreement.

(c) If less than all of the 2008 Payments are prepaid pursuant to this Section 2.05 then, as of the date of such prepayment pursuant to this Section, the schedule of 2008 Payments attached as Exhibit B hereto shall be recalculated by the City in order to take such prepayment into account. The City shall deliver a copy of such revised schedule to the Trustee and such revised schedule shall automatically supersede and replace the previous form of Exhibit B.

(d) Before making any prepayment pursuant to this Section, the City shall give written notice to the Authority specifying the date on which the prepayment will be paid and the order thereof, which date shall be not less than 50 days from the date such notice is given; provided, that notwithstanding any such prepayment, the City shall not be relieved of its obligations hereunder, including specifically its obligations under this article, until the 2008 Payments and all amounts due under the 2008 Reimbursement Agreement shall have been fully paid (or provision for payment thereof shall have been made pursuant to Article VI of the Master Contract).

Section 2.06. Establishment of 2008 Rebate Fund. The City hereby agrees to establish and maintain, so long as any 2008 Certificates remain Outstanding, a fund separate from any other fund established and maintained hereunder designated the "City of Modesto Water Utility System 2008 Rebate Fund." All amounts at any time on deposit in the 2008 Rebate Fund shall be held by the City to the extent required to satisfy the requirement to make rebate payments to the United States (the "Rebate Requirement") pursuant to Section 148 of the Code and the Treasury Regulations promulgated thereunder (the "Treasury Regulations"). Such amounts shall be free

and clear of any lien under the Master Contract and the 2008 Supplemental Contract and shall be governed by this Section 2.06 and by the 2008 Tax Certificate.

(1) Within 60 days of the end of each Certificate Year (as such term is defined in the 2008 Tax Certificate), or such other period ending no later than 60 days after the end of the fifth Certificate Year, (i) the City shall calculate or cause to be calculated with respect to the 2008 Supplemental Contract the amount that would be considered the “rebate amount” within the meaning of Section 1.148-3 of the Treasury Regulations, using as the “computation date” for this purpose the end of such Certificate Year, and (ii) the City shall deposit to the 2008 Rebate Fund from amounts on deposit in the Revenue Fund or other amounts received by the City, if and to the extent required, amounts sufficient to cause the balance in the 2008 Rebate Fund to be equal to the “rebate amount” so calculated.

The City shall not be required to deposit any amount to the 2008 Rebate Fund in accordance with preceding sentence if the amount on deposit in the 2008 Rebate Fund prior to the deposit required to be made under this paragraph (1) equals or exceeds the “rebate amount” calculated in accordance with the preceding sentence. Such excess may be withdrawn from the 2008 Rebate Fund to the extent permitted under paragraph (2) of this Section.

The City shall not be required to calculate the “rebate amount,” and shall not be required to deposit any amount to the 2008 Rebate Fund in accordance with this paragraph (1), with respect to all or a portion of the proceeds of the 2008 Certificates (including amounts treated as proceeds of the 2008 Certificates) (i) to the extent such proceeds satisfy the expenditure requirements of Section 148(f)(4)(g) or Section 148(f)(4)(C) of the Code or Section 1.148-7(d) of the Treasury Regulations, whichever is applicable, and otherwise qualify for the exception to the Rebate Requirement pursuant to whichever of said sections is applicable, (ii) to the extent such proceeds are subject to an election by the City under Section 148(f)(4)(C)(vii) of the Code to pay a 1.5% penalty in lieu of arbitrage rebate in the event any of the percentage expenditure requirements of Section 148(f)(4)(C) are not satisfied, or (iii) to the extent such proceeds qualify for the exception to arbitrage rebate under Section 148(f)(4)(A)(ii) of the Code for amounts in a “bona fide debt service fund.”

(2) Any funds remaining in the 2008 Rebate Fund after payment of all the 2008 Payments hereunder and any amounts described in clause (ii) of paragraph (3) of this Section, or provision made therefor, including accrued interest, shall be transferred by the City to the Revenue Fund.

(3) Subject to the exceptions contained in paragraph (1) of this Section to the requirement to calculate the “rebate amount” and make deposits to the 2008 Rebate Fund, the City shall pay to the United States, from amounts on deposit in the 2008 Rebate Fund,

(i) not later than 60 days after the end of (A) the fifth Certificate Year, and (B) each fifth Certificate Year thereafter, an amount that, together with all previous rebate payments, is equal to at least 90% of the “rebate amount”

calculated as of the end of such Certificate Year in accordance with Section 1.148-3 of the Treasury Regulations; and

(ii) not later than 60 days after the payment of all 2008 Certificates, an amount equal to 100% of the “rebate amount” calculated as of the date of such payment (and any income attributable to the “rebate amount” determined to be due and payable) in accordance with Section 1.148-3 of the Treasury Regulations.

(4) Each payment required to be made pursuant to paragraph (3) of this Section shall be made to the Internal Revenue Service on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be completed by or on behalf of the City.

(5) In the event that, prior to the time any payment is required to be made from the 2008 Rebate Fund, the amount in the 2008 Rebate Fund is not sufficient to make such payment when such payment is due, the City shall calculate the amount of such deficiency and deposit an amount equal to such deficiency into the 2008 Rebate Fund prior to the time such payment is due.

(6) In the event that immediately following the calculation required by paragraph (1) of this Section, but prior to any deposit made under said subsection, the amount on deposit in the 2008 Rebate Fund exceeds the “rebate amount” calculated in accordance with said subsection, the City shall transfer the excess from the 2008 Rebate Fund to the Revenue Fund.

(7) The City shall retain records of all determinations made hereunder until six years after the final payment or discharge of all 2008 Certificates.

(8) Notwithstanding anything in the Master Contract or the 2008 Supplemental Contract to the contrary, the Rebate Requirement shall survive the payment in full or discharge of the 2008 Certificates and the 2008 Payments.

Section 2.07. Tax Covenants. The City hereby covenants it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the portion of the 2008 Payments constituting interest under Section 103 of the Code. The City shall not, directly or indirectly, use or permit the use of proceeds of the 2008 Supplemental Contract or any of the property financed or refinanced with proceeds of the 2008 Supplemental Contract, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 2008 Payments constituting interest.

The City shall not take any action, or fail to take any action, if any such action or failure to take action would cause any obligations delivered in connection with the 2008 Supplemental Contract to be “private activity bonds” within the meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the 2008 Supplemental Contract or any of the property financed or refinanced with proceeds of the 2008 Supplemental Contract, or any portion thereof, or any other funds of the City, that would cause any of the 2008 Certificates

on other obligations delivered in connection with the 2008 Supplemental Contract to be “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any 2008 Payments are unpaid, the City, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, applicable and in effect. The City shall establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of any obligations delivered in connection with the 2008 Supplemental Contract as “governmental bonds.”

The City shall not, directly or indirectly, use or permit the use of any proceeds of the 2008 Supplemental Contract, or of any property financed or refinanced thereby, or other funds of the City, or take or omit to take any action, that would cause any obligations delivered in connection with the 2008 Supplemental Contract to be “arbitrage bonds” within the meaning of Section 148 of the Code. To that end, the City shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the 2008 Supplemental Contract.

The City shall not make any use of the proceeds of the 2008 Supplemental Contract or any other funds of the City, or take or omit to take any other action, that would cause the 2008 Supplemental Contract to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

In furtherance of the foregoing tax covenants, the City covenants that it will comply with the provisions of the 2008 Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or discharge of the 2008 Certificates and the 2008 Payments.

The Authority and the City covenant that, in the event of any change in the 2008 Trust Agreement, this 2008 Supplemental Contract or other relevant documents relating to the 2008 Certificates, or any other actions taken or omitted by the City or the Authority, upon the advice or with the approving opinion of Special Counsel other than Sidley Austin LLP, Special Counsel in connection with the original execution and delivery of the 2008 Certificates, the Authority and the City will, upon the making of any such change, or the taking or omission of any such other action, cause to be delivered an opinion of Special Counsel (together with a reliance letter thereon addressed to the 2008 Certificate Insurer and the Trustee) nationally recognized in the area of municipal bonds to the effect that the portion of each 2008 Payment due under this 2008 Supplemental Contract designated as and comprising interest with respect to the 2008 Certificates is excluded from gross income for federal income tax purposes.

Section 2.08. Continuing Disclosure. So long as the Bonds are in a Daily Mode or Weekly Mode, the City shall have no continuing disclosure obligation hereunder. The City hereby covenants and agrees that it will comply with and carry out all of its obligations under the Continuing Disclosure Agreement delivered in connection with the execution and delivery of the 2008 Certificates. Notwithstanding any other provision of the Master Contract or hereof, failure

of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default under the Master Contract or hereunder.

Section 2.09. Provisions Related to the 2008 Certificate Insurance Policy. For so long as, and only during such time as, the 2008 Certificate Insurance Policy is in effect and the 2008 Certificate Insurer is not in default thereunder, the following provisions shall be in effect, and any conflict between the provisions of this Section 2.09 and the provisions of any other Section hereof shall be governed by the provisions of this Section 2.09:

(a) In determining whether a payment default has occurred hereunder, or whether a 2008 Payment has been made hereunder, no effect shall be given to payments made under the 2008 Certificate Insurance Policy.

(b) Any acceleration of the unpaid 2008 Payments pursuant to Section 5.01 of the Master Contract or any annulment thereof shall be subject to the prior written consent of the 2008 Certificate Insurer.

(c) Neither the City nor the Authority will use the 2008 Certificate Insurer's name in any public document including, without limitation, a press release or presentation, announcement or forum without the 2008 Certificate Insurer's prior consent; provided, however, such prohibition on the use of the 2008 Certificate Insurer's name shall not relate to the use of the 2008 Certificate Insurer's standard approved form of disclosure in public documents issued in connection with the 2008 Certificates to be issued in accordance with the terms of the 2008 Certificate Insurer's commitment letter; and provided further such prohibition shall not apply to the use of the 2008 Certificate Insurer's name in order to comply with public notice, public meeting or public reporting requirements.

(d) The 2008 Certificate Insurer shall be a third-party beneficiary of this 2008 Supplemental Contract.

(e) The Authority and the City shall provide the 2008 Certificate Insurer with a copy of any notice required to be given by such party hereunder, such notice to be delivered at the address for the 2008 Certificate Insurer set forth in the 2008 Trust Agreement.

Section 2.10. 2008 Interest Rate Swap Agreement.

(a) The City and the Authority hereby agree and acknowledge that the 2008 Interest Rate Swap Agreement (excluding the obligations thereunder to post collateral under certain circumstances and to make termination payments upon any early termination event or event of default except to the extent such termination payment is insured under the terms of the 2008 Swap Insurance Policy) constitutes a Parity Payment Agreement and a Parity Obligation payable solely from and secured by a pledge of Gross Revenues on a parity with all other existing and future Parity Obligations. The City and the Authority hereby agree and acknowledge that obligations under the 2008 Interest Rate Swap Agreement to post collateral under certain circumstances or to make termination payments upon an early termination event or event of default under the 2008 Interest Rate Swap Agreement (other than to the extent such termination payment is insured under the terms of the 2008 Swap Insurance Policy) are Subordinate Obligations payable solely from and secured by a pledge of Gross Revenues on a subordinate

basis to the Parity Obligations. Amounts payable by the City as a termination payment under the 2008 Interest Rate Swap Agreement upon an event of default with respect to the City thereunder and the designation of an early termination by the 2008 Certificate Insurer pursuant to the terms of the 2008 Interest Rate Swap Agreement (which payments are insured under the terms of the 2008 Swap Insurance Policy) constitute a Parity Obligation payable solely from and secured by a pledge of Gross Revenues on a parity with all other existing and future Parity Obligations. In the event any obligation of the City to post collateral or to make payments upon an early termination or event of default under the 2008 Interest Rate Swap Agreement constituting a Subordinate Obligation shall arise, the City shall establish a fund as necessary for the purpose of satisfying such obligation. As provided and on the dates under Section 2.04 of the Master Contract and Section 2.03 hereof, the City shall from the money in the Revenue Fund deposit in the 2008 Supplemental Contract Payment Account of the Parity Obligation Payment Fund a sum equal to the scheduled payments next due on the 2008 Interest Rate Swap Agreement. The City shall not be required to advance any moneys derived from any source of income other than the Gross Revenues for the payments due under the 2008 Interest Rate Swap Agreement or for the performance of any agreements or covenants required to be performed by it contained in the 2008 Interest Rate Swap Agreement. The general fund of the City is not liable, and neither the faith and credit nor the taxing power of the City is pledged, for the payments under the 2008 Interest Rate Swap Agreement.

(b) Any interest rate swap agreements relating to the 2008 Certificates entered after the date hereof shall meet the following conditions (unless otherwise agreed to by the 2008 Certificate Insurer in writing): (i) the interest rate swap agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, (b) debt then outstanding, or (c) debt reasonably expected to be issued or incurred within thirty-six months of the proposed interest rate swap, and (ii) the interest rate swap agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively off-sets the exposure from any such element or component. Unless otherwise consented to in writing by 2008 Certificate Insurer, the net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the 2008 Certificates and on any debt on a parity with the 2008 Certificates, provided, that any insured termination amounts shall be on a parity with the interest rate swap obligations and any uninsured termination amounts shall be subordinate to the interest rate swap obligations and on any debt on a parity with the interest rate swap obligations. The City shall not terminate interest rate swap agreement unless it demonstrates to the satisfaction of the 2008 Certificate Insurer prior to the payment of any such termination amount that (a) such payment will not cause the City to be in default of the interest rate swap agreement, and (b) such payment will not cause the City to be in default under any financing agreement, as such agreement may be amended or supplemented, including but not limited to, any monetary obligations thereunder. All counterparties or guarantors to the interest rate swap agreement must have a rating of at least "A" and "A2" by Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's"). If the counterparty or guarantor's rating falls below "A-" or "A3" by either S&P or Moody's, the counterparty or guarantor shall execute a credit support annex to the interest rate swap agreement, which credit support annex shall be acceptable to the 2008 Certificate Insurer. If the counterparty or the guarantor's long term unsecured rating falls below "Baa3" or "BBB-" by either Moody's or S&P, a replacement counterparty or guarantor, acceptable to the 2008 Certificate Insurer, shall be required.

Section 2.11. Maintaining Liquidity Facility. The City agrees that at any time when the 2008 Certificates bear interest in a Daily Mode, a Weekly Mode, a Flexible Mode or a Term Mode, it will maintain a Liquidity Facility, as required by Section 3.11 of the 2008 Trust Agreement, acceptable to the 2008 Certificate Insurer, in the Required Stated Amount or in such other amount as may be required by the 2008 Certificate Insurer and the Rating Agencies then rating the 2008 Certificates. The City shall replace such Liquidity Facility if the Liquidity Facility's rating is withdrawn, suspended or lowered below a rating that is acceptable to the 2008 Certificate Insurer. The City covenants that it will not voluntarily terminate a Liquidity Facility then in effect without either: (i) providing for an Alternate Liquidity Facility prior to the effective date of the termination; or (ii) converting the Daily Mode, Weekly Mode, Flexible Mode or Term Mode to a Fixed Rate Mode. If 2008 Certificates bearing interest in the Daily Mode, the Weekly Mode, the Flexible Mode or the Term Mode are then Outstanding, the Trustee shall not release the applicable Liquidity Facility until it has received the Alternate Liquidity Facility. The City shall give, or cause to be given pursuant to Section 3.11(d) of the 2008 Trust Agreement, written notice of its intention to terminate a Liquidity Facility and exercise its option to provide an Alternate Liquidity Facility to the Trustee and each of the other Notice Parties 30 days before the proposed termination date of the Liquidity Facility and the effective date of such Alternate Liquidity Facility. The City shall provide notice of any expiration, termination, extension or substitution of the Liquidity Facility to the Rating Agencies.

### ARTICLE III

#### MISCELLANEOUS

Section 3.01. Terms of the 2008 Supplemental Contract Subject to the Master Contract. This 2008 Supplemental Contract constitutes a Parity Obligation and a Supplemental Contract under the Master Contract and, as such, shall be subject to the provisions of the Master Contract and shall have all of the advantages, benefits, interests and security afforded Parity Obligations and Supplemental Contracts pursuant to the Master Contract. Every term and condition contained in the Master Contract shall apply to the 2008 Supplemental Contract with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to the 2008 Supplemental Contract.

Section 3.02. Assignment of the 2008 Supplemental Contract. The City hereby acknowledges that the Authority, for good and valuable consideration, has transferred, assigned and sent over to the Trustee, pursuant to the provisions of the 2008 Trust Agreement, all of the 2008 Payments and any and all rights and privileges it has under the Master Contract and hereunder. The Trustee shall not assume any responsibilities for any duties or covenants or warranties of the Authority hereunder.

Section 3.03. 2006 Amendments. Notwithstanding anything to the contrary herein, the amendments to the Master Contract contained in the 2006 Supplemental Contract remain in full force and effect.

Section 3.04. California Law. This 2008 Supplemental Contract shall be construed and governed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed and attested this 2008 Supplemental Installment Purchase Contract by their officers thereunto duly authorized as of the day and year first written above.

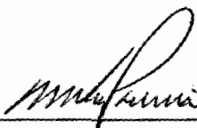
CITY OF MODESTO

By   
Finance Director/Treasurer


Attest:

  
City Clerk

MODESTO PUBLIC FINANCING AUTHORITY

By   
Auditor and Treasurer

Attest:

  
Secretary

## **EXHIBIT A**

### **Description of the 2008 Project**

The City is proposing to refinance the costs of improvements made by the City in connection with the expansion of the Modesto Regional Water Treatment Plant (MRWTP), including the construction of several new downstream water facilities, and various water distribution system improvements to the Water System to ensure the reliability of water supply to both existing and future customers. The 2008 Project includes refinancing the acquisition of land and right-of-way, and design and construction costs related to the new facilities and improvements. The facilities included the acquisition, construction and installation of three storage tanks and connecting transmission facilities, construction and improvement of transmission/distribution mains and associated pump stations, and installation of motor-operated control valves which will control the flow of treated surface water from the MRWTP to the City system. The facilities and improvements refinanced as the 2008 Project helped replace lost reliable groundwater production capacity, improve the City's ability to maintain desired system operational pressures during high demand periods and meet other operational criteria. These facilities improved system distribution capabilities to future customers.

## EXHIBIT B

### Schedule of Principal Installments Relating to 2008 Payments

Principal Payment Date (October 1)	Principal Installment
2008	\$ 290,000
2009	285,000
2010	285,000
2011	285,000
2012	310,000
2013	310,000
2014	340,000
2015	340,000
2016	365,000
2017	365,000
2018	395,000
2019	395,000
2020	395,000
2021	425,000
2022	450,000
2023	2,300,000
2024	2,410,000
2025	2,515,000
2026	2,595,000
2027	2,705,000
2028	2,810,000
2029	2,945,000
2030	3,055,000
2031	3,185,000
2032	3,295,000
2033	3,430,000
2034	3,570,000
2035	3,705,000
2036	3,870,000
	<u>\$47,625,000</u>

Pursuant to Section 2.03 of the 2008 Supplemental Contract, the 2008 Payments should be made no later than 3 Business Days preceding the due date therefor. In addition to the foregoing principal payments, the 2008 Payments shall include interest payable on each Interest Payment Date under the 2008 Trust Agreement in an amount equal to the interest due on the 2008 Certificates on each Interest Payment Date.

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE REGARDING AUTHORITY RESOLUTION

I, Stephanie Lopez, hereby certify that I am the Secretary of the Commission of the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority organized under the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the Authority.


I hereby further certify that the attached resolution is a full, true and correct copy of Resolution No. 01-2008, adopted at the regular meeting of the Commission of the Authority held on May 13, 2008, of which meeting all of the members of the Governing Board had due notice and at which a quorum was present and acting throughout.

I hereby further certify that I have carefully compared the same with the original resolution so adopted at said meeting and that it is a full, true and correct copy of said resolution; and that said resolution has not been amended, modified or rescinded since the date of adoption and is now in full force and effect.

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Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By:   
\_\_\_\_\_  
Stephanie Lopez,  
Secretary

**MODESTO PUBLIC FINANCING AUTHORITY  
RESOLUTION NO.01-2008**

**A RESOLUTION OF THE MODESTO PUBLIC FINANCING AUTHORITY RELATING TO WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION, SERIES 2008; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A 2008 TRUST AGREEMENT, A 2008 SUPPLEMENTAL CONTRACT, A REMARKETING AGREEMENT, A LIQUIDITY FACILITY AND A PURCHASE CONTRACT; APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH; APPOINTING A TRUSTEE; AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS**

WHEREAS, the Modesto Public Financing Authority (the "Authority") is a joint exercise of powers authority duly organized and existing pursuant to the Modesto Public Financing Joint Exercise of Powers Agreement, dated as of December 5, 1989, by and between the City of Modesto (the "City"), a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California, and the Industrial Development Authority of the City;

WHEREAS, the Authority and the City have previously entered into a Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract") in order to provide for the financing and refinancing from time to time of the costs of acquisition and construction of various additions, betterments, extensions and improvements to the City's Water Utility System;

WHEREAS, the City previously refinanced certain improvements to its Water Utility System pursuant to the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997, by and between the City and the Authority, supplementing the Master Contract, with proceeds of \$25,585,000 in aggregate principal amount of Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project) (the "1997

Certificates”), executed and delivered pursuant to a Trust Agreement, dated as of November 1, 1997 (the “1997 Trust Agreement”), by and between the Authority and The Bank of New York Trust Company, N.A., as successor trustee (the “1997 Trustee”);

WHEREAS, the City previously financed certain improvements to its Water Utility System (the “2006 Project”), pursuant to the 2006 Supplemental Installment Purchase Contract (the “2006 Supplemental Contract”), dated as of November 1, 2006, with proceeds \$46,275,000 in aggregate principal amount of Water Revenue Certificates of Participation 2006 Series A (the “2006 Certificates”), executed and delivered pursuant to a Trust Agreement, dated as of November 1, 2006 (the “2006 Trust Agreement”), by and between the Authority and The Bank of New York Trust Company, N.A., as trustee (the “2006 Trustee”);

WHEREAS, pursuant to Article III of the Master Contract, the City may incur additional obligations payable on a parity thereunder, including by execution of a supplemental installment purchase contract;

WHEREAS the City has experienced unusually high interest rates on its auction securities due to market disruptions;

WHEREAS the City has determined that by refinancing the 2006 Certificates, the City can achieve interest cost savings and/or a desirable restructuring of debt obligations so as to minimize the impact of current and potentially future market instability;

WHEREAS, the City now desires to cause to be executed and delivered an additional series of certificates in an aggregate initial principal amount not to exceed \$52,000,000 and designated as the Refunding Water Refunding Revenue Certificates of Participation, Series 2008

(the “2008 Certificates”) for the purpose of (i) refinancing the outstanding 2006 Certificates, (ii) funding a deposit to the parity reserve fund with cash, proceeds of the 2008 Certificates, or a debt service reserve surety bonds and (iii) financing the costs of execution and delivery of the 2008 Certificates;

WHEREAS, the Authority and the City will enter into a 2008 Supplemental Installment Purchase Contract (the “2008 Supplemental Contract”) to refinance the 2006 Project (the “2008 Project”);

WHEREAS, The Bank of New York Trust Company, N.A., as trustee (the “2008 Trustee”), and the Authority will enter into a Trust Agreement (the “2008 Trust Agreement”) in order to provide for the execution and delivery of the 2008 Certificates and pursuant to which the Authority will assign certain of its rights under the 2008 Supplemental Contract, including its right to receive the payments to be made by the City thereunder;

WHEREAS, in consideration of such assignment and the execution and entering into of the 2008 Trust Agreement by the 2008 Trustee and the Authority, the 2008 Trustee has agreed to execute and deliver the 2008 Certificates, evidencing and representing proportionate interests of the owners thereof in installment payments to be made by the City;

WHEREAS, the City has determined to execute and deliver the 2008 Certificates initially as variable rate demand certificates;

WHEREAS, Banc of America Securities LLC, as Remarketing Agent (the “Remarketing Agent”), and the Authority propose to execute and enter into a Remarketing and Interest Services

Agreement (the "Remarketing Agreement"), relating to the performance of certain duties with respect to the remarketing of the 2008 Certificates;

WHEREAS, Banc of America, N.A., as Liquidity Facility Provider (the "Liquidity Facility Provider"), the City, and the Authority propose to execute and enter into a Stand-By Certificate Purchase Agreement (the "Liquidity Facility"), relating to the performance of certain duties with respect to the remarketing of the 2008 Certificates;

WHEREAS, the Authority proposes to execute and enter into a Purchase Contract (the "Purchase Contract") with Banc of America Securities LLC (the "Underwriter") and the City, pursuant to which the Underwriter will purchase the 2008 Certificates for reoffering to the public;

WHEREAS, the Authority proposes to execute and deliver an Official Statement (the "Official Statement") relating to the 2008 Certificates and to authorize the distribution of such Official Statement to prospective and actual purchasers of the 2008 Certificates;

WHEREAS, the City intends to obtain from a municipal bond insurance provider (the "Insurer") municipal bond insurance policies to insure certain payments on the 2008 Certificates and certain swap payments to be made by the City under a related interest rate swap agreement and surety bonds to meet the parity reserve fund requirement; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is

now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Authority, as follows:

Section 1. Findings. The Commission of the Authority hereby specifically finds and determines it is desirable and furthers the public purpose to assist the City in the financing of the 2008 Project through the actions authorized hereby and that the statements, findings and determinations of the Authority set forth above and in the preambles of the documents approved herein are true and correct.

Section 2. 2008 Trust Agreement. The 2008 Trust Agreement, proposed to be executed and entered into by and between the Authority and the 2008 Trustee, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and each of the Chairperson, Vice Chairperson, Executive Director, and Auditor and Treasurer of the Authority, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the 2008 Trustee the 2008 Trust Agreement in substantially said form, with such changes therein as such officer executing the 2008 Trust Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the aggregate principal amount of the 2008 Certificates to be executed and delivered thereunder shall not exceed \$52,000,000, the final principal payment date of the 2008 Certificates shall be not later than 35 years from the initial installment payment, and the 2008 Certificates initially shall be delivered as variable rate demand securities bearing interest at

a rate not to exceed 12% per annum (except when such 2008 Certificates are held by the Liquidity Facility Provider)

Section 3. 2008 Supplemental Contract. The 2008 Supplemental Contract, proposed to be executed and entered into by and between the City and the Authority, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and each of the Chairperson, Vice Chairperson, Executive Director and Auditor and Treasurer of the Authority, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the City the 2008 Supplemental Contract in substantially said form, with such changes therein as such officer executing the 2008 Supplemental Contract may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Remarketing Agreement. The Remarketing Agreement, proposed to be executed and entered into by and among the Remarketing Agent and the Authority, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and each of the Chairperson, Vice Chairperson, Executive Director and Auditor and Treasurer of the Authority, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the Remarketing Agent and the City the Remarketing Agreement in substantially said form, with such changes therein as such officer executing the Remarketing Agreement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Liquidity Facility. The Liquidity Facility, proposed to be executed and entered into by and among the City, the Authority and the Liquidity Facility Provider propose to

execute and enter into the Liquidity Facility, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and each of the Chairperson, Vice Chairperson, Executive Director and Auditor and Treasurer of the Authority, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the Liquidity Facility Provider and the City the Liquidity Facility in substantially said form, with such changes therein as such officer executing the Liquidity Facility may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. Purchase Contract. The Purchase Contract, proposed to be executed and entered into by and among the City, the Authority and the Underwriter, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and each of the Chairperson, Vice Chairperson, Executive Director and Auditor and Treasurer of the Authority, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the Underwriter and the City the Purchase Contract in substantially said form, with such changes therein as such officer executing the Purchase Contract may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. Official Statement. The Official Statement, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved. Each of the Chairperson, Vice Chairperson, Executive Director and Auditor and Treasurer of the Authority, acting singly, is hereby authorized and directed to cause the Official Statement, in substantially said form, with such changes therein as such officer may require or approve, to be distributed to potential and actual purchasers of the 2008 Certificates. Each of the Chairperson, Vice Chairperson, Executive Director and Auditor and Treasurer of the Authority, acting singly, is

hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Official Statement in substantially said form, with such changes therein as such officer executing the Official Statement may require or approve with such approved by such officer executing the Official Statement, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 8. Attestations. The Secretary of the Authority is hereby authorized and directed to attest the signatures of the Chairperson, Vice Chairperson, Executive Director or the Auditor and Treasurer of the Authority in connection with the execution and delivery of the 2008 Certificates and the documents approved by this Resolution.

Section 9. Other Actions. The Chairperson, Vice Chairperson, Executive Director, the Auditor and Treasurer and Secretary of the Authority are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the 2008 Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the 2008 Supplemental Contract, the 2008 Trust Agreement, the Remarketing Agreement, the Liquidity Facility, the Purchase Contract, the Official Statement, and the 2008 Certificates; to obtain municipal bond insurance policies and debt service reserve surety bonds, if upon the advice of the City's financial advisor such policies and surety bonds are projected to result in a savings to the City; to effect the redemption of the 2006 Certificates; to effect any required amendments to the City's related interest rate swap agreement; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 10. Effective Date. This Resolution shall take effect immediately upon its passage.

The foregoing resolution was introduced at a meeting of the Modesto Public Financing Authority of the City of Modesto held on the 13<sup>th</sup> day of May, 2008, by Authority Member Hawn, who moved its adoption, which motion being duly seconded by Authority Member Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Authority Commissioners: Hawn, Lopez, Marsh, Olsen,  
Mayor Ridenour

NOES: Authority Commissioners: Keating, O'Bryant

ABSENT: Authority Commissioners: None

ATTEST: Stephanie Lopez  
STEPHANIE LOPEZ, Secretary

APPROVED AS TO FORM:

By: Susana Alcala Wood  
SUSANA ALCALA WOOD,  
City Attorney  
Acting as Authority General Counsel

THIS IS TO CERTIFY THAT THIS  
IS A TRUE COPY OF THE DOCUMENT ON  
FILE WITH THIS OFFICE.

DATE May 28, 2008

Stephanie Lopez  
SIGNATURE  
CITY CLERK  
CITY OF MODESTO, CA

I HAVE TO CERTIFY THAT THIS  
IS A TRUE COPY OF THE DOCUMENT ON  
FILE WITH THIS OFFICE

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CITY OF MODESTO, CA  
CITY CLERK  
RECEIVED

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE REGARDING CITY RESOLUTION

I, Stephanie Lopez, hereby certify that I am the City Clerk of the City of Modesto (the "City"), a charter city and municipal corporation duly organized under the Constitution and the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the City.

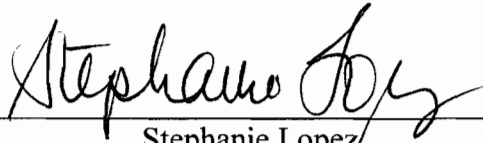
I hereby further certify that the attached resolution is a full, true and correct copy of Resolution No. 2008-294, adopted at the regular meeting of the City Council of the City held on May 13, 2008, of which meeting all of the members of the City Council of the City had due notice and at which a quorum was present and acting throughout.

I hereby further certify that I have carefully compared the same with the original resolution so adopted at said meeting and that it is a full, true and correct copy of said resolution; and that said resolution has not been amended, modified or rescinded since the date of adoption and is now in full force and effect.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Dated: May 30, 2008

CITY OF MODESTO

By:   
\_\_\_\_\_  
Stephanie Lopez  
City Clerk

**MODESTO CITY COUNCIL  
RESOLUTION NO. 2008-294**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO RELATING TO WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION, SERIES 2008; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A 2008 SUPPLEMENTAL CONTRACT, A LIQUIDITY FACILITY AND A PURCHASE CONTRACT; APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH; AUTHORIZING THE 2008 SWAP AMENDMENTS AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS**

WHEREAS, the City of Modesto is a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City");

WHEREAS, the City and the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California, have previously entered into a Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract") in order to provide for the financing and refinancing from time to time of the costs of acquisition and construction of various additions, betterments, extensions and improvements to the City's Water Utility System;

WHEREAS, the City previously refinanced certain improvements to its Water Utility System, pursuant to the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997, by and between the City and the Authority, supplementing the Master Contract, with proceeds of \$25,585,000 in aggregate principal amount of Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project) (the "1997 Certificates") executed and delivered pursuant to a Trust Agreement, dated as of November 1,

1997, by and between the Authority and The Bank of New York Trust Company, N.A., as successor trustee;

WHEREAS, the City previously financed certain improvements to its Water Utility System (the "2006 Project"), pursuant to the 2006 Supplemental Installment Purchase Contract (the "2006 Supplement Contract"), dated as of November 1, 2006, by and between the City and the Authority, supplementing the Master Contract, with proceeds of \$46,275,000 in aggregate principal amount of Water Revenue Certificates of Participation 2006 Series A (the "2006 Certificates"), executed and delivered pursuant to a Trust Agreement, dated as of November 1, 2006, by and between the Authority and The Bank of New York Trust Company, N.A., as trustee;

WHEREAS, pursuant to Article III of the Master Contract, the City may incur additional obligations payable on a parity thereunder, including by execution of a supplemental installment purchase contract;

WHEREAS, the City has experienced unusually high interest rates on its auction securities due to market disruptions;

WHEREAS, the City has determined that by refinancing the 2006 Certificates, the City can achieve interest cost savings and/or a desirable restructuring of debt obligations so as to minimize the impact of current and potentially future market instability;

WHEREAS, the City now desires to cause to be executed and delivered an additional series of certificates in an aggregate initial principal amount not to exceed \$52,000,000 and designated as City of Modesto Water Refunding Revenue Certificates of Participation, Series

2008 (the "2008 Certificates") for the purpose of (i) refinancing the outstanding 2006 Series A Certificates, (ii) funding a parity reserve fund with cash, proceeds of the 2008 Certificates, or debt service reserve surety bonds and (iii) financing the costs of execution and delivery of the 2008 Certificates;

WHEREAS, the Authority and the City will enter into a 2008 Supplemental Installment Purchase Contract (the "2008 Supplemental Contract") to refinance the 2006 Project (the "2008 Project");

WHEREAS, pursuant to a Trust Agreement (the "2008 Trust Agreement") proposed to be executed and entered into by and between the Authority and The Bank of New York Trust Company, N.A., as trustee (the "2008 Trustee"), the Authority proposes to assign certain of its rights under the 2008 Supplemental Contract, including its right to receive the payments to be made by the City thereunder;

WHEREAS, in consideration of such assignment and the execution and entering into of the 2008 Trust Agreement by the 2008 Trustee and the Authority, the 2008 Trustee has agreed to execute and deliver the 2008 Certificates, evidencing and representing proportionate interests of the owners thereof in installment payments to be made by the City;

WHEREAS, the 2008 Certificates are expected to be initially executed and delivered as variable rate demand securities;

WHEREAS, Banc of America, N.A., as Liquidity Facility Provider (the "Liquidity Facility Provider"), the City and the Authority propose to execute and enter into a Stand-By

Certificate Purchase Agreement (the “Liquidity Facility”), relating to the performance of certain duties with respect to the remarketing of the 2008 Certificates;

WHEREAS, the City proposes to execute and enter into a Purchase Contract (the “Purchase Contract”) with Banc of America Securities LLC (the “Underwriter”) and the Authority, pursuant to which the Underwriter will purchase the 2008 Certificates for reoffering to the public;

WHEREAS, the City proposes to execute and deliver an Official Statement (the “Official Statement”) relating to the 2008 Certificates and to authorize the distribution of such Official Statement to prospective and actual purchasers of the 2008 Certificates;

WHEREAS the City and Bank of America, N.A. (the “Counterparty”), as a qualified counterparty, previously entered into a ISDA Master Agreement (Local Currency–Single Jurisdiction 1992), the U.S. Municipal Counterparty Schedule thereto, a Credit Support Annex, each dated as of September 27, 2006, and a Confirmation, entered into on September 27, 2006 (collectively, the “2006 Interest Rate Swap Agreement”);

WHEREAS the City and Bank of America, N.A., now desire to amend and supplement the 2006 Interest Rate Swap Agreement so as to relate the 2006 Interest Rate Swap Agreement to the 2008 Certificates and include certain provisions required by the Insurer (as defined below) (the “2008 Interest Rate Swap Amendments”);

WHEREAS, the City intends to obtain from a municipal bond insurance provider (the “Insurer”) municipal bond insurance policies to insure certain payments on the 2008 Certificates

and certain swap payments to be made by the City under the 2008 Interest Rate Swap Amendments and surety bonds to meet the parity reserve fund requirement; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Modesto, as follows:

Section 1. Findings. The City Council hereby specifically finds and determines that the actions authorized hereby constitute and are with respect to the public affairs of the City and that the statements, findings and determinations of the City set forth above and in the preambles of the documents approved herein are true and correct and that the consummation of the transactions contemplated therein shall result in significant public benefits to the City.

Section 2. 2008 Supplemental Contract. The 2008 Supplemental Contract, proposed to be executed and entered into by and between the City and the Authority, in the form presented at this meeting and on file with the City Clerk of the City, is hereby approved. Each of the City Manager and the Finance Director, acting singly, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority the 2008 Supplemental Contract in substantially said form, with such changes therein as such officer executing the 2008 Supplemental Contract may require or approve, such approval to be conclusively evidenced by

the execution and delivery thereof; provided, that the schedule of the installment payments to be contained in the 2008 Supplemental Contract and to be attached as an exhibit thereto shall be determined by the City Manager or the Finance Director of the City upon the sale of the 2008 Certificates, the aggregate principal amount of 2008 Certificates to be executed and delivered shall not exceed \$52,000,000, the final principal payment date of the 2008 Certificates shall not be later than 35 years from the initial installment payment, and the 2008 Certificates initially shall be issued as variable rate demand securities bearing interest at a rate not to exceed 12% per annum (except when such 2008 Certificates are held by the Liquidity Facility Provider).

Section 3. Liquidity Facility. The Liquidity Facility, proposed to be executed and entered into by and among the City, the Authority and the Liquidity Facility Provider, in the form presented at this meeting and on file with on file with the City Clerk, is hereby approved, and each of the City Manager and the Finance Director, acting singly, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Liquidity Facility Provider and the Authority the Liquidity Facility in substantially said form, with such changes therein as such officer executing the Liquidity Facility may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Purchase Contract. The Purchase Contract, proposed to be executed and entered into by and among the City, the Authority, and the Underwriter, in the form presented at this meeting and on file with the City Clerk, is hereby approved, and each of the City Manager and the Finance Director, acting singly, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Underwriter and the Authority the Purchase Contract in substantially said form, with such changes therein as such officer executing

the Purchase Contract may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Official Statement. The Official Statement, in the form presented at this meeting and on file with the City Clerk, is hereby approved. Each of the Mayor, the City Manager and the Finance Director, acting singly, is hereby authorized and directed to cause the Official Statement, in substantially said form, with such changes therein as such officer may require or approve, to be distributed to potential and actual purchasers of the 2008 Certificates. Each of the Mayor, the City Manager and the Finance Director, acting singly, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Official Statement in substantially said form, with such changes therein as such officer executing the Official Statement may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. 2008 Interest Rate Swap Amendments. The execution and delivery of the 2008 Interest Rate Swap Amendments, in such form, as recommended by Sidley Austin LLP, and approved by the City Manager or the Finance Director, necessary to relate the 2006 Interest Rate Swap Agreement to the 2008 Certificates and obtain a swap insurance policy from the Insurer, is hereby approved and each of the City Manager and the Finance Director, acting singly, is hereby authorized and directed for and in the name and on behalf of the City to execute and deliver to the Counterparty the 2008 Interest Rate Swap Amendments, with such changes therein as such officer executing the 2008 Interest Rate Swap Amendments may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. Attestations. The City Clerk is hereby authorized and directed to attest the signature of the Mayor, the City Manager and the Finance Director and to affix and attest the seal of the City, as may be required or appropriate in connection with the execution and delivery of the 2008 Certificates and the documents approved by this Resolution.

Section 8. Other Actions. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the 2008 Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the 2008 Supplemental Contract, the Liquidity Facility, the Purchase Contract, the Official Statement, the 2008 Interest Rate Swap Amendments and the 2008 Certificates; to obtain municipal bond insurance policies and debt service reserve surety bonds, if upon the advice of the City's financial advisor such policies and surety bonds are projected to result in a savings to the City; to effect the redemption of the 2006 Certificates; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 9. Effective Date. This Resolution shall take effect immediately upon its passage.

The foregoing resolution was introduced at a meeting of the City of Modesto held on the 13<sup>th</sup> day of May, 2008, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Hawn, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating, O'Bryant

ATTEST: Stephanie Lopez  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Susana Alcala Wood  
SUSANA ALCALA WOOD, City Attorney

THIS IS TO CERTIFY THAT THIS  
IS A TRUE COPY OF THE DOCUMENT ON  
FILE WITH THIS OFFICE.

DATE May 28, 2008

Stephanie Lopez  
SIGNATURE  
CITY CLERK  
CITY OF MODESTO, CA

THE UNITED STATES  
POSTAL SERVICE  
FIRST CLASS

3000

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POSTAGE  
PAID BY ADDRESSEE  
FIRST CLASS PERMIT NO. 1000  
NEW YORK, N.Y.

**\$47,625,000**  
**CITY OF MODESTO**  
**WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION**  
**2008 SERIES A**

**PURCHASE CONTRACT**

May 30, 2008

Modesto Public Financing Authority  
1010 10th Street  
Modesto, California 95354

City of Modesto  
1010 10th Street  
Modesto, California 95354

Ladies and Gentlemen:

Banc of America Securities LLC (the "Underwriter") offers to enter into this Purchase Contract (the "Purchase Contract") with the Modesto Public Financing Authority (the "Authority") and the City of Modesto (the "City") for the purchase by the Underwriter of the City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates") that will be executed and delivered pursuant to the Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), between the Authority and The Bank of New York Trust Company, N.A., as trustee (the "Trustee").

This offer is made subject to the Authority's and the City's acceptance by execution of this Purchase Contract and delivery of the same to the Underwriter on or before 11:59 p.m. on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the Authority and the City at any time prior to such acceptance. Upon the Authority's and the City's acceptance hereof, the Purchase Contract will be binding upon the Authority, the City and the Underwriter. Capitalized terms used in this Purchase Contract and not otherwise defined herein shall have the respective meanings set forth for such terms in the Trust Agreement and, if so not defined therein, the Official Statement.

**Section 1. Purchase, Sale and Delivery.** Upon the terms and conditions and upon the basis of the representations set forth in this Purchase Contract, the Underwriter agrees to purchase, and the Authority and the City agree to cause the sale and delivery to the Underwriter, all (but not less than all) of the Certificates at a purchase price of \$47,471,079.37 (being an amount equal to the principal amount of the Certificates (\$47,625,000) less an underwriter's discount of \$153,920.63.)

In connection with the execution and delivery of the Certificates, the Authority will enter into (i) a Remarketing Agreement, dated as of May 1, 2008 (the "Remarketing Agreement") with Banc of America Securities LLC, as the remarketing agent with respect to the Certificates (the "Remarketing Agent") for the purposes of remarketing the Certificates subject to optional or mandatory tender for purchase and (ii) a Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Liquidity Facility") with Bank of America, N.A., as liquidity facility provider (the "Liquidity Facility Provider") for the purpose of providing funds for the payment of the purchase price of Certificates that are subject to optional or mandatory tender for purchase and not remarketed by the Remarketing Agent.

## **Section 2. Terms; Authorizing Instruments; Purpose.**

(a) The Certificates will be dated their date of delivery and mature on October 1, 2036. The Certificates will initially be executed and delivered in the Weekly Mode and initially evidence and represent interest for the first interest rate period as shown in Exhibit A attached hereto and thereafter at the rate calculated in accordance with the Trust Agreement. The Certificates will evidence and represent the proportionate interests of the owners thereof in the 2008 Payments to be paid to the Authority by the City pursuant to the Contract.

(b) The proceeds of the sale of the Certificates will be used to (1) refinance certain additional additions, betterments, extensions and improvements to the City's water system (the "Water Utility System") and (2) pay the costs of executing and delivering the Certificates and to pay the premium for a reserve fund financial guaranty insurance policy that will be credited to the debt service reserve fund for the Parity Obligations (the "Surety Policy").

(c) The payment of the principal and interest evidenced by the Certificates when due will be guaranteed by a financial guaranty insurance policy (the "Insurance Policy") issued by Assured Guaranty Corp. (the "Insurer") simultaneously with the delivery of the Certificates.

## **Section 3. Official Statement.**

(a) The City has delivered to the Underwriter the preliminary official statement, dated May 22, 2008 (the "Preliminary Official Statement") and will deliver the final official statement, dated the date hereof (as amended and supplemented from time to time pursuant to Section 5(i) or Section 6(i) of this Purchase Contract, the "Official Statement") to the Underwriter pursuant to Section 4 herein.

(b) The City has authorized the use of the Official Statement and the information contained therein by the Underwriter in connection with the public offering and the sale of the Certificates prior to the date hereof. The City consents to the use by the Underwriter prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Bonds. As of its date, the Preliminary Official Statement has been deemed "final" by the City, except for the omission of certain information permitted to be omitted by Rule 15c2 12, as amended (the "Rule"), of the Securities and Exchange Commission. Prior to the date hereof, the City has delivered to the Underwriter a deemed "final" certificate relating to the Preliminary Official Statement.

**Section 4. Agreement to Notify Underwriter Regarding Official Statement.** The City has supplied or caused to be supplied to the Underwriter the Official Statement in sufficient quantity as requested by the Underwriter to comply with the rules of the Municipal Securities Rulemaking Board (the "MSRB"). The Underwriter hereby agrees that it will not send any confirmation requesting payment for the purchase of any Certificates unless the confirmation is accompanied by or preceded by the delivery of a copy of the Official Statement. The Underwriter agrees to: (i) provide the City with final pricing information on the Certificates on a timely basis prior to the Closing Date (as defined in Section 7 hereof), (ii) promptly file a copy of the Official Statement, including any supplements prepared by the City, with a nationally recognized municipal securities information repository and (iii) take any and all other actions necessary to comply with applicable Securities and Exchange Commission rules and MSRB rules governing the offering, sale and delivery of the Certificates to ultimate purchasers.

**Section 5. Representations, Warranties and Covenants of the City.** The City hereby represents, warrants and agrees with the Underwriter that:

(a) The City is and will be on the Closing Date a charter city and municipal corporation, organized and existing pursuant to the Constitution laws of the State of California (the "State"), with the full power and authority to execute and deliver the Official Statement, and to enter into the 2008 Supplemental Contract and this Purchase Contract (collectively, the "2008 City Agreements" and, together with the Master Contract and the 1997 Supplemental Contract, the "City Agreements").

(b) The city council of the City (the "City Council") has duly and validly adopted Resolution No. 97-596 (the "1997 City Resolution") at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, on October 21, 1997, authorizing and approving all action necessary to be taken by it for the execution, delivery and due performance of the Master Contract and the taking of any and all such action as may be required on the part of the City to carry out, give effect to and consummate the transactions contemplated by the 1997 City Resolution and has duly and validly adopted Resolution No. 2008-294 (the "2008 City Resolution" and, together with the 1997 City Resolution, the "City Resolutions") at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, on May 13, 2008, authorizing and approving all action necessary to be taken by it for the execution, delivery and due performance of the 2008 City Agreements and the Official Statement and the taking of any and all such action as may be required on the part of the City to carry out, give effect to and consummate the transactions contemplated by the 2008 City Resolution.

(c) The execution and delivery of the 2008 City Agreements and the Official Statement and compliance with the provisions on the City's part contained herein and therein, will not in any material respect conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the City under the terms of any such law, administrative regulation,

judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the 2008 City Agreements.

(d) The City is not in any material respect in breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute a default or an event of default under any such instrument.

(e) Except as disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body pending or, to the best knowledge of the City, threatened against the City in any material respect affecting the existence of the City or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Certificates or the pledge of the Payments under the Contract or in any way contesting or affecting the validity or enforceability of the City Agreements or contesting the powers of the City or its authority to enter into, adopt or perform its obligations under any of the foregoing, or which would have a material adverse effect on the City's ability to perform its obligations under the City Agreements or contesting in any way the completeness or accuracy of the Official Statement, or any amendment or supplement thereto.

(f) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Certificates for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate, and (ii) to determine the eligibility of the Certificates for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Certificates; provided, however, that in no event shall the City be required to take any action which would subject it to general or unlimited service of process in any jurisdiction in which it is not now so subject.

(g) As of the date hereof, and except for statements regarding the Insurer, the Liquidity Bank and DTC and excluding the information contained in the Official Statement under the captions "CERTIFICATE INSURANCE," "LIQUIDITY FACILITY," "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority), as to which the City does not make any representation or warranty, the Official Statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(h) As of the date thereof and at all times subsequent thereto to and including the date of Closing and except for statements regarding the Insurer, the Liquidity Bank and DTC and excluding the information contained in the Official Statement under the captions "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority), as to which the City does not make any representation or warranty, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make

the statements made therein, in the light of the circumstances under which they were made, not misleading.

(i) If between the date hereof and the date of Closing, and except for statements regarding the Insurer, the Liquidity Provider and DTC and excluding the information contained in the Official Statement under the captions "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority), as to which the City does not make any representation or warranty, an event occurs which would cause the information contained in the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, the City will notify the Underwriter, and, if in the opinion of the City, the Underwriter or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City will forthwith prepare and furnish to the Underwriter (at the expense of the City) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriter) which will amend or supplement the Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

If the information contained in the Official Statement is amended or supplemented pursuant to subparagraph (i) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date of Closing, the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein), except for statements regarding the Insurer, the Liquidity Bank, and DTC and excluding the information contained in the Official Statement under the captions "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority), as to which the City does not make any representation or warranty, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

The financial statements of, and other financial information regarding, the Water Utility System contained in the Official Statement fairly present the financial position and results of the operations of the Water Utility System as of the dates and for the periods therein set forth, and, to the best of the City's knowledge, (i) the audited financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, and (ii) the other financial information has been determined on a basis substantially consistent with that of the City's audited financial statements included in the Official Statement and except as disclosed in the Official Statement or otherwise disclosed in writing to the Underwriter, there has not been any materially adverse change in the financial condition of the City since June 30, 2007 and there has been no occurrence, circumstance or combination thereof which is reasonably expected to result in any such materially adverse change.

(j) Except as disclosed in the Official Statement or otherwise disclosed in writing to the Underwriter, the City has not previously failed to comply in all material respects with any undertakings under the Rule.

**Section 6. Representations, Warranties and Covenants of the Authority.** The Authority hereby represents, warrants and agrees with the Underwriter that:

(a) The Authority is a public body corporate and politic, organized and existing pursuant to the laws of the State of California, including Section 6500 et seq. of the California Government Code, as amended, and the Joint Exercise of Powers Agreement, dated as of December 1, 1989 (the "JPA Agreement"), by and between the Authority and the Industrial Development Authority of the City of Modesto.

(b) The governing board of the Authority (the "Governing Board") has duly and validly adopted Resolution No. 97-1 (the "1997 Authority Resolution") at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, on October 21, 1997, authorizing and approving all action necessary to be taken by it for the execution, delivery and due performance of the Master Contract and the taking of any and all such action as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated by the 1997 Authority Resolution and has duly and validly adopted Resolution No. 01-2008 (the "2008 Authority Resolution" and, together with the 1997 Authority Resolution, the "Authority Resolutions" and, together with the City Resolutions, the "Resolutions") at a meeting duly called, noticed and conducted, at which a quorum was present and acting throughout, on May 13, 2008, authorizing and approving all action necessary to be taken by it for the execution, delivery and due performance of the Trust Agreement, the Contract, the Liquidity Facility, the Remarketing Agreement and this Purchase Contract (collectively, the "2008 Authority Agreements" and, together with the Master Contract, the "Authority Agreements") and the Official Statement and the taking of any and all such action as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated by the 2008 Authority Resolution.

(c) The execution and delivery of the 2008 Authority Agreements and the Official Statement and compliance with the provisions on the Authority's part contained herein and therein, will not in any material respect conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the 2008 Authority Agreements.

(d) The Authority is not in any material respect in breach of or default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute a default or an event of default under any such instrument.

(e) Except as disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public

board or body pending or, to the best knowledge of the Authority, threatened against the Authority in any material respect affecting the existence of the Authority or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Certificates or the collection of the Payments under the Contract or in any way contesting or affecting the validity or enforceability of the Authority Agreements or contesting the powers of the Authority or its authority to enter into, adopt or perform its obligations under any of the foregoing, or which would have a material adverse effect on the Authority's ability to perform its obligations under the Authority Agreements or contesting in any way the completeness or accuracy of the Official Statement, or any amendment or supplement thereto.

(f) The Authority will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Certificates for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate, and (ii) to determine the eligibility of the Certificates for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Certificates; provided, however, that in no event shall the Authority be required to take any action which would subject it to general or unlimited service of process in any jurisdiction in which it is not now so subject.

(g) As of the date hereof, the information contained in the Official Statement under the captions "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(h) As of the date thereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as defined in subparagraph (k) hereof) for the Certificates, the information contained in the Official Statement under the captions "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority) did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(i) If between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Certificates, an event occurs which would cause the information contained in the Official Statement under the captions "THE AUTHORITY" or "LITIGATION" (solely as it relates to the Authority), as then supplemented or amended, to contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, the Authority will notify the Underwriter, and, if in the opinion of the Authority, the Underwriter or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Authority will forthwith prepare and furnish to the Underwriter (at the expense of the Authority) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriter) which will amend or supplement the Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make

the statements made therein, in the light of the circumstances under which they were made, not misleading. For the purposes of this subsection, between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Certificates, the Authority will furnish such information with respect to itself as the Underwriter may from time to time reasonably request.

(j) If the information contained in the Official Statement under the captions “THE AUTHORITY” or “LITIGATION” (solely as it relates to the Authority) is amended or supplemented pursuant to subparagraph (i) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Certificates, the portions of the Official Statement so supplemented or amended will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(k) As used herein and for the purposes of the foregoing, the term “End of the Underwriting Period” for the Certificates shall mean the earlier of (i) the Closing Date unless the City shall have been notified in writing to the contrary by the Underwriter on or prior to the Closing Date, or (ii) the date on which the End of the Underwriting Period for the Certificates has occurred under the Rule provided, however, that the City may treat as the End of the Underwriting Period for the Certificates the date specified as such in a notice from the Underwriter stating the date which is the End of the Underwriting Period.

#### **Section 7. The Closing.**

(a) At 8:00 a.m., San Francisco time, on May 30, 2008, or on such earlier or later date as we mutually agree upon (the “Closing Date”), the City will deliver or cause to be delivered to the Underwriter, at a location or locations to be designated by the Underwriter in New York, New York, the Certificates (delivered through the Trustee via the F.A.S.T. delivery book-entry system of The Depository Trust Company, New York, New York (“DTC”)), duly executed, and at the offices of Sidley Austin LLP (“Special Counsel”) in San Francisco, California, or such other place as we mutually agree upon, the other documents described herein. The Underwriter shall accept such delivery and pay the purchase price of the Certificates as set forth in Section 1 of this Purchase Contract in immediately available funds to the order of the Trustee, less the premium for the Insurance Policy and the Surety Policy in the aggregate amounts of \$826,615.80 and \$62,475.38, respectively, which the Underwriter will wire directly to the Insurer.

(b) The Certificates shall be issued in fully registered form and shall be prepared and delivered as one certificate for each maturity registered in the name of a nominee of DTC. It is anticipated that CUSIP identification numbers will be inserted on the Certificates, but neither the failure to provide such numbers nor any error with respect thereto shall constitute a cause for failure or refusal by the Underwriter to accept delivery of the Certificates in accordance with the terms of this Purchase Contract.

**Section 8. Conditions to Underwriter’s Obligations.** The Underwriter has entered into this Purchase Contract in reliance upon the representations and warranties of the City and the Authority contained herein and to be contained in the documents and instruments to be

delivered on the Closing Date, and upon the performance by the City and the Authority of their respective obligations to be performed hereunder and under such documents and instruments to be delivered at or prior to the Closing Date. The Underwriter's obligations under this Purchase Contract are and shall also be subject to the following conditions:

(a) The representations and warranties of the City and the Authority contained in this Purchase Contract shall be true and correct in all material respects on the date of this Purchase Contract and on and as of the Closing Date as if made on the Closing Date;

(b) As of the Closing Date, the Official Statement may not have been amended, modified or supplemented, except in any case as may have been agreed to by the Underwriter;

(c) (i) As of the Closing Date, the Resolutions, the City Agreements and the Authority Agreements shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to by the Underwriter; and (ii) the City and the Authority shall perform or have performed all of their respective obligations required under or specified in the Resolutions, the City Agreements and the Authority Agreements to be performed at or prior to the Closing Date;

(d) As of the Closing Date, all necessary official action of the City and the Authority relating to the City Agreements, the Authority Agreements, the Resolutions, and the Official Statement, shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect;

(e) Subsequent to the date of this Purchase Contract, up to and including the Closing Date, there shall not have occurred any change in or particularly affecting the City or the Water Utility System, as these matters are described in the Official Statement, which in the reasonable professional judgment of the Underwriter materially impairs the investment quality of the Certificates;

(f) As of or prior to the Closing Date, the Underwriter shall have received each of the following documents:

(1) Certified copies of the 2008 City Resolution and the 2008 Authority Resolution.

(2) The 2008 City Agreements and 2008 Authority Agreements, each duly executed on behalf of the respective parties thereto.

(3) The Insurance Policy, together with such legal opinions and certificates as may be reasonably requested by Special Counsel, executed on behalf of the Insurer by its duly authorized officer.

(4) The Preliminary Official Statement, a deemed "final" certificate related to the Preliminary Official Statement and the Official Statement, with the Official Statement duly executed on behalf of the City and the Authority.

(5) An approving opinion of Special Counsel, dated the Closing Date, as to the validity of the Certificates and the exclusion of interest with respect to the Certificates from federal gross income and State income taxation, addressed to the City substantially in the form attached as an appendix to the Official Statement, with a reliance letter to the Underwriter.

(6) A supplemental opinion of Special Counsel, addressed to the Underwriter, to the effect that:

(i) The Certificates are not subject to registration pursuant to the registration requirements of the Securities Act of 1933, are municipal securities within the meaning of the Securities Exchange Act of 1934, as amended, and the Trust Agreement is exempt from qualification as an Trust Agreement pursuant to the Trust Indenture Act of 1939.

(ii) The Purchase Contract has been duly authorized, executed and delivered by the City and the Authority, and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding agreement of the City and the Authority enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought and to the limitations on legal remedies against public agencies in the State of California; and

(iii) The statements in the Official Statement under the captions "THE 2008 CERTIFICATES", "SECURITY FOR THE 2008 CERTIFICATES" and "TAX MATTERS" and in APPENDIX B – "DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS," and APPENDIX C – "PROPOSED FORM OF OPINION OF SPECIAL COUNSEL" to the extent they purport to summarize certain provisions of the City Agreements, the Authority Agreements, the Certificates and the opinion of such counsel, present a fair and accurate summary of such provisions and opinion for purposes of use in the Official Statement.

(7) The opinion of the City Attorney, dated the Closing Date and addressed to the Underwriter, to the effect that (i) the City is a charter city and municipal corporation organized and existing pursuant to the Constitution and laws of the State; (ii) the City Resolutions were duly adopted at meetings of the City Council which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout and the City Resolutions are in full force and effect and have not been modified, amended or rescinded as of the Closing Date; (iii) to the best knowledge of such counsel after reasonable investigation, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against or affecting the City, challenging the existence of the City or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Certificates or the pledge of the Payments under the Contract or in any way contesting or affecting the validity or enforceability of

the City Agreements or contesting the powers of the City or its authority to enter into, adopt or perform its obligations under any of the foregoing, or which would have a material adverse effect on the City's ability to perform its obligations under the City Agreements or contesting in any way the completeness or accuracy of the Official Statement; (iv) the execution and delivery of the 2008 City Agreements and the Official Statement, the adoption of the City Resolutions and compliance by the City with the provisions of the foregoing, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute, on the part of the City, a breach or default under any agreement or instrument to which the City is a party or by which it is bound or, to the best knowledge of such counsel, any existing law, regulation, court order or consent decree to which the City is subject; (v) the Official Statement has been duly authorized, executed and delivered, and the City Agreements have been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding agreements of the City enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought and to the limitations on legal remedies against cities in the State of California; (vi) except as described in the Official Statement, no authorization, approval, consent, or other order of the State or any other governmental authority or agency within the State having jurisdiction over the City is required for the valid authorization, execution, delivery and performance by the City of the City Agreements or for the adoption of the City Resolutions which has not been obtained; and (vii) to the best of such counsel's knowledge, the information contained in the Official Statement under the captions "THE 2008 PROJECT," "THE WATER UTILITY SYSTEM" and "LITIGATION" (solely as it relates to the City) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(8) The opinion of counsel to the Authority, dated the Closing Date and addressed to the Underwriter, to the effect that (i) the Authority is a joint exercise of powers authority, duly organized and existing pursuant to the JPA Agreement and the laws of the State; (ii) the Authority Resolutions were duly adopted at meetings of the Governing Board which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout and the Authority Resolutions are in full force and effect and have not been modified, amended or rescinded as of the Closing Date; (iii) to the best knowledge of such counsel after reasonable investigation, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against or affecting the Authority, challenging the existence of the Authority or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Certificates or the collection of the Payments under the Contract or in any way contesting or affecting the validity or enforceability of the Authority Agreements or contesting the powers of the Authority or its authority to enter into, adopt or perform its obligations under any of the foregoing, or which would have a material adverse effect on the Authority's ability to perform its obligations under the

Authority Agreements or contesting in any way the completeness or accuracy of the Official Statement; (iv) the execution and delivery of the 2008 Authority Agreements, the adoption of the Authority Resolutions and compliance by the Authority with the provisions of the foregoing, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute, on the part of the Authority, a breach or default under the JPA Agreement or any other agreement or other instrument to which the Authority is a party or by which it is bound or, to the best knowledge of such counsel, any existing law, regulation, court order or consent decree to which the Authority is subject; (v) the Authority Agreements have been duly authorized, executed and delivered by the Authority and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding agreements of the Authority enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought and to the limitations on legal remedies against authorities in the State of California; (vi) except as described in the Official Statement, no authorization, approval, consent, or other order of the State or any other governmental authority or agency within the State having jurisdiction over the Authority is required for the valid authorization, execution, delivery and performance by the Authority of the Authority Agreements or for the adoption of the Authority Resolutions which has not been obtained; and (vii) to the best of such counsel's knowledge, the information contained in the Official Statement under the captions "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(9) A certificate, dated the Closing Date, signed by a duly authorized representative of the City satisfactory to the Underwriter, in form and substance satisfactory to the Underwriter, to the effect that:

(i) the representations and warranties of the City contained in Section 5 of this Purchase Contract are accurate in all material aspects, as and if made on the Closing Date;

(ii) the City Agreements have been duly executed and delivered and each constitutes a valid and legally binding obligation of the City enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought;

(iii) the City Resolutions are in full force and effect at the Closing Date and have not been amended, modified or supplemented, except as agreed to by the City and the Underwriter;

(iv) the City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied on or prior to the Closing Date;

(v) subsequent to the date of the Official Statement and on or prior to the date of such certificate, there has been no material adverse change in the condition (financial or otherwise) of the City or the Water Utility System, whether or not arising in the ordinary course of the operations of the City, as described in the Official Statement; and

(vi) except for statements regarding the Insurer, the Liquidity Bank and DTC and excluding the information contained in the Official Statement under the captions "CERTIFICATE INSURANCE," "LIQUIDITY FACILITY," "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority), the Official Statement does not contain any untrue or misleading statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

(10) A certificate, dated the Closing Date, signed by a duly authorized representative of the Authority satisfactory to the Underwriter, in form and substance satisfactory to the Underwriter, to the effect that:

(i) the representations and warranties of the Authority contained in Section 6 of this Purchase Contract are accurate in all material aspects, as and if made on the Closing Date;

(ii) the Authority Agreements have been duly executed and delivered and each constitutes a valid and legally binding obligation of the Authority enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought;

(iii) the Authority Resolutions are in full force and effect at the Closing Date and have not been amended, modified or supplemented, except as agreed to by the Authority and the Underwriter;

(iv) the Authority has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied on or prior to the Closing Date; and

(v) the information contained in the Official Statement under the captions "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority) does not contain any untrue or misleading statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

(11) A certificate of an authorized officer of the Insurer, dated the Closing Date to the effect that the information relating to the Insurer, the Insurance Policy contained in the Official Statement, as of its date and as of the Closing Date, is true and correct in all material respects.

(12) The opinion, dated the Closing Date and addressed to the Underwriter and the City, of Stradling Yocca Carlson & Rauth, a Professional Corporation, disclosure counsel (“Disclosure Counsel”) to the effect that:

(i) the Certificates are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Trust Agreement is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended. No opinion is expressed with respect to the Insurance Policy or the Liquidity Facility; and

(ii) based on Disclosure Counsel’s participation in conferences with representatives of the Underwriter, Orrick, Herrington & Sutcliffe LLP, as Underwriter’s counsel (“Underwriter’s Counsel”), the City, the City Attorney, the Authority, counsel to the Authority, Public Financial Management, Inc., as financial advisor, the Liquidity Facility Provider, Special Counsel and others, during which conferences the contents of the Official Statement and related matters were discussed, and in reliance thereon and on the records, documents, certificates and opinions described therein, Disclosure Counsel advises the Underwriter and the City that, during the course of its engagement as disclosure counsel on this matter, no information came to its attention that caused it to believe that the Official Statement as of its date and as of the date of such opinion (except for any financial or statistical data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion, Appendices A through F or any information about book-entry, the DTC, the Insurer, the Insurance Policy, the Liquidity Facility or the Liquidity Facility Provider included therein, as to which no opinion or view need be expressed) contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(13) Certificate of the Liquidity Facility Provider related to the Official Statement and opinion of Counsel of the Liquidity Facility Provider in form and substance acceptable to the Underwriter.

(14) The opinion of counsel of the Trustee, dated the Closing Date, addressed to the City and the Underwriter to the effect that:

(i) The Trustee is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America, having full powers and authority and being qualified to enter into, accept and administer the trust created under the Trust Agreement and to enter into the Trust Agreement.

(ii) The performance by the Trustee of the duties required under the Trust Agreement has been duly authorized by all necessary corporate action on the part of the Trustee, and under present law do not contravene any law or government regulation or order presently binding on the Trustee or contravene

any law or governmental regulation or order presently binding on the Trustee or the articles of association/articles of incorporation/charter, as applicable, or the bylaws of the Trustee or contravene any provision of or constitute a default under any indenture, trust agreement, contract or other instrument to which the Trustee is a party or by which the Trustee is bound.

(iii) The performance by the Trustee of the duties required under the Trust Agreement does not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental agency or authority.

(iv) The Trust Agreement has been duly authorized, executed and delivered by the Trustee, and, assuming due authorization, execution and delivery by the other parties thereto, the Trust Agreement constitutes a legal, valid and binding agreement of the Trustee enforceable in accordance with its respective terms, subject to laws relating in bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought.

(v) The Trustee has duly authorized the execution and delivery of the Trust Agreement.

(vi) All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the Trust Agreement have been obtained and are in full force and effect.

(15) A certificate or certificates, dated the Closing Date, in form and substance acceptable to the Underwriter, of an authorized officer of the Trustee to the effect that:

(i) The Trustee is a national banking association duly organized and validly existing under the laws of the United States of America.

(ii) The Trustee has full corporate trust powers and authority to serve as Trustee under the Trust Agreement and to perform its obligations and duties under the Trust Agreement, and the Trust Agreement have been executed by a duly authorized officer of the Trustee.

(iii) The Certificates have been duly executed and delivered by the Trustee.

(iv) The Trustee's action in serving as Trustee under the Trust Agreement is in full compliance with, and does not conflict with, any applicable law or governmental regulation currently in effect, and does not conflict with or violate any contract to which the Trustee is a party or any administrative or judicial decision by which the Trustee is bound.

(16) An arbitrage certificate relating to the Certificates duly signed on behalf of the City.

(17) Evidence of required filings with the California Debt and Investment Advisory Commission.

(18) A copy of the executed Blanket Issuer Letter of Representations by and between the City and DTC relating to the book entry system.

(19) Evidence that insured ratings on the Certificates of "AAA" and "A-1+" by Standard & Poor's Ratings Services ("S&P") and "Aaa" and "VMIG-1" by Moody's Investors Service, Inc. ("Moody's") and underlying ratings on the Certificates of "A+" by S&P" and "A2" by Moody's are in full force and effect on the Closing Date.

(20) A Certificate of the Liquidity Facility Provider, dated the Closing Date, executed by an authorized representative of the Liquidity Facility Provider, to the effect that: (i) the Liquidity Facility has been duly authorized, executed and delivered by the Liquidity Facility Provider; (ii) the Liquidity Facility Provider has full power and authority to carry out its obligations under the Liquidity Facility; and (iii) there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body pending or known to be threatened against or affecting the Liquidity Facility Provider where an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Liquidity Facility.

(21) A certificate of the Remarketing Agent that, to the best knowledge of the Remarketing Agent, the information included in the Official Statement under the caption "REMARKETING" is true and correct in all material respects.

(22) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter or Special Counsel may reasonably request to evidence compliance by the City and the Authority with legal requirements, the truth and accuracy, as of the Closing Date, of the representations of the City and the Authority herein contained and of the Official Statement and the due performance or satisfaction by the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the City.

All of the opinions, letters, certificates, instruments and other documents mentioned in this Purchase Contract shall be deemed to be in compliance with the provisions of this Purchase Contract if, but only if, they are in form and substance satisfactory to the Underwriter. If the City or the Authority is unable to satisfy the conditions to the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Certificates contained in this Purchase Contract or if the obligations of the Underwriter to purchase, to accept delivery of and to pay for the Certificates shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriter, the City nor the Authority shall be under further obligations hereunder, except that the respective obligations of the Authority, the City and the Underwriter set forth in Section 9 of this Purchase Contract shall continue in full force and effect.

**Section 9. Conditions to the Authority's and the City's Obligations.** The performance by the Authority and the City of their respective obligations under this Purchase Contract are conditioned upon: (i) the performance by the Underwriter of its obligations hereunder and (ii) receipt by the Authority and the City of opinions addressed to the Authority and the City, and receipt by the Underwriter of opinions addressed to the Underwriter, and the delivery of certificates being delivered on the Closing Date by persons and entities other than the City and the Authority.

**Section 10. Termination Events.** The Underwriter shall have the right to terminate the Underwriter's obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Certificates by notifying the City of its election to do so if, after the execution hereof and prior to the Closing: (1) the marketability of the Certificates or the market price thereof, in the reasonable opinion of the Underwriter, has been materially and adversely affected by any decision issued by a court of the United States (including the United States Tax Court) or of the State of California, by any ruling or regulation (final, temporary or proposed) issued by or on behalf of the Department of the Treasury of the United States, the Internal Revenue Service, or other governmental agency of the United States, or any governmental agency of the State of California, or by a tentative decision or announcement by any member of the House Ways and Means Committee, the Senate Finance Committee, or the Conference Committee with respect to contemplated legislation or by legislation enacted by, pending in, or favorably reported to either the House of Representatives or either House of the Legislature of the State of California, or formally proposed to the Congress of the United States by the President of the United States or to the Legislature of the State of California by the Governor of the State of California in an executive communication, affecting the tax status of the City or the Authority, its property or income, its obligations (including the Certificates) or the interest thereon or any tax exemption granted or authorized by the Internal Revenue Code of 1986, as amended; (2) the United States shall have become engaged in new hostilities which have resulted in a declaration of war or a national emergency, or there shall have occurred any other outbreak or escalation or re-escalation of hostilities, or a local, national or international calamity or crisis, financial or otherwise, the effect of such outbreak, calamity or crisis being such as, in the reasonable opinion of the Underwriter, would affect materially and adversely the ability of the Underwriter to market the Certificates; (3) there shall have occurred a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by the United States, New York State or California State authorities; (4) a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission shall be issued or made to the effect that the execution and delivery of the Certificates is or would be in violation of any provision of the Securities Act of 1933, as then in effect, or of the Securities Exchange Act of 1934, as then in effect, or of the Trust Indenture Act of 1939, as then in effect; (5) legislation shall be enacted by the House of Representatives or the Senate of the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, or a ruling or regulation by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed to the effect that the Certificates are not exempt from registration, qualification or other similar requirements of the Securities Act of 1933, as then in effect, or of the Trust Indenture Act of 1939, as then in effect; (6) in the reasonable judgment of the Underwriter, the market price of the Certificates, or the market price generally of obligations of the general character of the Certificates, might be materially and adversely affected because additional material restrictions not in force as of the date hereof shall

have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; (7) the Comptroller of the Currency, The New York Stock Exchange, or other national securities exchange, or any governmental authority, shall impose, as to the Certificates or obligations of the general character of the Certificates, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, or financial responsibility requirements of the Underwriter; (8) a general banking moratorium shall have been established by federal, New York or State authorities; (9) any legislation, ordinance, rule or regulation shall be introduced in or be enacted by any governmental body, department or agency in the State or a decision of a court of competent jurisdiction within the State shall be rendered, which, in the reasonable opinion of the Underwriter, after consultation with the City, materially adversely affects the market price of the Certificates; (10) any federal or California court, authority or regulatory body shall take action materially and adversely affecting the collection or pledge of the Payments under the Contract; (11) any event occurring, or information becoming known which, in the reasonable opinion of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading; or (12) the withdrawal or downgrading of the rating of the Certificates to less than those referenced in Section 8(e)(19).

**Section 11. Payment of Expenses.**

(a) The Underwriter shall be under no obligation to pay, and the City shall pay the following expenses incident to the performance of the City's obligations hereunder:

- (i) the fees and disbursements of Special Counsel and Disclosure Counsel;
- (ii) the cost of printing and delivering the Certificates, the Preliminary Official Statement and the Official Statement (and any amendment or supplement prepared pursuant to Section 5 or 6 of this Purchase Contract);
- (iii) the fees and disbursements of accountants, advisers and of any other experts or consultants retained by the City;
- (iv) the premium for the Insurance Policy; and
- (v) any other expenses and costs of the City incident to the performance of its obligations in connection with the authorization, issuance and sale of the Certificates, including, but not limited to, fees and expenses related to the Liquidity Facility, out of pocket expenses and regulatory expenses, and any other expenses agreed to by the parties.

(b) The Underwriter shall pay all expenses incurred by them in connection with the public offering and distribution of the Certificates including, but not limited to:

- (i) all advertising expenses in connection with the offering of the Certificates;
- and

(ii) the fees and expenses of Underwriter's Counsel;

(iii) all out-of-pocket disbursements and expenses incurred by the Underwriter in connection with the offering and distribution of the Certificates, except as provided in (a) above or as otherwise agreed to by the Underwriter and the City.

**Section 12. Notices.** Any notice or other communication to be given to the City under this Purchase Contract may be given by delivering the same in writing to the City at the address set forth on the first page of this Purchase Contract, and any notice or other communication to be given to the Underwriter under this Purchase Contract may be given by delivering the same in writing to Banc of America Securities LLC, CA5-801-18-36, 600 Montgomery Street, Suite 1800, San Francisco, California 94111-2719, Attention: Scott Nagelson, Principal.

**Section 13. Survival of Representations, Warranties, Agreements.** All of the City's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect regardless of: (a) any investigations made by or on behalf of the Underwriter; or (b) delivery of and payment for the Certificates pursuant to this Purchase Contract. The agreements contained in this Section and in Section 9 shall survive any termination of this Purchase Contract.

**Section 14. Benefit; No Assignment.** This Purchase Contract is made solely for the benefit of the City, the Authority and the Underwriter (including its successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. The rights and obligations created by this Purchase Contract are not subject to assignment by the Underwriter, the Authority or the City without the prior written consent of the other party hereto.

**Section 15. Severability.** In the event that any provision of this Purchase Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Purchase Contract.


**Section 16. Counterparts.** This Purchase Contract may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute the Purchase Contract by signing any such counterpart.

**Section 17. Governing Law.** The validity, interpretation and performance of this Purchase Contract shall be governed by the laws of the State of California.

**Section 18. Effectiveness.** This Purchase Contract shall become effective upon the execution of the acceptance hereof by an authorized officer of the City, and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

BANC OF AMERICA SECURITIES LLC

By:  \_\_\_\_\_  
Principal

Accepted:

CITY OF MODESTO

By: \_\_\_\_\_  
Director of Finance/Treasurer

MODESTO PUBLIC FINANCING AUTHORITY

By: \_\_\_\_\_  
Auditor and Treasurer

**Section 18. Effectiveness.** This Purchase Contract shall become effective upon the execution of the acceptance hereof by an authorized officer of the City, and shall be valid and enforceable as of the time of such acceptance.

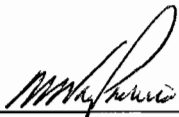
Very truly yours,

BANC OF AMERICA SECURITIES LLC

By: \_\_\_\_\_  
Principal

Accepted:

CITY OF MODESTO

By:  \_\_\_\_\_  
Director of Finance/Treasurer

MODESTO PUBLIC FINANCING AUTHORITY

By:  \_\_\_\_\_  
Auditor and Treasurer

**EXHIBIT A**

**TERM OF THE CERTIFICATES**

The initial Weekly Rate for the Certificates is 1.45%.


**CERTIFICATE OF THE MODESTO PUBLIC FINANCING AUTHORITY  
AS TO PRELIMINARY OFFICIAL STATEMENT**

The undersigned, on behalf of the Modesto Public Financing Authority (the "Authority"), hereby certifies that there has been delivered to the underwriter (the "Underwriter") of the City of Modesto Refunding Water Revenue Certificates of Participation, 2008 Series A (the "2008 Certificates") a preliminary official statement relating to the 2008 Certificate, dated the date set forth below (including the cover page, the introduction and all appendices thereto, the "Preliminary Official Statement"), which the Authority deems to be final as of its date for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom by Rule 15c2-12.

The Authority hereby approves the use and distribution by the Underwriter of the Preliminary Official Statement.

Dated: May 22, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By:  \_\_\_\_\_  
Wayne Padilla  
Auditor and Treasurer

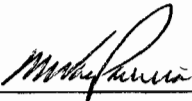
**CERTIFICATE OF THE CITY OF MODESTO  
AS TO PRELIMINARY OFFICIAL STATEMENT**

The undersigned, on behalf of the City of Modesto (the "City"), hereby certifies that there has been delivered to the underwriter (the "Underwriter") of the City of Modesto Refunding Water Revenue Certificates of Participation, 2008 Series A (the "2008 Certificates") a preliminary official statement relating to the 2008 Certificates, dated the date set forth below (including the cover page, the introduction and all appendices thereto, the "Preliminary Official Statement"), which the City deems to be final as of its date for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom by Rule 15c2-12.

The City hereby approves the use and distribution by the Underwriter of the Preliminary Official Statement.

Dated: May 22, 2008

CITY OF MODESTO

By:   
Wayne Padilla  
Finance Director/Treasurer

PRELIMINARY OFFICIAL STATEMENT DATED MAY 23, 2008

NEW ISSUE-FULL BOOK-ENTRY ONLY

RATINGS: (Insured) Moody's: Aaa/VMIG-1; S&P: AAA/A-1+  
(Underlying) Moody's: A2; S&P: A+  
(See "Ratings" herein)

In the opinion of Sidley Austin LLP, San Francisco, California, Special Counsel, based on existing statutes, regulations, rulings and judicial decisions and assuming compliance with certain covenants in the documents pertaining to the 2008 Certificates and requirements of the Internal Revenue Code of 1986, as amended (the "Code"), as described herein, interest with respect to the Certificates is not includable in the gross income of the owners of the Certificates for federal income tax purposes. In the further opinion of Special Counsel, interest with respect to the 2008 Certificates is not treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals and corporations. Interest with respect to the Certificates, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation's alternative minimum tax liability. In the further opinion of Special Counsel, interest with respect to the 2008 Certificates is exempt from personal income taxes imposed by the State of California. See "TAX MATTERS" herein.

\$47,630,000\*

CITY OF MODESTO, CALIFORNIA  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Dated: Date of delivery

Price: 100%

CUSIP† 607804AB7

Due: October 1, 2036

The 2008 Certificates are being executed and delivered pursuant to the 2008 Trust Agreement, dated as of May 1, 2008, by and between the Modesto Public Financing Authority and The Bank of New York Trust Company, N.A., as trustee, for the principal purpose of refinancing certain improvements to the Water Utility System of the City of Modesto. The 2008 Certificates are payable solely from installment payments to be made by the City to the Authority pursuant to the Master Installment Purchase Contract, dated as of November 1, 1997, as supplemented by the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, by and between the City and the Authority. The obligation of the City to make such installment payments is a special obligation of the City payable solely from Gross Revenues of its Water Utility System and certain funds and accounts created under the 2008 Trust Agreement. As described herein, those Gross Revenues are also pledged to the payment of certain other Parity Obligations of the City.

The 2008 Certificates will be initially executed and delivered in the Weekly Mode, and interest with respect to the 2008 Certificates in the Weekly Mode will be evidenced at the Weekly Rate. In general, the Weekly Rate is the rate of interest per annum determined by Banc of America Securities LLC, as Remarketing Agent, on and as of the applicable Rate Determination Date to be the minimum rate of interest which would result in the sale of the 2008 Certificates at a price equal to 100% of the principal amount thereof. Such interest is payable on the first Business Day of each month. The 2008 Certificates are subject to conversion to a different interest rate mode pursuant to the 2008 Trust Agreement. This Official Statement describes the 2008 Certificates only while they are in the Weekly Mode.

While the 2008 Certificates are in the Weekly Mode, they are subject to optional and mandatory tender for purchase under the circumstances described herein. Funds for the payment of the purchase price of the 2008 Certificates that are so subject to optional tender or mandatory tender for purchase and that are not remarketed by the Remarketing Agent will be available (subject to certain conditions precedent and automatic termination events) under a Standby Certificate Purchase Agreement, dated as of May 1, 2008, between the Authority and Bank of America, N.A., as the Liquidity Facility Provider.



The Standby Certificate Purchase Agreement does not support, secure or guaranty the payments of the principal of, premium, if any, or interest with respect to the 2008 Certificates.

The 2008 Certificates are being executed and delivered in book-entry form only and when executed and delivered will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York. Beneficial interests in the 2008 Certificates while the 2008 Certificates are in the Weekly Mode will be available for purchase in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof. Purchasers of such beneficial interests will not receive certificates representing their beneficial ownership in the 2008 Certificates but will receive credit balances on the books of their respective nominees. The principal of and interest evidenced by the 2008 Certificates are payable by the Trustee to Cede & Co.; and such interest and principal payments are to be disbursed to the beneficial owners of the 2008 Certificates through their nominees.

The 2008 Certificates are subject to optional prepayment and mandatory sinking fund prepayment prior to maturity as well as optional and mandatory tender for purchase as described herein.

The scheduled payment of principal of and interest with respect to the 2008 Certificates when due will be guaranteed under a financial guaranty insurance policy to be issued concurrently with the delivery of the 2008 Certificates by Assured Guaranty Corp.



THE OBLIGATION OF THE CITY TO PAY INSTALLMENTS OF PRINCIPAL AND INTEREST IS A SPECIAL OBLIGATION OF THE CITY PAYABLE SOLELY FROM THE GROSS REVENUES OF ITS WATER UTILITY SYSTEM LESS MAINTENANCE AND OPERATIONS COSTS THEREOF (AS DEFINED IN THE MASTER INSTALLMENT PURCHASE CONTRACT), ALL AS FURTHER DESCRIBED HEREIN. SAID OBLIGATION DOES NOT CONSTITUTE A DEBT OF THE CITY OR THE STATE OF CALIFORNIA, OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY OR THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE INSTALLMENT PAYMENTS OR THE INTEREST THEREON.

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR GENERAL REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS ARE ADVISED TO READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

The 2008 Certificates are offered when, as and if delivered and received by the Underwriter, subject to the approval of legality by Sidley Austin LLP, San Francisco, California, Special Counsel, and certain other conditions. Certain legal matters will be passed upon for the City and the Authority by the City Attorney of the City and by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, Disclosure Counsel; for the Trustee by the Jensen Law Office, Orinda, California; for the Liquidity Facility Provider by Kathleen C. Johnson, Esq., Santa Barbara, California and for the 2008 Certificate Insurer by its General Counsel. It is anticipated that the 2008 Certificates will be available for delivery to The Depository Trust Company or its agent on or about May 30, 2008.

Banc of America Securities LLC

Dated: May \_\_, 2008

\* Preliminary, subject to change.

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This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold, nor may offers to buy them be accepted, prior to the time the Official Statement is delivered in final form. No circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, these securities in any jurisdiction in which such solicitation or sale would be unlawful.

**CITY OF MODESTO, CALIFORNIA**

1010 10th Street

P.O. Box 642

Modesto, California 95353

(209) 577-5369

TDD (209) 526-9211 Hearing and Speech Impaired Only

**CITY COUNCIL**

Jim Ridenour, Mayor

Garrad Marsh, Vice Mayor

Dave Lopez

Janice Keating

Will O'Bryant

Kristin Olsen

Brad Hawn

**CITY OFFICIALS**

James E. Niskanen, Interim City Manager

Susana Alcala Wood, City Attorney

Wayne Padilla, Finance Director/Treasurer

Nick Pinhey, Director of Public Works

---

**SPECIAL SERVICES**

**Special Counsel**

Sidley Austin LLP

San Francisco, California

**Trustee**

The Bank of New York Trust Company, N.A.

San Francisco, California

**Financial Advisor**

Public Financial Management, Inc.

San Francisco, California

**Disclosure Counsel**

Stradling Yocca Carlson & Rauth, a Professional Corporation

Newport Beach, California

All the information which the City of Modesto intends to present investors regarding the City, the Authority, and the 2008 Certificates is contained in this Official Statement. While the City maintains an internet website for various purposes, none of the information on that website is intended to assist investors in making any investment decision, or to provide any continuing information, with respect to the 2008 Certificates or any other obligations of the City. Moreover, none of the information on the website is incorporated herein by reference. No dealer, broker, salesperson or other person has been authorized by the City, the Authority, the 2008 Certificate Insurer or the Underwriter to give any information or to make any representations other than those contained in this Official Statement in connection with the offering made hereby and, if given or made, such other information or representations must not be relied upon as having been authorized by the City, the Authority, the 2008 Certificate Insurer or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the 2008 Certificates by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers of the 2008 Certificates. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as a representation of facts.

The information set forth herein has been obtained from sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness. The information and expression of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City or the 2008 Certificate Insurer since the date hereof. All summaries of documents contained herein are made subject to the provisions of such documents and do not purport to be complete statements of any or all such provisions.

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The Underwriter has provided the following sentence for inclusion in this Official Statement:

*The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.*

---

The 2008 Certificate Insurer has provided the following sentence for inclusion in this Official Statement:

Assured Guaranty makes no representation regarding the 2008 Certificates or the advisability of investing in the 2008 Certificates. In addition, Assured Guaranty makes no representation regarding, nor does it accept any responsibility for, the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding Assured Guaranty supplied by Assured Guaranty and presented under the heading "Certificate Insurance" and Appendix E --- "Specimen Financial Guaranty Insurance Policy."

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**CAUTIONARY INFORMATION REGARDING FORWARD-LOOKING STATEMENTS IN  
THIS OFFICIAL STATEMENT**

Certain statements included or incorporated by reference in this Official Statement constitute "Forward-Looking Statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used, such as "plan," "expect," "estimate," "budget" and other similar words and include, but are not limited to, statements that describe possible future connections to and revenues and expenses of the Water Utility System.

The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.

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THE 2008 CERTIFICATES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXEMPTION CONTAINED IN SUCH ACT. THE 2008 CERTIFICATES HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

**TABLE OF CONTENTS**

**Page**

INTRODUCTION .....	1
General.....	1
The 2008 Certificates.....	1
Security for the 2008 Certificates .....	2
Certificate Insurance .....	3
Liquidity Facility .....	4
Swap Agreement.....	4
The City .....	5
The Water Utility System .....	5
Tax Matters.....	5
No Continuing Disclosure .....	5
Disclosure of Indemnity of Purchasers.....	5
REFINANCING PLAN .....	5
THE 2008 PROJECT .....	5
ESTIMATED SOURCES AND USES OF FUNDS .....	7
THE 2008 CERTIFICATES .....	7
General.....	7
Book-Entry-Only System .....	7
Interest Rate Provisions .....	8
Optional Tender.....	9
Mandatory Tender for Purchase Upon Change of Mode.....	9
Other Mandatory Tenders.....	11
Purchase Fund.....	11
Liquidity Facility .....	12
Delayed Remarketing Period .....	13
Prepayment .....	14
Purchase in Lieu of Prepayment.....	15
Parity Obligations .....	16
SECURITY FOR THE 2008 CERTIFICATES.....	16
General.....	16
2008 Payments.....	16
Pledge of Gross Revenues .....	18
Rate Covenant.....	18
Parity Reserve Fund.....	19
Flow of Funds.....	20
Existing and Future Parity Obligations.....	23
2008 Swap Agreement.....	25
CERTIFICATE INSURANCE .....	26
Certificate Insurance Policy.....	26
Assured Guaranty Corp. ....	27
LIQUIDITY FACILITY .....	29
Initial Liquidity Facility.....	29

**TABLE OF CONTENTS**  
*(continued)*

	<i>Page</i>
Bank of America, N.A. ....	33
REMARKETING .....	34
THE WATER UTILITY SYSTEM .....	36
History of the Water Utility System .....	36
Existing Facilities .....	38
Sources of Water.....	38
Treatment and Delivery Agreement .....	39
Water Quality.....	42
DBCP Settlement Agreement .....	43
PCE Litigation .....	44
Employees.....	44
Retirement Programs .....	45
Insurance.....	46
Service Area and Customers.....	46
Water Charges and Billing.....	47
Delinquencies .....	51
Historical Operating Results.....	52
Capital Improvement Program .....	52
Summary of Projected Operating Results of the Water Utility System .....	53
Impact of Proposition 218 on Water Utility System Fees and Charges .....	54
Effect of Proposition 218 and of Possible General Limitations on Enforcement Remedies .....	56
Investment Policy .....	56
Financial Statements.....	57
RISK FACTORS .....	57
General.....	58
Earthquakes, Floods and Other Natural Disasters .....	58
Demand for Water .....	59
Water Supply .....	59
Water Utility System Expenses .....	59
Rate Process.....	59
Statutory and Regulatory Impact.....	59
Limitations on Remedies and Bankruptcy.....	60
Limited Obligations .....	60
THE AUTHORITY .....	61
APPROVAL OF LEGAL PROCEEDINGS.....	61
LITIGATION.....	61
TAX MATTERS.....	61
Information Reporting and Backup Withholding.....	62
State Tax Exemption.....	62
Future Developments.....	63
RATINGS .....	63

**TABLE OF CONTENTS**  
*(continued)*

	<i>Page</i>
FINANCIAL ADVISOR .....	63
CERTAIN RELATIONSHIPS .....	63
UNDERWRITING .....	64
MISCELLANEOUS .....	64
APPENDIX A – EXCERPTS FROM THE CITY’S FINANCIAL STATEMENTS .....	A-1
APPENDIX B – DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS....	B-1
APPENDIX C – PROPOSED FORM OF OPINION OF SPECIAL COUNSEL.....	C-1
APPENDIX D – INFORMATION CONCERNING DTC .....	D-1
APPENDIX E – SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY.....	E-1
APPENDIX F – CERTAIN INFORMATION ABOUT THE CITY .....	F-1

**\$47,630,000\***  
**CITY OF MODESTO, CALIFORNIA**  
**WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION**  
**2008 SERIES A**

**INTRODUCTION**

**General**

This Official Statement, including the cover page and all appendices attached hereto, provides certain information concerning the City of Modesto Refunding Water Revenue Certificates of Participation, 2008 Series A (the “2008 Certificates”), evidencing and representing the proportionate interests of the Owners thereof in certain payments to be made by the City of Modesto, California (the “City”). Descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and reference is made to each document for complete details of all terms and conditions thereof. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in APPENDIX B — “DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS.”

The 2008 Certificates are being executed and delivered primarily to refinance certain improvements (collectively, the “2008 Project”) to the City’s water utility system (the “Water Utility System”) as further described under the caption “THE 2008 PROJECT” below. Proceeds derived from the sale of the 2008 Certificates, along with other funds available for such purposes, will also be used to pay the costs of executing and delivering the 2008 Certificates and to make a cash deposit into, and to pay the premium for a reserve fund financial guaranty insurance policy (the “Parity Reserve Fund Insurance Policy”) that will be credited to, the debt service reserve fund for the Parity Obligations (as hereinafter defined) (the “Parity Reserve Fund”). See “REFINANCING PLAN” and “ESTIMATED SOURCES AND USES OF FUNDS.”

**The 2008 Certificates**

The 2008 Certificates represent the proportionate undivided interests of the registered owners thereof (the “Owners”) in installment payments (the “2008 Payments”) payable by the City under the Master Installment Purchase Contract, dated as of November 1, 1997 (the “Master Contract”), by and between the City and the Modesto Public Financing Authority, a California joint exercise of powers agency (the “Authority”), as supplemented by supplemental purchase contracts including the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 by and between the City and the Authority (the “2008 Contract” and, collectively with the Master Contract, the “Contract”). The 2008 Certificates are being executed and delivered pursuant to the Trust Agreement, dated as of May 1, 2008 (the “2008 Trust Agreement”), by and between the Authority and The Bank of New York Trust Company, N.A., as trustee (the “Trustee”). Pursuant to the 2008 Trust Agreement, the Authority has assigned to the Trustee for the benefit of the Owners of the 2008 Certificates all its rights under the Contract, including its right to receive 2008 Payments payable under the Contract and its right to enforce payment by the City of the 2008 Payments when due.

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\* Preliminary, subject to change.

The 2008 Certificates will be dated the date on which they are executed and delivered and will mature on October 1, 2036 (the “Maturity Date”), subject to prepayment prior thereto. See “THE 2008 CERTIFICATES — Prepayment.” The 2008 Certificates will be initially executed and delivered in the Weekly Mode, and interest with respect to the 2008 Certificates in the Weekly Mode will be evidenced at the Weekly Rate. In general, the Weekly Rate is the rate of interest per annum determined by Banc of America Securities LLC, as Remarketing Agent (the “Remarketing Agent”), on and as of the applicable Rate Determination Date to be the minimum rate of interest which would result in the sale of the 2008 Certificates at a price equal to 100% of the principal amount thereof. Such interest is payable on the first Business Day of each month. See “THE 2008 CERTIFICATES.” The 2008 Certificates are subject to conversion to a different interest rate mode pursuant to the 2008 Trust Agreement. *This Official Statement describes the 2008 Certificates only while they are in the Weekly Mode.*

While the 2008 Certificates are in the Weekly Mode, they are subject to optional and mandatory tender for purchase under the circumstances described herein. Funds for the payment of the purchase price of the 2008 Certificates that are so subject to optional tender or mandatory tender for purchase and that are not remarketed by the Remarketing Agent will be available (subject to certain conditions precedent and automatic termination events) under a Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the “Liquidity Facility”), between the Authority and Bank of America, N.A., as Liquidity Facility Provider (the “Liquidity Facility Provider”). The Liquidity Facility does not support, secure or guaranty the payments of the principal of, premium, if any, or interest with respect to the 2008 Certificates. For a description of the Standby Certificate Purchase Agreement and information concerning Bank of America, N.A., see “LIQUIDITY FACILITY.”

### **Security for the 2008 Certificates**

**General.** The 2008 Certificates represent the proportionate interests of the Owners in the 2008 Payments. The City is required to make the 2008 Payments pursuant to the provisions of the Contract. The 2008 Payments represent the purchase price of the 2008 Project, which the Authority is selling to the City.

**The Master Contract.** The Master Contract establishes the terms and conditions upon which certain obligations of the City will be incurred and secured. Pursuant to the Master Contract, all Gross Revenues (as defined in the Master Contract) of the Water Utility System are pledged to the payment of the 2008 Payments, all payments required to be made under all other Parity Obligations and Maintenance and Operations Costs; and amounts on deposit in the Parity Reserve Fund are pledged to the payment of the 1997 Payments (defined below), the 2008 Payments and any other obligations hereafter issued in connection with a Supplemental Contract. The City has previously incurred, and may in the future incur, obligations payable from Gross Revenues on a parity with the 2008 Payments (“Parity Obligations”) pursuant to the terms and conditions of the Master Contract. See “SECURITY FOR THE 2008 CERTIFICATES — Existing and Future Parity Obligations.” To provide additional security for the 2008 Certificates and Parity Obligations, the Master Contract contains a rate covenant which requires the City to fix, prescribe, and collect certain minimum rates, fees and charges for the water service, calculated in accordance with the Master Contract. See “SECURITY FOR THE 2008 CERTIFICATES — Rate Covenant.”

**The 1997 Contract.** The City has previously financed and refinanced certain improvements to its Water Utility System pursuant to a 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997, by and between the City and the Authority (the “1997 Contract”), under which

the City is obligated to make certain payments (the "1997 Payments") to the Authority as payment of the purchase price for those improvements. The 1997 Payments are payable from Gross Revenues on a parity with the 2008 Payments.

***The 2006 Contract.*** Subsequent to its execution of the 1997 Contract, in order to finance the cost of additional improvements to the Water Utility System (the "2006 Project"), the City entered into the 2006 Supplemental Installment Purchase Contract with the Authority (the "2006 Contract"), supplementing the Master Contract. Pursuant to the 2006 Contract, the City obligated itself to make certain payments (the "2006 Payments") to the Authority; and pursuant to a related trust agreement the Authority assigned to The Bank of New York Trust Company, N.A., as trustee (the "2006 Trustee"), its right to receive the 2006 payments. The Authority and the 2006 Trustee executed and delivered certificates of participation in the 2006 Payments (the "2006 Certificates"), and proceeds from the sale of the 2006 Certificates are being used to pay the costs of constructing the 2006 Project. In connection with the 2008 Contract, the City will reconvey the 2006 Project to the Authority for sale back to the City as the 2008 Project; and proceeds from the sale of the 2008 Certificates, along with other funds available for such purpose, will be applied to prepay the 2006 Payments. As a result of the foregoing, the City's obligations with respect to the 2006 Contract will be extinguished, and the 2006 Certificates will be defeased, concurrently with the execution and delivery of the 2008 Certificates, provided, however, that certain amendments to the Master Contract contained in the 2006 Contract will remain in full force and effect.

***The 2008 Contract.*** The 2008 Contract is a Parity Obligation executed and delivered under the provisions of the Master Contract. In consideration of the Authority's agreement to finance the 2008 Project pursuant to the provisions of the 2008 Contract, the City agrees to pay the 2008 Payments to the Authority, solely from Gross Revenues on parity with all other Parity Obligations and Maintenance and Operation Costs, as provided in the 2008 Contract. The obligation of the City to make the 2008 Payments from Gross Revenues is absolute and unconditional; and, until such time as the 2008 Payments have been paid in full (or provision for the payment thereof shall have been made pursuant to the Master Contract), the City will not discontinue or suspend any such payments required to be made by it under the 2008 Contract when due whether or not the Water Utility System or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part. See "SECURITY FOR THE 2008 CERTIFICATES — 2008 Payments."

THE OBLIGATION OF THE CITY TO PAY THE 2008 PAYMENTS IS A SPECIAL OBLIGATION OF THE CITY PAYABLE SOLELY FROM GROSS REVENUES OF THE WATER UTILITY SYSTEM AND DOES NOT CONSTITUTE A DEBT OF THE CITY OR OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF IN CONTRAVENTION OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY OR THE STATE OF CALIFORNIA, OR ANY POLITICAL SUBDIVISION, THEREOF IS PLEDGED TO THE PAYMENT OF THE 2008 PAYMENTS.

### **Certificate Insurance**

Assured Guaranty Corp. ("Assured Guaranty" or the "2008 Certificate Insurer") has issued a commitment to issue, simultaneously with the delivery of the 2008 Certificates, a municipal bond insurance policy (the "2008 Certificate Insurance Policy") relating to the 2008 Certificates, effective as of the date of delivery of the 2008 Certificates. By the terms of the 2008 Certificate Insurance

Policy, Assured Guaranty agrees to pay the principal and interest represented by the 2008 Certificates which come due for payment but which are unpaid, to the extent that the Trustee has not received sufficient funds from the City with which to make such payment. See “CERTIFICATE INSURANCE” and APPENDIX E — “SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY.”

Assured Guaranty will also issue the Parity Reserve Fund Insurance Policy; and, in connection therewith, the City and the Trustee will enter into an agreement with Assured Guaranty, dated as of May 1, 2008 (the “Reimbursement Agreement”). The City’s obligations under the Reimbursement Agreement will be Parity Obligations.

### **Liquidity Facility**

While the 2008 Certificates are in the Weekly Mode, they are subject to optional tender and mandatory tender for purchase. Funds for the payment of the purchase price of 2008 Certificates that are so tendered for purchase and that are not remarketed by the Remarketing Agent will be available (subject to certain conditions precedent and automatic termination events) under the Liquidity Facility. The Liquidity Facility does not support, secure or guaranty the payments of the principal of, premium, if any, or interest with respect to the 2008 Certificates. See “LIQUIDITY FACILITY.”

### **Swap Agreement**

In connection with the execution and delivery of the 2006 Certificates, the City entered into an interest rate swap agreement in the form of an ISDA Master Agreement (Local Currency – Single Jurisdiction), the U.S. Municipal Counterparty Schedule thereto, a Credit Support Annex and a Confirmation each dated as of and entered into on September 27, 2006 (collectively, the “2006 Swap Agreement”) with Bank of America, N.A. (the “Swap Provider”). In connection with the execution and delivery of the 2008 Certificates, the City and the Swap Provider will amend the 2006 Swap Agreement in various respects, including increasing the notional amount thereof, revising schedule pursuant to which the notional amount is to be reduced and providing for certain payments thereunder to be insured by Assured Guaranty (as so amended, the “2008 Swap Agreement”). The 2008 Swap Agreement is scheduled to expire on the Maturity Date of the 2008 Certificates; and the notional amount of the 2008 Swap Agreement is scheduled to be reduced on the same dates and in the same amounts as the principal evidenced by the 2008 Certificates is scheduled to be reduced. Pursuant to the 2008 Swap Agreement, the City will be required to make periodic payments to the Swap Provider calculated on the basis of a fixed rate of interest on an initial notional amount equal to the principal amount represented by the 2008 Certificates. In return, the Swap Provider will be required to make periodic payments to the City calculated on the basis of a variable rate of interest equal to a percentage of LIBOR on the same notional amount. The amounts payable by each party pursuant to the 2008 Swap Agreement are netted against the payments to be received by such party thereunder. See “SECURITY FOR THE 2008 CERTIFICATES — 2008 Swap Agreement.”

Bank of America, N.A. (the Swap Provider and the Liquidity Facility Provider) and Banc of America Securities LLC, (the Underwriter and Remarketing Agent), are affiliates, both being subsidiaries of Bank of America Corporation.

## **The City**

The City was incorporated in 1884, is the county seat of Stanislaus County, had an estimated population of over 209,000 as of January 1, 2008, and covers approximately 36 square miles. The City operates under a council-manager form of government pursuant to a charter adopted in 1963. It is located in Central California, approximately 93 miles east of San Francisco. See APPENDIX F — “CERTAIN INFORMATION ABOUT THE CITY.”

## **The Water Utility System**

The Water Utility System provides potable water service to residential, commercial and industrial consumers located within the incorporated area of the City and in neighboring areas of Stanislaus County. The City owns, operates and maintains the Water Utility System, which is the sole retail provider of water service in the City. See “THE WATER UTILITY SYSTEM.”

## **Tax Matters**

For description of the tax status of interest with respect to the 2008 Certificates, see “TAX MATTERS” herein and see the complete copy of the proposed form of opinion of Special Counsel set forth in APPENDIX C — “PROPOSED FORM OF OPINION OF SPECIAL COUNSEL.”

## **No Continuing Disclosure**

While in the Weekly Mode, the 2008 Certificates are exempt from the continuing disclosure requirements of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended.

## **Disclosure of Indemnity of Purchasers**

Any person who purchases a beneficial interest in the 2008 Certificates in connection with the initial offering thereof agrees that the underwriters of the 2008 Certificates may disclose such person’s identity to the City and Authority unless such person advises his or her sales representative otherwise.

## **REFINANCING PLAN**

Proceeds from the sale of the 2008 Certificates, along with other funds available for such purpose, in an aggregate amount equal to the outstanding principal amount of the 2006 Certificates and the interest payable with respect thereto on May 30, 2008, will be deposited with the 2006 Trustee concurrently with the execution of the 2008 Certificates. The 2006 Trustee has previously given a conditional notice of full prepayment of the 2006 Certificates to the registered owners thereof. Said notice states that the 2006 Certificates will be prepaid in full on May 30, 2008, subject to receipt by the 2006 Trustee of funds sufficient to pay the prepayment price of the 2006 Certificates on said date. Thus, upon execution and delivery of the 2008 Certificates and the deposit of proceeds from the sale thereof in the amount described above with the 2006 Trustee, the 2006 Certificates will no longer be outstanding.

## **THE 2008 PROJECT**

The 2008 Project consists of the City’s conveyance to the Authority of the improvements that comprise the 2006 Project and the Authority’s reconveyance thereof to the City in order to effect the

refinancing of the 2006 Project. The 2006 Project consists of improvements required to be made by the City in connection with the Modesto Irrigation District's expansion of the Modesto Regional Water Treatment Plant (the "Water Treatment Plant"), including the construction of several new downstream water facilities and various water distribution system improvements to insure the reliability of water supply to both existing and future customers. The 2006 Project includes the acquisition of land and rights of way as well as design and construction costs related to the new facilities and improvements. The facilities include the acquisition, construction and installation of three storage tanks and connecting transmission facilities, construction and improvement of transmission/distribution mains and associated pump stations, and installation of motor-operated control valves controlling the flow of treated surface water from the Water Treatment Plant to the City system. The 2006 Project facilities and improvements are intended to help replace less reliable groundwater production capacity, improve the City's ability to maintain desired system operational pressures during high-demand periods and meet other operational criteria. These facilities are also intended to improve system distribution capabilities to future customers.

The Water Treatment Plant was constructed and is owned and operated by the Modesto Irrigation District ("MID"). Pursuant to an agreement with the City (the "Treatment and Delivery Agreement"), MID has agreed to an expansion of the Water Treatment Plant, doubling its rated capacity from approximately 30 million gallons per day to approximately 60 million gallons per day. (The Water Treatment Plant has been designed to accommodate a possible further expansion subject to a future agreement between the City and MID.) On June 26, 2007, the Modesto Irrigation District Financing Authority issued bonds in a principal amount of \$93,190,000 (the "MIDFA 2007 Bonds") in order to provide financing for the Water Treatment Plant expansion described above. The ultimate source of funds expected to be used to pay debt service on the MIDFA 2007 Bonds consists of payments to be made by the City to MID pursuant to the Treatment and Delivery Agreement. See "THE WATER UTILITY SYSTEM — Treatment and Delivery Agreement."

The 2006 Project is expected to be completed in the third quarter of 2009, the expansion of the Water Treatment Plant is expected to be completed in the fourth quarter of 2009 and the expanded plant is expected to be fully operational early in 2010.

## ESTIMATED SOURCES AND USES OF FUNDS

The table below sets forth the estimated sources and uses of the proceeds of the 2008 Certificates and certain other funds:

Sources:	
Principal Amount of the 2008 Certificates	\$
Funds Held for 2006 Certificates	
Less: Underwriter's Discount	( _____ )
Total	<u>\$ _____</u>
Uses:	
Transfer to 2006 Trustee <sup>(1)</sup>	\$
Parity Reserve Fund <sup>(2)</sup>	
Costs of Issuance <sup>(3)</sup>	
Total	<u>\$ _____</u>

<sup>(1)</sup> Equal to the principal amount of the 2006 Certificates and the interest payable with respect thereto on May 30, 2008, the date designated for the prepayment of the 2006 Certificates.

<sup>(2)</sup> The Reserve Fund Requirement, which is described herein under the caption "SECURITY FOR THE 2008 CERTIFICATES — Parity Reserve Fund," will be satisfied in connection with the execution and delivery of the 2008 Certificates by (a) the retention in the Parity Reserve Fund of cash currently held therein in connection with the 2006 Certificates in the amount of \$ \_\_\_\_\_ and (b) the delivery to the Trustee of the Parity Reserve Fund Insurance Policy, with policy limits of \$ \_\_\_\_\_.

<sup>(3)</sup> Includes the premium for the 2008 Certificate Insurance Policy and the Parity Reserve Fund Insurance Policy, fees and expenses of Special Counsel, Disclosure Counsel, Financial Advisor, and Trustee, and printing and other miscellaneous expenses.

## THE 2008 CERTIFICATES

### General

The 2008 Certificates represent the proportionate interests of the Owners in the 2008 Payments. The 2008 Certificates will be dated the date on which they are executed and delivered and will mature on the Maturity Date, subject to prepayment prior thereto as described below under "Prepayment." The 2008 Certificates will be initially executed and delivered in the Weekly Mode, and interest with respect to the 2008 Certificates in the Weekly Mode will be evidenced at the Weekly Rate. See "Interest Rate Provisions" below.

Upon delivery, the 2008 Certificates will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the 2008 Certificates. Ownership interests in the 2008 Certificates may be purchased in book entry form only. See "Book-Entry-Only System" below. While the 2008 Certificates are in the Weekly Mode such ownership interests may be purchased in denominations of \$100,000 and integral multiples of \$5,000 in excess thereof.

### Book-Entry-Only System

The 2008 Certificates will be executed and delivered in book-entry form only. Purchasers of the 2008 Certificates will not receive certificates representing their ownership interests in the 2008 Certificates purchased but will receive credit balances on the books of their respective nominees. All payments with respect to the 2008 Certificates are to be made by the Trustee directly to DTC. DTC

is expected to credit such payments to the respective accounts of its Direct Participants which, in turn, are expected to make payment thereof to the purchasers of the 2008 Certificates.

As long as Cede & Co. is the registered owner of the 2008 Certificates, references herein to the Owners of the 2008 Certificates shall refer to Cede & Co. and not to the beneficial owners of the 2008 Certificates (the “Beneficial Owners”). *Neither the Authority nor the City gives any assurance that DTC, its Participants or others will distribute payments with respect to the 2008 Certificates or notices concerning the 2008 Certificates to the Beneficial Owners thereof or that DTC will otherwise serve and act in the manner described in this Official Statement. See APPENDIX D — “INFORMATION CONCERNING DTC” for a further description of DTC and its book-entry system. The information presented therein is based solely on information provided by DTC.*

The Authority may decide to discontinue the use of book-entry transfers through DTC (or a successor Securities Depository). In that event, the 2008 Certificates will be printed and delivered to the Beneficial Owners and will be governed by the provisions of the 2008 Trust Agreement with respect to the payment of principal and interest and rights of exchange and transfer.

### **Interest Rate Provisions**

***Establishment of the Weekly Rate.*** The 2008 Certificates will be executed and delivered in the Weekly Mode. The interest rate for the 2008 Certificates while they are in the Weekly Mode will be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date (each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday) as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of the 2008 Certificates at a price equal to 100% of the principal amount thereof. While the 2008 Certificates are in the Weekly Mode, the Remarketing Agent is obligated to establish the Weekly Rate by 4:00 p.m. New York City time on each Rate Determination Date; and the Weekly Rate shall be in effect during the applicable Weekly Rate Period (generally, the period commencing on Thursday of each week to and including Wednesday of the following week).

***Notification of the Weekly Rate.*** The Remarketing Agent is required to make the Weekly Rate available no later than 5:00 p.m. New York City time on the Business Day following the Rate Determination Date by telephone or Electronic means to the Authority, each other Notice Party and any Beneficial Owner requesting such rate.

***Alternate Rate.*** When the 2008 Certificates are in the Weekly Mode, in the event (i) the Remarketing Agent fails or is unable to determine the interest rate for the 2008 Certificates, (ii) the method by which the Remarketing Agent determines the interest rate with respect to the 2008 Certificates shall be held to be unenforceable by a court of law of competent jurisdiction, or (iii) the Remarketing Agent suspends its remarketing effort in accordance with the provisions of the Remarketing Agreement (as hereinafter defined), then the 2008 Certificates shall evidence interest during each subsequent Interest Period for the 2008 Certificates at the Alternate Rate in effect on the first day of such Weekly Rate Period. The Alternate Rate for the 2008 Certificates in the Weekly Mode as of any Rate Determination Date is a rate per annum equal to (a) the SIFMA Municipal Swap Index (the “SIFMA Rate”) most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Rate is no longer published, the S&P Weekly High Grade Index (formerly the J.J. Kenny Index), or (c) if neither the SIFMA Rate nor the S&P Weekly High Grade Index is published, the index determined to equal the prevailing rate determined

by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association (“SIFMA”) to determine the SIFMA Rate just prior to when the SIFMA stopped publishing the SIFMA Rate. If there is no Remarketing Agent for the 2008 Certificates, if the Remarketing Agent fails to make any such determination or if the Remarketing Agent has suspended its remarketing efforts in accordance with the Remarketing Agreement, then the Trustee shall make the determinations required by this definition, or if the Trustee shall decline to make such determination, a financial advisor, investment banker or other qualified party shall make such determination at the expense of the Authority. Such provisions will continue to apply until such time as the Remarketing Agent (or the Authority, if applicable) resumes making such determinations. In the case of clause (ii) above, the Remarketing Agent (or the Authority, if applicable) shall resume making such determination at such time as there is delivered to the Remarketing Agent or the Authority, as applicable, an opinion of Special Counsel to the effect that there are no longer any legal prohibitions against the Remarketing Agent or Authority, as applicable, making such determinations.

### **Optional Tender**

Subject to the availability of sufficient funds from either the remarketing of such 2008 Certificates or the Liquidity Facility, while the 2008 Certificates are in the Weekly Mode, any 2008 Certificate or portion thereof in a principal amount equal to an Authorized Denomination is required to be purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by 5:00 p.m. New York City time on the Business Day seven days prior to the applicable Purchase Date. See, “Purchase Fund,” “Delayed Remarketing Period,” “Liquidity Facility” and “LIQUIDITY FACILITY — Initial Liquidity Facility.” A Tender Notice is a notice delivered by Electronic means or in writing that states: (i) the principal amount of the 2008 Certificates to be purchased pursuant to the optional tender provisions of the 2008 Trust Agreement; (ii) the Purchase Date on which such 2008 Certificates are to be purchased; (iii) applicable payment instructions with respect to such 2008 Certificates being tendered for purchase; and (iv) an irrevocable demand for such purchase. For so long as the 2008 Certificates are registered in the name of Cede & Co., as nominee for DTC, the tender option rights of Owners of 2008 Certificates may be exercised only by a Direct Participant of DTC acting, directly or indirectly, on behalf of a Beneficial Owner of 2008 Certificates by giving notice of its election to tender 2008 Certificates or portions thereof at the time and in the manner described above. Beneficial Owners will not have any rights to tender 2008 Certificates directly to the Trustee.

If funds sufficient to pay the Purchase Price of any Certificate are held by the Trustee on any Purchase Date, such 2008 Certificate shall be deemed to have been purchased and shall be purchased according to the terms of the Trust Agreement, for all purposes of the Trust Agreement, irrespective of whether or not such 2008 Certificate shall have been delivered to the Trustee; and neither the former Owner of such 2008 Certificate nor any other person shall have any claim thereon, under the Trust Agreement or otherwise, for any amount other than the Purchase Price thereof.

### **Mandatory Tender for Purchase Upon Change of Mode**

*Changes in Mode.* At the option of the Authority, the 2008 Certificates in the Weekly Mode may be changed to another Mode (other than a Fixed Rate Mode) as set forth below, provided that all the 2008 Certificates shall be converted.

Unless otherwise specified in the 2008 Trust Agreement, notice of the proposed change in Mode must be given by the Trustee to the Owners of the 2008 Certificates not less than the 15th day next preceding the applicable Mode Change Date. Such notice must state the Mode to which the conversion will be made and the proposed Mode Change Date and, if applicable, shall be combined with the notice of mandatory purchase required to be delivered by the Trustee pursuant to the 2008 Trust Agreement. The new Mode shall commence on the Mode Change Date and the interest rate(s), together, in the case of a change to the Flexible Mode, with the Interest Period or Interest Period(s), as applicable, shall be determined by the Remarketing Agent (or the Authority in the case of the Interest Period for the 2008 Certificates being converted to a Term Rate Mode) in the manner provided in the 2008 Trust Agreement.

In the case of a change from the Weekly Mode, the Mode Change Date can be any Business Day. The 2008 Certificates shall be subject to mandatory tender for purchase on such Mode Change Date as described below: and, except as is otherwise described herein, the 2008 Certificates shall be purchased on the Mode Change Date at a Purchase Price equal to 100% of the principal amount thereof; provided, however, that if the 2008 Certificates are to be purchased on an Interest Payment Date other than the last Interest Payment Date applicable to the 2008 Certificates, and if the 2008 Certificates would otherwise be subject to optional prepayment on such Mode Change Date at a prepayment price of more than 100% of the principal amount thereof, then the 2008 Certificates shall be purchased at a Purchase Price equal to such prepayment price.

**Conditions Precedent.** It is a condition precedent to a change in Mode that certain items shall have been delivered to the Authority, Trustee, the 2008 Certificate Insurer, and the Remarketing Agent on or prior to the Mode Change Date. Those items include (a) in the case of a change from the Weekly Mode to any Mode other than the Daily Mode, a Favorable Opinion of Special Counsel dated the Mode Change Date and (b) a notice from the Rating Agencies of the rating(s) to be assigned to the 2008 Certificates on such Mode Change Date. In addition, the Authority must also have obtained and delivered to the Trustee the written consent of the 2008 Certificate Insurer to the change in Mode.

**Failure to Satisfy Conditions.** In the event that the Authority has not withdrawn any election by it to change a Mode as described below and the conditions referred to above have not been satisfied by the applicable Mode Change Date, then the New Mode shall not take effect (although any mandatory purchase shall be made on such date if notice has been sent to the Owners stating that the 2008 Certificates would be subject to mandatory purchase on such date). In the case of a failed change in Mode from the Weekly Mode, the 2008 Certificates shall remain in the Weekly Mode with interest rates established in accordance with the provisions described above under "Interest Rate Provisions" on and as of the failed Mode Change Date.

**Rescission of Election to Change Mode.** The Authority may rescind any election by it to change a Mode prior to the Mode Change Date by giving written notice thereof to the Notice Parties prior to such Mode Change Date. If the Trustee receives notice of such rescission prior to the time the Trustee has given notice to the Owners of the 2008 Certificates, then such notice of change in Mode shall be of no force and effect. If the Trustee receives notice from the Authority of rescission of a Mode change after the Trustee has given notice thereof to the Owners of the 2008 Certificates, then if the proposed Mode Change Date would have been a Mandatory Purchase Date, such date shall continue to be a Mandatory Purchase Date. If the proposed change in Mode was from the Weekly Mode, the 2008 Certificates shall remain in the Weekly Mode with interest rates established

in accordance with the provisions described above under “Interest Rate Provisions” on and as of the proposed Mode Change Date.

***Mandatory Tender for Purchase on Change of Mode.*** A change from the Weekly Mode to any other Mode will result in the mandatory purchase of the 2008 Certificates on the Mode Change Date. The Trustee is required to give notice of each such mandatory purchase by mail to the Owners of the 2008 Certificates subject to mandatory purchase no less than 15 days prior to the applicable Mandatory Purchase Date, which is the Mode Change Date. Such notice is required to state the Mandatory Purchase Date, set forth the Purchase Price applicable on such Mandatory Purchase Date, and identify the 2008 Certificates to be purchased. Such notice must also state that interest on the 2008 Certificates subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2008 Certificate shall not affect the validity of the mandatory purchase of any other 2008 Certificate with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Owner.

### **Other Mandatory Tenders**

The 2008 Certificates are subject to mandatory tender for purchase on each Mandatory Tender Date. In addition to Mode Change Dates, Mandatory Purchase Dates applicable to 2008 Certificates in the Weekly Mode are: (i) any Substitution Date (the date on which an Alternate Liquidity Facility is substituted for the Liquidity Facility then in effect); (ii) the fifth Business Day prior to an Expiration Date (the stated expiration date of a Liquidity Facility, as it may be extended from time to time as provided in such Liquidity Facility, or any earlier date on which such Liquidity Facility shall terminate at the direction of the Authority, expire or be cancelled, other than the date on which a Liquidity Facility shall terminate as a result of an Automatic Termination Event or an event of default under the Reimbursement Agreement entered into in connection with such Liquidity Facility); (iii) the date specified by the Trustee following the occurrence of an event of default with respect to the Liquidity Facility which requires or gives the Liquidity Facility Provider the option to terminate the Liquidity Facility upon notice and requires that all Outstanding 2008 Certificates secured by such Liquidity Facility be tendered for purchase under the applicable Reimbursement Agreement, which date shall be a Business Day not less than 20 days after the Trustee’s receipt of notice of such event of default from the applicable Liquidity Facility Provider and in no event later than the Business Day preceding the termination date specified in the notice of event of default delivered to the Trustee by such Liquidity Facility Provider; and (iv) any Business Day specified by the Authority in a notice delivered to the Trustee, which Mandatory Purchase Date shall be not less than twenty (20) days after the Trustee’s receipt of such notice from the Authority.

The Trustee is required to give notice of each such mandatory purchase at the same time and in the same manner as is described above under “Mandatory Tender for Purchase upon Change of Mode - *Mandatory Tender for Purchase on Change of Mode.*”

### **Purchase Fund**

The Trust Agreement requires the Trustee to establish and maintain a separate fund to be designated as the “2008 Purchase Fund” (the “2008 Purchase Fund”) and separate accounts therein to be designated as the “Remarketing Proceeds Account,” the “Liquidity Facility Account” and the “Authority Account.” The 2008 Purchase Fund shall be held in trust solely for the benefit of the Owners of tendered 2008 Certificates.

Upon receipt of the proceeds of a remarketing of any 2008 Certificate on the date such 2008 Certificate is to be purchased, the Trustee is required to deposit such remarketing proceeds in the Remarketing Proceeds Account to be applied to the payment of the Purchase Price of such 2008 Certificate. Upon receipt of the proceeds of a draw on a Liquidity Facility, the Trustee is required to deposit such Liquidity Facility proceeds in the Liquidity Facility Account to be applied to the payment of the Purchase Price of the 2008 Certificates to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in a Liquidity Facility Account and not needed for the payment of the Purchase Price of the 2008 Certificates shall be immediately returned to the applicable Liquidity Facility Provider. Upon receipt of funds from the Authority provided at its sole discretion for such purpose, the Trustee is required to deposit such funds in the Authority Account to be applied to the payment of the Purchase Price of the 2008 Certificates. Any amounts deposited in an Authority Account and not needed for the payment of the Purchase Price of the 2008 Certificates shall be immediately returned to the Authority. Amounts held in the Remarketing Proceeds Account, the Liquidity Facility Account and the Authority Account are not permitted to be commingled with any other funds held by the Trustee and must be held uninvested.

Each of the Remarketing Proceeds Account and the Liquidity Facility Account shall meet the requirements of an Eligible Account.

### **Liquidity Facility**

**Requirement.** While the 2008 Certificates are in the Weekly Mode, the Authority is required to provide a Liquidity Facility. Each such Liquidity Facility (and any Alternate Liquidity Facility provided in replacement thereof) must (i) be in an amount equal to the Required Stated Amount, (ii) be provided by a Liquidity Facility Provider and (iii) provide for the purchase of the 2008 Certificates upon their optional or mandatory tender in accordance with the provisions of the Trust Agreement. The Authority is not permitted to voluntarily terminate such Liquidity Facility or any Alternate Liquidity Facility without providing at least 30 days written notice to the Trustee and each of the other Notice Parties.

**Draws.** If a Liquidity Facility is in effect with respect to the 2008 Certificates, on each date on which a 2008 Certificate is to be purchased, the Trustee, by demand given by Electronic means before 12:30 p.m. New York City time, is required to draw on the applicable Liquidity Facility in accordance with the terms thereof so as to receive thereunder by 2:30 p.m. New York City time on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such 2008 Certificates on such date, to enable the Trustee to pay the Purchase Price in connection therewith. The proceeds of such draw shall be paid to the Trustee, who shall deposit said proceeds in the Liquidity Facility Account.

**Alternate Liquidity Facility.** The Authority may provide an Alternate Liquidity Facility on any Business Day not later than the fifth Business Day prior to the Expiration Date of the Liquidity Facility then in effect for the 2008 Certificates. Any such Alternate Liquidity Facility must be approved by the 2008 Certificate Insurer. The Authority must give at least 30 days' written notice to the Trustee and each of the Notice Parties of its intent to furnish an Alternate Liquidity Facility, which notice shall specify the nature of such Liquidity Facility, the identity of the Liquidity Facility Provider and the proposed Substitution Date. The Trustee must then give notice of each Mandatory Purchase Date resulting from the proposed delivery of an Alternate Liquidity Facility in accordance with the provisions set forth in the Trust Agreement.

On or before the Substitution Date, there must be delivered to the Trustee: (i) the Alternate Liquidity Facility in substitution for the Liquidity Facility then in effect, (ii) a Favorable Opinion of Special Counsel and (iii) a written Opinion of Counsel for the provider of Alternate Liquidity Facility to the effect that such Alternate Liquidity Facility is a legal, valid, and binding obligation of the provider thereof and covering such other matters as the Authority shall require. Upon the satisfaction of such conditions, the Trustee must accept such Alternate Liquidity Facility and surrender the Liquidity Facility then in effect to the provider thereof on the Substitution Date; provided that if there are insufficient remarketing proceeds to pay the Purchase Price of all 2008 Certificates subject to mandatory purchase on such Substitution Date, the Trustee may not surrender the Liquidity Facility then in effect until the Trustee shall have drawn upon the existing Liquidity Facility to pay the Purchase Price for the 2008 Certificates subject to mandatory purchase on such Substitution Date. If any condition precedent to the substitution of an Alternate Liquidity Facility is not satisfied, the substitution shall not occur, but the affected 2008 Certificates shall remain subject to mandatory purchase on the proposed Substitution Date.

### **Delayed Remarketing Period**

If sufficient funds are not available to pay the Purchase Price of all tendered 2008 Certificates (“Tendered Certificates”) to be purchased on any Purchase Date: (i) no purchase of such Tendered Certificates shall be consummated on such Purchase Date; (ii) all such Tendered Certificates shall be returned to the Owners thereof; (iii) all remarketing proceeds shall be returned to the Remarketing Agent for return to the persons providing such moneys; and (iv) such insufficiency and the failure to pay the Purchase Price on any Payment Date shall *not* constitute an Event of Default under the Trust Agreement. All such Tendered Certificates shall evidence interest at the Maximum Rate during the period of time from and including the applicable Purchase Date to (but not including) the date that all such Tendered Certificates are successfully remarketed (the “Delayed Remarketing Period”).

The Authority may direct the conversion of such Tendered Certificates to a different Mode during a Delayed Remarketing Period in accordance with the provisions of the Trust Agreement, but the Authority is not required to comply with the notice requirements otherwise applicable to a change of Mode.

During a Delayed Remarketing Period, the Remarketing Agent shall continue to use its best efforts to remarket such Tendered Certificates. Once the Remarketing Agent has advised the Trustee that it has a good faith belief that it is able to remarket all of such Tendered Certificates, the Trustee shall give written notice by mail to the Owners of such Tendered Certificates not later than five Business Days prior to the proposed Purchase Date, which notice shall state: (i) that such Tendered Certificates will be subject to mandatory tender for purchase on the proposed Purchase Date; (ii) the proposed Purchase Date; (iii) the Mode applicable to such Tendered Certificates from and after the proposed Purchase Date; (iv) the procedures for such mandatory tender for purchase; (v) the Purchase Price applicable to such Tendered Certificates; and (vi) the consequences of a failed remarketing.

The Trustee may, upon direction of the Authority, apply amounts on deposit in the 2008 Prepayment Subaccount of the 2008 Principal Account to the prepayment of Tendered Certificates, as a whole or in part on any Business Day during such Delayed Remarketing Period, at a prepayment price equal to the principal amount thereof, together with interest accrued thereon to the date fixed for prepayment, without premium. The Trustee shall give five (5) Business Days’ notice of such prepayment to the Owners of the 2008 Certificates to be prepaid.

Interest on Tendered Certificates shall be paid to the Owners thereof (i) on the first Business Day of each calendar month occurring during a Delayed Remarketing Period and (ii) on the day after the last day of such Delayed Remarketing Period.

**Prepayment**

**Optional Prepayment.** Each 2008 Certificate in the Weekly Mode is subject to prepayment at the option of the Authority, in whole or in part, in Authorized Denominations on any Business Day, at a prepayment price equal to 100% of the principal amount thereof, plus, accrued interest, if any, to the Prepayment Date, without premium.

**Mandatory Sinking Fund Prepayment.** Except in the case of 2008 Certificates that have been converted to Serial Certificates upon a change to the Fixed Rate Mode, the 2008 Certificates are subject to mandatory prepayment from Sinking Fund Payments prior to the Maturity Date, in part by lot, on October 1 of each year on and after October 1, 2008, in accordance with the schedule set forth below upon notice hereinafter described, from and in the amount of the principal installment of the 2008 Payments due and payable on such dates, at a prepayment price equal to the sum of the principal amount evidenced and represented thereby plus accrued and unpaid interest evidenced and represented thereby to the Prepayment Date, without a prepayment premium. In addition, if any 2008 Certificates have been optionally prepaid, the amounts of such Sinking Fund Payments shall be reduced as directed by the Authority, or if not so directed, proportionality in increments of Authorized Denominations, by the principal amount evidenced and represented by all such 2008 Certificates so optionally prepaid.

<i>Mandatory Sinking Fund Payment Date (October 1)</i>	<i>Sinking Fund Payment</i>	<i>Mandatory Sinking Fund Payment Date (October 1)</i>	<i>Sinking Fund Payment</i>
2008		2023	
2009		2024	
2010		2025	
2011		2026	
2012		2027	
2013		2028	
2014		2029	
2015		2030	
2016		2031	
2017		2032	
2018		2033	
2019		2034	
2020		2035	
2021		2036 (maturity)	
2022			

Notwithstanding the foregoing, no 2008 Certificate (other than a Liquidity Provider Certificate) shall be optionally prepaid while any Liquidity Provider Certificate is Outstanding unless all Outstanding Liquidity Provider Certificates are prepaid or purchased by the Trustee and cancelled concurrently with such prepayment or purchase.

If for any reason, the Liquidity Provider Certificates remain in book-entry but have not been assigned a separate CUSIP number, the Trustee shall apply the amounts in the 2008 Sinking Fund Subaccount set aside for prepayment to the purchase from the Liquidity Facility provider of Liquidity Provider Certificates in an aggregate principal amount not in excess of the principal amount intended to be prepaid at a purchase price equal to the prepayment price specified above. The Liquidity Provider Certificates so purchased shall be cancelled by the Trustee, and the principal amount thereof shall be credited against the principal amount of the 2008 Certificates otherwise required to be prepaid.

***Notice of Prepayment.*** When the prepayment of 2008 Certificates is authorized as described above, the Trustee is required to give notice thereof. Such notice must state the date of such notice, the prepayment price, the place of prepayment (including the name and appropriate address of the Trustee), the CUSIP number (if any) of the 2008 Certificates to be prepaid, and, if less than all of the 2008 Certificates are to be prepaid, the distinctive certificate numbers thereof to be prepaid and, in the case of 2008 Certificates to be prepaid in part only, the respective portions of the principal amount evidenced and represented thereby to be prepaid. Each such notice shall also state that on said date there will become due and payable on each of said 2008 Certificates the prepayment price thereof and, in the case of a 2008 Certificate to be prepaid in part only, the specified portion of the principal amount evidenced and represented thereby to be prepaid, together with accrued and unpaid interest evidenced and represented thereby to the prepayment date, and that from and after such prepayment date interest evidenced and represented thereby shall cease to accrue; and such notice shall require that said 2008 Certificates be then surrendered at the address of the Trustee specified in the prepayment notice.

Such notice must be mailed by the Trustee, at least 30 but not more 60 days before the prepayment date to the respective Owners of the 2008 Certificates designated for prepayment at their addresses appearing on the registration books of the Trustee. Such notice is also required to be provided to Securities Depositories and Information Services. Failure to receive such notice shall not invalidate any of the proceedings taken in connection with such prepayment.

Any prepayment may be cancelled if the notice of such prepayment has not been mailed to the respective Owners of the 2008 Certificates or if such notice expressly conditioned the prepayment upon the occurrence of one or more events. Notice of any such cancellation shall be given in the same manner as the notice of prepayment was given at least three Business Days prior to the date scheduled for prepayment.

***Effect of Prepayment.*** If notice of prepayment has been duly given as described above and money for the payment of the prepayment price of the 2008 Certificates called for prepayment together with any accrued interest to the date fixed for prepayment is held by the Trustee, then on the prepayment date designated in such notice, the 2008 Certificates so called for prepayment will become due and payable on the date fixed for prepayment at the prepayment price specified in such notice; and from and after the date so designated, interest evidenced and represented by such 2008 Certificates so called for prepayment shall cease to accrue, and the Owners of such 2008 Certificates shall have no rights in respect thereof except to receive payment of the prepayment price thereof.

### **Purchase in Lieu of Prepayment**

Subject to the provisions of the 2008 Trust Agreement, the Authority has the option to purchase any 2008 Certificate on any date on which it would be subject to optional prepayment at a

purchase price equal to the then applicable prepayment price plus accrued interest thereon to the date of purchase.

### **Parity Obligations**

The City has previously incurred obligations payable from Gross Revenues of its Water Utility System on a parity with the 2008 Payments; and, under the terms of the Master Contract, the City may incur additional such obligations in the future. In addition to the 1997 Payments and its obligation to make the scheduled payments required pursuant to the 2008 Swap Agreement, its obligation to make termination payments under the 2008 Swap Agreement (but only if such payments are insured under the Swap Policy) and its obligations under the Reimbursement Agreement and the Liquidity Facility, the City currently has outstanding unpaid Parity Obligations with MID and the State of California Department of Water Resources (“CDWR”). See “SECURITY FOR THE 2008 CERTIFICATES — Existing and Future Parity Obligations.”

## **SECURITY FOR THE 2008 CERTIFICATES**

### **General**

Each 2008 Certificate represents a proportionate interest in the 2008 Payments to be made by the City under the 2008 Contract. Pursuant to the 2008 Trust Agreement, the Authority will assign substantially all of its right, title and interest in the 2008 Contract to the Trustee for the benefit of the Owners of the 2008 Certificates. The rights so assigned include the Authority’s right to receive the 2008 Payments and its right to exercise any remedies provided in the 2008 Contract in the event of a default by the City thereunder.

Pursuant to the 2008 Contract, the City will purchase the 2008 Project from the Authority at the purchase price specified in the 2008 Contract, which is equal to the aggregate principal amount evidenced by the 2008 Certificates. The City is obligated to make such purchase by paying the 2008 Payments specified in the 2008 Contract including the interest on such payments.

### **2008 Payments**

Pursuant to the 2008 Trust Agreement, the Authority will transfer, assign and set over to the Trustee all of the 2008 Payments and any and all rights and privileges it has under the 2008 Contract with respect to the 2008 Certificates, including, without limitation, the right to collect and receive directly all of the 2008 Payments and the right to hold and enforce any security interest.

The 2008 Payments under the 2008 Contract represent the purchase price of the 2008 Project, which the Authority is selling to the City pursuant to the 2008 Contract for the purpose of refinancing the 2006 Project. The obligation of the City to pay the 2008 Payments from Gross Revenues is absolute and unconditional; and, until such time as the 2008 Payments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to the Master Contract), the City will not discontinue or suspend any 2008 Payments required to be paid by it under the 2008 Contract when due, whether or not the Water Utility System or any part thereof (including the 2008 Project) is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part; and such payments are not subject to reduction whether by offset, abatement or otherwise and are not conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever. Notwithstanding anything contained in the Contract, however,

the City is not required to advance any moneys derived from any source of income other than the Gross Revenues for the payment of the 2008 Payments or for the performance of any agreements or covenants required to be performed by it contained in the Contract.

As more fully described below, under the Contract, Gross Revenues of the Water Utility System are pledged as security for the payment of the 1997 Payments, the 2008 Payments, any other Parity Obligations and the Maintenance and Operation Costs, as defined below.

“Water Utility System” is defined under the Master Contract to mean (i) all property rights, contractual rights and facilities of the City relating to water, including all facilities, properties, structures or works for the treatment, conservation, storage, transmission and distribution of water now owned by the City and (ii) all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

“Gross Revenues” is defined under the Master Contract to mean all gross income and revenue received or receivable by the City from the ownership or operation of the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges (including all Connection Fees, contributions in aid of construction, and charges and standby water availability charges legally available for debt service) received by the City for the Water Service and the other services and facilities of the Water Utility System and all net proceeds of insurance covering business interruption loss relating to the Water Utility System and all other income and revenue howsoever derived by the City from the ownership or operation of the Water Utility System or arising from the Water Utility System, and including all Payment Agreement Receipts, and including all income from the deposit or investment of any money in the Revenue Fund or, to the extent deposited in the Revenue Fund, in the Parity Reserve Fund, but excluding in all cases any proceeds of taxes and any refundable deposits made to establish credit and advances.

“Maintenance and Operation Costs” is defined under the Master Contract to mean the costs paid or incurred by the City for maintaining and operating the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including, but not limited to, (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water Utility System in good repair and working order, (b) all costs of water purchased by the City including all costs under the Treatment and Delivery Agreement by and among the City, the Del Este Water Company and MID (which has since been amended and restated) which do not constitute debt service thereunder, (c) all administrative costs of the City that are charged directly or apportioned to the operation of the Water Utility System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, payments into pension funds, and (d) all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Master Contract or of any resolution authorizing the execution of any Parity Obligation or of such Parity Obligation, such as compensation, reimbursement and indemnification of the trustee or remarketing agent for any such Parity Obligation, letter of credit fees for any such Parity Obligations, and fees and expenses of Independent Certified Public Accountants and Independent Consultants, but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, premiums and discounts, (2) interest expense, (3) amounts paid from funds of the City other than Gross Revenues, and (4) in-lieu transfers or recoupment of contributed capital to the City’s general fund.

## **Pledge of Gross Revenues**

Pursuant to the Contract, all Gross Revenues of the Water Utility System are irrevocably pledged to the payment of the 1997 Payments, the 2008 Payments, any other Parity Obligations and the Maintenance and Operation Costs; and the Gross Revenues of the Water Utility System may not be used for any other purpose while any of the 1997 Payments or the 2008 Payments remain unpaid; provided, however, that out of Gross Revenues there may be apportioned such sums for such purposes as are expressly permitted by the Contract. Such pledge constitutes a first pledge of and charge and lien upon the Gross Revenues of the Water Utility System for the payment of the amounts due with respect to the Contract, other Parity Obligations and the Maintenance and Operation Costs in accordance with the terms of the Contract.

## **Rate Covenant**

Pursuant to the Master Contract, the City covenants that it will at all times fix, prescribe and collect rates, fees and charges for the Water Service during each Fiscal Year which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield Adjusted Annual Net Revenues for such Fiscal Year equal to at least 125% of Annual Debt Service to be paid during such Fiscal Year (the "Rate Covenant").

"Adjusted Annual Net Revenues" is defined under the Master Contract to mean, for any Fiscal Year or any designated 12-month period in question, the Adjusted Annual Gross Revenues during such Fiscal Year or 12-month period less the Maintenance and Operation Costs during such Fiscal Year or 12-month period.

"Adjusted Annual Gross Revenues" is defined under the Master Contract to mean, for any Fiscal Year or any designated 12-month period in question, the Gross Revenues during such Fiscal Year or 12-month period, plus deposits to the City of Modesto Water Utility System Revenue Fund (the "Revenue Fund") from amounts on deposit in the Rate Stabilization Fund, but only as and to the extent specified in the Master Contract, minus (y) amounts transferred from the Revenue Fund to the Rate Stabilization Fund in accordance with the Master Contract and, (z) for purposes of determining compliance with the rate covenant described above only, earnings from the investments in the Parity Reserve Fund that are deposited in the Revenue Fund in such Fiscal Year or 12-month period.

"Adjusted Annual Debt Service" is defined under the Master Contract to mean, for any Fiscal Year or any designated 12-month period in question, the Annual Debt Service for such Fiscal Year or 12-month period minus the sum of (i) for purposes of the rate covenant described above only, the earnings from the investments in the Parity Reserve Fund that are deposited in the Revenue Fund in such Fiscal Year or 12-month period, and (ii) the amount of the Annual Debt Service paid from the proceeds of Parity Obligations or interest earned thereon (other from the Parity Reserve Fund), all as set forth in a Certificate of the City.

"Annual Debt Service" is generally defined under the Master Contract to mean, for any Fiscal Year or any designated 12-month period in question, the payments required to be made with respect to all Outstanding Parity Obligations in such Fiscal Year or 12-month period; provided, that for purposes of determining compliance with the rate covenant described above, the Reserve Fund Requirement and conditions for the execution of Parity Obligations, certain additional provisions are applicable as described in APPENDIX B — "DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS."

The City's ability to comply with the Rate Covenant may be limited by provisions of the California Constitution. See "THE WATER UTILITY SYSTEM — Impact of Proposition 218 on Water Utility System Fees and Charges." The opinion of Sidley Austin LLP, Special Counsel, with respect to the 2008 Certificates will state that the enforceability of the Contract is subject to the limitations on the imposition by the City of certain fees and charges relating to the Water Utility System under Articles XIII C and XIII D of the California Constitution. See APPENDIX C — "PROPOSED FORM OF OPINION OF SPECIAL COUNSEL." The City's ability to comply with the Rate Covenant may also be adversely affected by other factors. See "RISK FACTORS."

### **Parity Reserve Fund**

The Parity Reserve Fund was initially established pursuant to a trust agreement, dated as of November 1, 1997 (the "1997 Trust Agreement"), which provided for the execution and delivery of the City's Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project) (the "1997 Certificates"). The 1997 Certificates represent the proportionate, undivided interests in the 1997 Payments pursuant to the 1997 Contract. All amounts on deposit in the Parity Reserve Fund are available to be transferred to pay principal and interest evidenced and represented by both the 1997 Certificates and the 2008 Certificates and any other obligations in connection with a future supplement to the Contract (collectively, the "Parity Certificates") as described in greater detail below.

In connection with the execution and delivery of the 1997 Certificates, the City caused to be delivered to the then Trustee to be held in the Parity Reserve Fund in satisfaction of the Reserve Fund Requirement a municipal bond debt service reserve fund policy (the "1997 Certificate Reserve Policy") issued by Financial Guaranty Insurance Company, doing business in California as FGIC Insurance Company ("FGIC"). However, as a result of recent reductions in the ratings assigned to obligations insured by FGIC, the 1997 Certificate Reserve Policy must be replaced with cash or a Reserve Funding Instrument (as defined below). Concurrently with the execution and delivery of the 2008 Certificates, the Trustee will credit the Parity Reserve Fund Insurance Policy to the Parity Reserve Fund; and, as a result of the foregoing, the balance then on deposit in the Parity Reserve Fund will be equal to the Reserve Fund Requirement.

"Reserve Fund Requirement" is defined under the Master Contract to mean, as of any date of determination and excluding any Parity Obligations which are not Supplemental Contracts and the debt service thereon, the least of (a) 10% of the initial offering price to the public of the Parity Obligations as determined under the Code, or (b) the Maximum Annual Debt Service, or (c) 125% of the Average Annual Debt Service, all as computed and determined by the City and specified in writing to the Trustee; provided, that such requirement (or any portion thereof) may be provided by one or more policies of municipal bond insurance or surety bonds issued by a municipal bond insurer or by a letter of credit issued by a bank or other institution if the obligations insured by such insurer or issued by such bank or other institution, as the case may be, have ratings at the time of issuance of such policy or surety bond or letter of credit equal to "Aa" or higher assigned by Moody's (if Moody's is then rating any of the Parity Obligations) and "AA" or higher assigned by S&P (if S&P is then rating any of the Parity Obligations) and that maintain at all times ratings at least equal to the lowest ratings (without giving effect to municipal bond insurance or other credit enhancement) on any of the Parity Obligations provided by Moody's (if Moody's is then rating any of the Parity Obligations) and by S&P (if S&P is then rating any of the Parity Obligations) (all such instruments collectively, "Reserve Funding Instruments"). If at any time, obligations insured by any such municipal bond insurer issuing a policy of municipal bond insurance or surety bond or a bank or

other institution issuing a letter of credit as permitted by the definition of Reserve Fund Requirement shall no longer maintain such ratings as required in accordance with the immediately preceding sentence, the City shall provide or cause to be provided cash or a substitute municipal bond insurance policy or surety bond or a letter of credit meeting such requirements.

Pursuant to the 2008 Trust Agreement, the Trustee is to (i) withdraw and use all cash, if any, on deposit in the Parity Reserve Fund prior to using and withdrawing any amounts derived from payments under any Reserve Funding Instruments and (ii) draw on all Reserve Funding Instruments on a pro rata basis, based on the draw limit of each Reserve Funding Instrument. Amounts received by the Trustee from the City pursuant to the Master Contract as a replenishment of amounts withdrawn from the Parity Reserve Fund shall be applied first on a pro rata basis to reimburse draws on Reserve Funding Instruments and then to replenish cash withdrawn from the Parity Reserve Fund.

Moneys on deposit in the Parity Reserve Fund will be transferred by the Trustee to the debt service fund established pursuant to the 1997 Trust Agreement and/or to the 2008 Debt Service Fund established pursuant to the 2008 Trust Agreement to pay principal and interest evidenced and represented by the 1997 Certificates and by the 2008 Certificates, respectively, on any date on which interest is payable with respect thereto in the event amounts on deposit in the applicable debt service fund are insufficient for such purposes. The Trustee will also, from such amounts on deposit in the Parity Reserve Fund, transfer or cause to be transferred to any applicable debt service fund established under any other trust agreement under which any obligations are issued in connection with a Supplemental Contract, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without discrimination or preference, that sum or sums, if any, equal to the amount required to be deposited therein pursuant to such trust agreement under which any obligations are issued in connection with a Supplemental Contract. Following the valuation of investments in the Parity Reserve Fund on or before each October 1, all moneys on deposit in the Parity Reserve Fund in excess of the Reserve Fund Requirement will be transferred by the Trustee to the City for deposit in the Revenue Fund.

### **Flow of Funds**

***Contract Provisions.*** The City agrees and covenants in the Contract that all Gross Revenues it receives will be deposited when and as received in the Revenue Fund, which the City established under the Master Contract and which the City agrees and covenants to maintain separate and apart from other moneys of the City so long as any Parity Obligations remain unpaid, and all money on deposit in the Revenue Fund is to be applied and used as follows. The City will pay at the following times in the following order of priority:

(1) *Payment of Maintenance and Operation Costs and Parity Obligation Payment Fund Deposits.* The City will, from the money in the Revenue Fund, without preference or priority, and in the event of any insufficiency of such moneys, ratably, without preference or priority (i) pay charges for Maintenance and Operation Costs of the Water Utility System (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not then immediately required) as such charges are due and payable, and (ii) deposit in the City of Modesto Water Utility System Parity Obligation Payment Fund established under the Master Contract, on the last Business Day of each month (1) an amount equal to the interest which has accrued or will accrue under all Parity Obligations during the next succeeding month calculated as if such

interest has accrued or will accrue on a daily basis during such period, and (2) an amount equal to the principal which has accrued or will accrue (as a result of maturity, mandatory sinking fund payments or mandatory prepayment or otherwise) under all Parity Obligations during the next succeeding month calculated as if such principal has accrued or will accrue on a daily basis during such period, plus (3) the net payments due or which will be due on all Parity Payment Agreements calculated as if such net payments accrued or will accrue on a daily basis during such period, except that no such deposit need be made if the City then holds money in the Parity Obligation Payment Fund at least equal to the amount of interest and principal due or becoming due and payable under all Parity Obligations on the next succeeding date on which interest or principal becomes due and payable under any Parity Obligation plus the net payments due on all Parity Payment Agreements on such next succeeding due date therefor. Moneys on deposit in the Parity Obligation Payment Fund will be transferred by the City to make and satisfy the payments due on the next applicable date on which interest or principal becomes due and payable under any Parity Obligation or any net payment becomes due and payable by the City under any Parity Payment Agreement at least one Business Day prior to such next applicable due date.

(2) *Parity Reserve Fund Deposits.* On or before the last Business Day of each month, the City will, from the remaining money on deposit in the Revenue Fund after deposits and transfers pursuant to paragraph (1) above, transfer to the Trustee for deposit in the Parity Reserve Fund that sum, if any, necessary to restore the Parity Reserve Fund to an amount equal to the Reserve Fund Requirement. The City will also, from such remaining moneys in the Revenue Fund, transfer or cause to be transferred to the applicable reserve fund or account for any Parity Obligations for which a separate reserve has been funded, without preference or priority between transfers made in accordance with this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, the sum or sums, if any, equal to the amount required to be deposited therein pursuant to such Parity Obligations.

After making the foregoing deposits and transfers, the City may apply any remaining money in the Revenue Fund for any lawful purpose of the City, including for the payment of any Subordinate Obligations in accordance with the instruments authorizing such Subordinate Obligations.

Pursuant to the Master Contract, the City has established the Rate Stabilization Fund, which has a balance of \$3,000,000 on deposit therein. The City may deposit in the Rate Stabilization Fund any Gross Revenues, after providing for the payment of Parity Obligations and Maintenance and Operation Costs, and any other money received and available to be used therefor, provided that deposits from such Gross Revenues for each Fiscal Year may be made until (but not after) 180 days after the end of such Fiscal Year. The City may withdraw amounts from the Rate Stabilization Fund only for inclusion in Adjusted Annual Net Revenues, such withdrawal to be made until (but not after) 180 days after the end of such Fiscal Year. All interest or other earnings upon deposits in the Rate Stabilization Fund will be accounted for as Gross Revenues. Notwithstanding the foregoing, no Gross Revenues will be deposited in the Rate Stabilization Fund to the extent that such amount was included by the City in Adjusted Annual Net Revenues for purposes of determining compliance with the rate covenant set forth in the Master Contract or the conditions for the execution of Parity Obligations contained in the Master Contract and deduction of the amounts to be deposited in the Rate Stabilization Fund would have caused noncompliance with such rate covenant or conditions.

The City's ability to set rates, fees and charges for the Water Service at levels which would permit the City to make deposits into the Rate Stabilization Fund may be limited by amendments to the California Constitution. See "THE WATER UTILITY SYSTEM — Impact of Proposition 218 on Water Utility System Fees and Charges." See also "THE WATER UTILITY SYSTEM — Summary of Projected Operating Results of the Water Utility System" for currently anticipated deposits into and withdrawals from the Rate Stabilization Fund.

The 2008 Contract establishes within the Parity Obligation Payment Fund the 2008 Supplemental Contract Payment Account. On or before the third Business Day immediately preceding each 2008 Payment Date or the date on which any net scheduled payment or insured termination payment is due under the 2008 Swap Agreement, the City shall, from the money in the Parity Obligation Payment Fund, deposit in the 2008 Supplemental Contract Payment Account (i) a sum equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Supplemental Contract on the next succeeding 2008 Payment Date and (ii) the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Swap Agreement, except that no such deposit need be made if the amount then on deposit in the 2008 Supplemental Contract Payment Account is at least equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Contract on the next succeeding 2008 Payment Date plus the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Swap Agreement on such next succeeding due date therefor. Moneys on deposit in the 2008 Supplemental Contract Payment Account shall (i) be transferred by the City to the Trustee on the Business Day immediately preceding each 2008 Payment Date to make and satisfy the 2008 Payment due on such 2008 Payment Date and (ii) be transferred by the City to the Trustee on the due date therefor to satisfy any net scheduled payment and any insured termination payment, if applicable, due under the 2008 Swap Agreement, all in accordance with the Master Contract and the 2008 Trust Agreement.

**2008 Trust Agreement Provisions.** Pursuant to the 2008 Trust Agreement, the Trustee is required to deposit the 2008 Payments in a separate fund established by it and designated as the 2008 Debt Service Fund. The 2008 Debt Service Fund will contain two accounts: the 2008 Interest Account and the 2008 Principal Account (with a 2008 Prepayment Subaccount and a 2008 Sinking Fund Subaccount therein).

On the Business Day immediately preceding each Interest Payment Date commencing May 30, 2008, the Trustee is required to set aside from the 2008 Debt Service Fund and deposit in the 2008 Interest Account an amount equal to the amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on each such Interest Payment Date. No deposit is required to be made in the 2008 Interest Account if the amount contained therein (exclusive of amounts transferred for the payment of amounts due under the 2008 Swap Agreement) is at least equal to the aggregate amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on the applicable Interest Payment Date. The Trustee is also required to deposit in the 2008 Interest Account any receipts relating to the 2008 Swap Agreement which the City has directed under the 2008 Swap Agreement to be transferred to the Trustee for deposit in the 2008 Interest Account and any amounts transferred to Trustee pursuant to the 2008 Contract for the payment of payments due under the 2008 Swap Agreement.

Except as otherwise provided in the 2008 Trust Agreement, all money in the 2008 Interest Account is required to be used and withdrawn by the Trustee solely for the purpose of paying the interest with respect to the 2008 Certificates as it shall become due and payable (including accrued

interest evidenced and represented by any 2008 Certificates purchased or prepaid prior to their respective Certificate Payment Date) and the net scheduled payments due to the Swap Provider under the 2008 Swap Agreement. The Trustee shall be under no obligation to calculate the amount of Payment Agreement Payments due under the 2008 Interest Rate Swap Agreement and shall be entitled to rely conclusively on the information received by it with respect to the amount of the Payment Agreement Payments due and owing by the City. On the Business Day immediately preceding each October 1, commencing on October 1, 2008, the Trustee is required to set aside from the 2008 Debt Service Fund and deposit in the 2008 Principal Subaccount (i) an amount equal to the principal amount evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1 (at the time of the execution and delivery of the 2008 Certificates, none of the 2008 Certificates will be Serial Certificates) and (ii) in the 2008 Sinking Fund Subaccount the amount of all Sinking Fund Payments required to be made on such October 1. Amounts to be applied to the optional prepayment of the principal component of the 2008 Certificates are to be deposited in the 2008 Prepayment Subaccount. No deposit need be made in the 2008 Principal Account if the amount contained therein is at least equal to the aggregate amount of the principal evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1 and the amount contained in the 2008 Sinking Fund Subaccount is at least equal to the aggregate amount of all Sinking Fund Payments required to be made on such October 1.

All money in the 2008 Principal Account is required to be used and withdrawn by the Trustee solely for the purpose of paying the principal evidenced and represented by the Serial Certificates as they shall become due and payable, whether at their respective Certificate Payment Dates or on prior prepayment, and all money in the 2008 Sinking Fund Subaccount is required to be used and withdrawn by the Trustee only to purchase or to prepay or pay Term Certificates, and with respect to the 2008 Sinking Fund Subaccount, on each Sinking Fund Payment Date, the Trustee is required to apply the Sinking Fund Payment required on that date to the prepayment (or payment at the Certificate Payment Date, as the case may be) of the Term Certificates upon the notice and in the manner provided in the 2008 Trust Agreement, provided that at any time prior to giving notice of such prepayment, the Trustee may, upon the Written Request of the Authority and receipt of sufficient moneys therefor, purchase for cancellation Term Certificates in accordance with the 2008 Trust Agreement.

### **Existing and Future Parity Obligations**

Upon the execution and delivery of the 2008 Certificates, the obligation of the City to pay the 2008 Payments will be secured on a parity lien basis with certain existing Parity Obligations. In the Master Contract (as clarified in the 2008 Contract), "Parity Obligations" is specifically defined as the payment obligations under the Treatment and Delivery Agreement which constitute debt service, the payment obligations under the CDWR Loan Agreement, and all Supplemental Contracts and all other obligations hereafter incurred by the City the payment of which constitutes a charge and lien on the Gross Revenues equal to and on a parity with the charge and lien upon the Gross Revenues for the payment of the Payments, other than (i) such portion of the payment obligations (including certain payments due upon an early termination thereof) under any Parity Payment Agreement to the extent such obligations are expressly subordinate to Parity Obligations pursuant to the terms of such Parity Payment Agreement and (ii) Parity Bank Agreements; provided that no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City. Under the Master Contract "CDWR Loan" means the loan to the City from the State of California Department of Water Resources in the principal amount of \$3,607,343.72 which \$1,754,299 was outstanding as

of April 1, 2008; and "Treatment and Delivery Agreement" means the Treatment and Delivery Agreement by and among the City of Modesto, the Del Este Water Company and MID. The Treatment and Delivery Agreement has since been amended and restated and is now called "Amended and Restated Treatment and Delivery Agreement Between Modesto Irrigation District and City of Modesto." Under the Treatment and Delivery Agreement, the City has agreed to pay all debt service on bonds issued by MID for the construction of the Water Treatment Plant (including, but not limited to, the 2007 MID Bonds), a raw water charge, project operation, administrative services and maintenance costs, insurance on the plant and the cost of electrical energy provided to the plant. The outstanding principal amount of bonds issued for the Water Treatment Plant as of April 1, 2008 was \$163,880,000. See "THE WATER UTILITY SYSTEM — Treatment and Delivery Agreement" for a description of the Treatment and Delivery Agreement and "THE WATER UTILITY SYSTEM — Summary of Projected Operating Results of the Water Utility System" for additional information concerning existing Parity Obligations. See also Appendix B — "DEFINITIONS AND SUMMARY OF PRINCIPAL DOCUMENTS." In addition to the Parity Obligations specifically defined as such in the Master Contract, the 2008 Swap Agreement (to the extent described above) and the 1997 Contract constitute Parity Obligations. The principal amount of the 1997 Payments currently outstanding is \$18,855,000. The Reimbursement Agreement and the Liquidity Facility constitute Parity Bank Agreements under the Contract; and Parity Bank Agreements are Parity Obligations if any amounts have been drawn thereunder which have not been reimbursed by the City.

In addition to the existing Parity Obligations, the City may at any time execute additional Parity Obligations, but subject to the specific conditions set forth in the Master Contract, including the conditions that there be on file with the Trustee either:

(1) A Certificate of the City demonstrating that during any 12 consecutive calendar months out of the immediately preceding 18 calendar month period, the Adjusted Annual Net Revenues were at least equal to 125% of the Maximum Annual Debt Service for all existing Parity Obligations plus the Parity Obligations proposed to be executed; provided, that for the purpose of providing such Certificate, the City may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from each new connection to the Water Utility System that was made prior to the execution of such Parity Obligations but which, during all or any part of said 12 month period, was not in existence, in an amount equal to the estimated additional Gross Revenues that would have been derived from each such connection if it had been made prior to the beginning of said 12 month period, and

(ii) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges fixed and prescribed for Water Service which became effective prior to the execution of such Parity Obligations but which, during all or any part of said 12 month period, was not in effect, in an amount equal to the estimated additional Gross Revenues that would have been derived from such increase in rates, fees and charges if it had been in effect prior to the beginning of said 12 month period; or

(2) A Consultant's Report showing that the Adjusted Annual Net Revenues for the Fiscal Year next following the end of the period during which interest on the Parity Obligations proposed to be executed is to be capitalized or, if no interest is capitalized, the

Fiscal Year in which the Parity Obligations proposed to be executed are executed, will be at least equal to 125% of the Maximum Annual Debt Service; provided, that for the purpose of providing the Consultant's Report, the Independent Consultant may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges prescribed for Water Service in effect and being charged, or rates, fees and charges for Water Service that are expected to be charged in accordance with a program of specific rates, fees, charges, rate levels or increases in overall Gross Revenue approved by a resolution of the City Council; and

(ii) An allowance for Gross Revenues from customers of the Water Utility System anticipated to be served by the facilities or improvements financed in substantial part by the Parity Obligations proposed to be executed together with any additional Parity Obligations expected to be executed prior to the Fiscal Year of determination.

Notwithstanding the foregoing, the Master Contract specifies that there shall be no limitations on the ability of the City to execute any Parity Obligation at any time to refund any outstanding Parity Obligation.

### **2008 Swap Agreement**

In connection with the execution and delivery of the 2006 Certificates, the City entered into an interest rate swap agreement in the form of an ISDA Master Agreement (Local Currency – Single Jurisdiction), the U.S. Municipal Counterparty Schedule thereto, a Credit Support Annex and a Confirmation each dated as of and entered into on September 27, 2006 (collectively, the “2006 Swap Agreement”) with Bank of America, N.A. (the “Swap Provider”). In connection with the execution and delivery of the 2008 Certificates, the City and the Swap Provider will amend and restate the 2006 Swap Agreement (as so amended and restated, the “2008 Swap Agreement”). The 2008 Swap Agreement is scheduled to expire on the Maturity Date of the 2008 Certificates; and the notional amount of the 2008 Swap Agreement is scheduled to be reduced on the same dates and in the same amounts as the principal evidenced by the 2008 Certificates is scheduled to be reduced. Pursuant to the 2008 Swap Agreement, the City will be required to make periodic payments to the Swap Provider calculated on the basis of a fixed rate of interest on an initial notional amount equal to the principal amount represented by the 2008 Certificates. In return, the Swap Provider will be required to make periodic payments to the City calculated on the basis of a variable rate of interest equal to a percentage of LIBOR on the same notional amount. The amounts payable by each party pursuant to the 2008 Swap Agreement are netted against the payments to be received by such party thereunder.

Certain of the amounts that may be payable by the City to the Swap Provider will be insured pursuant to a policy of interest rate swap insurance to be issued by Assured Guaranty (the “Swap Policy”).

The City's obligations under the 2008 Swap Agreement to make scheduled payments and certain termination payments (but only if such termination payments are insured pursuant to the Swap Policy) are Parity Obligations. No arrangements made in respect of the 2008 Swap Agreement will alter the City's obligation to make the 2008 Payments.

Both the City and the Swap Provider have the right to terminate the 2008 Swap Agreement prior to its stated termination date under certain conditions. Any such termination could result in an obligation on the part of the City or the Swap Provider to make termination payments to the other party, and the amount of such termination payments could be substantial. Any obligation on the part of the City to make such a termination payment (other than a termination payment that is insured under the terms of the Swap Policy) will not be a Parity Obligation and will be subordinate to the City's liabilities with respect to Parity Obligations.

Neither the Trustee nor the Owners will have any rights under the 2008 Swap Agreement or against the Swap Provider.

### **CERTIFICATE INSURANCE**

*The following information has been provided by Assured Guaranty Corp. It has not been verified by the Authority or the City. The following information is not complete, and reference is made to Appendix E for a specimen of the financial guaranty insurance policy (the "Policy") of Assured Guaranty Corp. ("Assured Guaranty" or the "Insurer").*

#### **Certificate Insurance Policy**

Assured Guaranty has made a commitment to issue the Policy relating to the 2008 Certificates, effective as of the date of issuance of such 2008 Certificates. Under the terms of the Policy, Assured Guaranty will unconditionally and irrevocably guarantee to pay that portion of principal of and interest with respect to the 2008 Certificates that becomes Due for Payment but shall be unpaid by reason of Nonpayment (the "Insured Payments"). Insured Payments shall not include any additional amounts owing by the Issuer solely as a result of the failure by the Trustee or the Paying Agent to pay such amount when due and payable, including without limitation any such additional amounts as may be attributable to penalties or to interest accruing at a default rate, to amounts payable in respect of indemnification, or to any other additional amounts payable by the Trustee or the Paying Agent by reason of such failure. The Policy is non-cancelable for any reason, including without limitation the non-payment of premium.

"Due for Payment" means, when referring to the principal of the 2008 Certificates, the stated maturity date thereof, or the date on which such 2008 Certificates shall have been duly called for mandatory sinking fund redemption, and does not refer to any earlier date on which payment is due by reason of a call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless Assured Guaranty in its sole discretion elects to make any principal payment, in whole or in part, on such earlier date) and, when referring to interest on such 2008 Certificates, means the stated dates for payment of interest.

"Nonpayment" means the failure of the Issuer to have provided sufficient funds to the Trustee or the Paying Agent for payment in full of all principal and interest Due for Payment on the 2008 Certificates. It is further understood that the term Nonpayment in respect of a 2008 Certificate also includes any amount previously distributed to the Holder (as such term is defined in the Policy) of such 2008 Certificate in respect of any Insured Payment by or on behalf of the Issuer, which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder. Nonpayment does not

include nonpayment of principal or interest caused by the failure of the Trustee or the Paying Agent to pay such amount when due and payable.

Assured Guaranty will pay each portion of an Insured Payment that is Due for Payment and unpaid by reason of Nonpayment, on the later to occur of (i) the date such principal or interest becomes Due for Payment, or (ii) the business day next following the day on which Assured Guaranty shall have received a completed notice of Nonpayment therefor in accordance with the terms of the Policy.

Assured Guaranty shall be fully subrogated to the rights of the Holders of the Bonds to receive payments in respect of the Insured Payments to the extent of any payment by Assured Guaranty under the Policy.

The Policy is not covered by any insurance or guaranty fund established under New York, California, Connecticut or Florida insurance law.

### **Assured Guaranty Corp.**

**General.** Assured Guaranty Corp. (“Assured Guaranty”) is a Maryland-domiciled insurance company regulated by the Maryland Insurance Administration and licensed to conduct financial guaranty insurance business in all fifty states of the United States, the District of Columbia and Puerto Rico. Assured Guaranty commenced operations in 1988. Assured Guaranty is a wholly owned, indirect subsidiary of Assured Guaranty Ltd. (“AGL”), a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the symbol “AGO.” AGL, through its operating subsidiaries, provides credit enhancement products to the U.S. and global public finance, structured finance and mortgage markets. Neither AGL nor any of its shareholders is obligated to pay any debts of Assured Guaranty or any claims under any insurance policy issued by Assured Guaranty.

Assured Guaranty is subject to insurance laws and regulations in Maryland and in New York (and in other jurisdictions in which it is licensed) that, among other things, (i) limit Assured Guaranty’s business to financial guaranty insurance and related lines, (ii) prescribe minimum solvency requirements, including capital and surplus requirements, (iii) limit classes and concentrations of investments, (iv) regulate the amount of both the aggregate and individual risks that may be insured, (v) limit the payment of dividends by Assured Guaranty, (vi) require the maintenance of contingency reserves, and (vii) govern changes in control and transactions among affiliates. Certain state laws to which Assured Guaranty is subject also require the approval of policy rates and forms.

Assured Guaranty’s financial strength is rated “AAA” by Standard Poor’s, a division of The McGraw-Hill Companies, Inc. (“S&P”), “AAA” by Fitch, Inc. (“Fitch”) and “Aaa” by Moody’s Investors Service, Inc. (“Moody’s”). Each rating of Assured Guaranty should be evaluated independently. An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies. Any downward revision or withdrawal of any of the above ratings may have an adverse effect on the market price of any security guaranteed by Assured Guaranty. Assured Guaranty does not guaranty the market price of the securities it guarantees, nor does it guaranty that the ratings on such securities will not be revised or withdrawn.

**Capitalization of Assured Guaranty Corp.** As of March 31, 2008, Assured Guaranty had total admitted assets of \$1,518,398,730 (unaudited), total liabilities of \$1,138,285,708 (unaudited), total surplus of \$380,113,022 (unaudited) and total statutory capital (surplus plus contingency reserves) of \$1,001,533,924 (unaudited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. As of December 31, 2007, Assured Guaranty had total admitted assets of \$1,361,538,502 (unaudited), total liabilities of \$961,967,238 (unaudited), total surplus of \$399,571,264 (unaudited) and total statutory capital (surplus plus contingency reserves) of \$982,045,695 (unaudited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. As of December 31, 2006, Assured Guaranty had total admitted assets of \$1,248,270,663 (audited), total liabilities of \$962,316,898 (audited), total surplus of \$285,953,765 (audited) and total statutory capital (surplus plus contingency reserves) of \$916,827,559 (audited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. The Maryland Insurance Administration recognizes only statutory accounting practices for determining and reporting the financial condition and results of operations of an insurance company, for determining its solvency under the Maryland Insurance Code, and for determining whether its financial condition warrants the payment of a dividend to its stockholders. No consideration is given by the Maryland Insurance Administration to financial statements prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) in making such determinations.

**Incorporation of Certain Documents by Reference.** The portions of the following documents relating to Assured Guaranty are hereby incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

- The Annual Report on Form 10-K of AGL for the fiscal year ended December 31, 2007 (which was filed by AGL with the Securities and Exchange Commission (the “SEC”) on February 29, 2008);
- The Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2008 (which was filed by AGL with the SEC on May 9, 2008); and
- The Current Reports on Form 8-K filed by AGL with the SEC, as they relate to Assured Guaranty.

All consolidated financial statements of Assured Guaranty and all other information relating to Assured Guaranty included in documents filed by AGL with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, subsequent to the date of this Official Statement and prior to the termination of the offering of the 2008 Certificates shall be deemed to be incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such consolidated financial statements.

Any statement contained in a document incorporated herein by reference or contained herein under the heading “CERTIFICATE INSURANCE — Assured Guaranty Corp.” shall be modified or superseded for purposes of this Official Statement to the extent that a statement contained herein or in any subsequently filed document which is incorporated by reference herein also modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Official Statement.

Copies of the consolidated financial statements of Assured Guaranty incorporated by reference herein and of the statutory financial statements filed by Assured Guaranty with the Maryland Insurance Administration are available upon request by contacting Assured Guaranty at 1325 Avenue of the Americas, New York, New York 10019 or by calling Assured Guaranty at (212) 974-0100. In addition, the information regarding Assured Guaranty that is incorporated by reference in this Official Statement that has been filed by AGL with the SEC is available to the public over the Internet at the SEC's web site at <http://www.sec.gov> and at AGL's web site at <http://www.assuredguaranty.com>, from the SEC's Public Reference Room at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, and at the office of the New York Stock Exchange at 20 Broad Street, New York, New York 10005.

Assured Guaranty makes no representation regarding the 2008 Certificates or the advisability of investing in the 2008 Certificates. In addition, Assured Guaranty has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding Assured Guaranty supplied by Assured Guaranty and presented under the heading "CERTIFICATE INSURANCE."

## LIQUIDITY FACILITY

*The following information has been provided by Bank of America, N.A. It has not been verified by the Authority or the City, and neither the Authority nor the City guarantees its accuracy or completeness.*

### Initial Liquidity Facility

**General.** The purchase price of 2008 Certificates tendered or deemed tendered for purchase and not remarketed is payable from amounts made available under a Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Liquidity Facility"), by and among the Authority, the District and the Liquidity Facility Provider. Certain provisions of the Liquidity Facility are summarized below, but such summary is qualified in its entirety by reference to the Liquidity Facility.

Subject to the terms and conditions of the Liquidity Facility, the Liquidity Facility Provider is to provide funds for the payment of the purchase price on each purchase of 2008 Certificates up to \$\_\_\_\_\_,000 in principal amount (the "Available Principal Commitment") and \$\_\_\_\_\_ (an amount equal to 35 days' interest on the Available Principal Commitment at an assumed rate of 12% computed on the basis of a 365-day year for the actual number of days elapsed) accrued interest on 2008 Certificates subject to the Weekly Rate tendered or deemed tendered for purchase in the event that remarketing proceeds are not sufficient to pay the Purchase Price (as defined in the Liquidity Facility) of such 2008 Certificates. *The Liquidity Facility will not provide for the payment of principal of and interest on any 2008 Certificates other than with respect to the purchase price of the 2008 Certificates tendered or deemed tendered and not remarketed.*

The Liquidity Facility will expire on its Stated Expiration Date, which will be May 29, 2011 unless otherwise extended or terminated earlier pursuant to its terms. **Under certain circumstances as described below, the obligations of the Liquidity Facility Provider to purchase 2008 Certificates will be automatically suspended or terminated without prior notice or demand;**

**and the Trustee will be unable to require the purchase of 2008 Certificates under the Liquidity Facility.**

*Events of Default.* The following events are defined as “Events of Default” under the Liquidity Facility:

(a) any principal or interest due on the 2008 Certificates is not paid by the Authority when due and such principal or interest is not paid by the Certificate Insurer when, as and in the amounts required to be paid pursuant to the terms of the Certificate Insurance Policy; or

(b) a Certificate Insurer Event of Insolvency shall have occurred and the rating of the City’s Water Enterprise Fund by any two of the three rating agencies is withdrawn or drops below (i) in the case of Fitch, a rating of “AAA-” (or its equivalent); (ii) in the case of Moody’s, a rating of “Aaa” (or its equivalent); and (iii) in the case of S&P, a rating of “AAA-” (or its equivalent) (such event is referred to herein as a “City Rating Event”); or

(c) (i) any material provision of the Certificate Insurance Policy at any time for any reason ceases to be valid and binding on the Certificate Insurer in accordance with the terms of the Certificate Insurance Policy or is declared, announced or ruled to be null and void by a court or other governmental agency of appropriate jurisdiction; or (ii) a senior authorized officer of the Certificate Insurer denies that it has any or further liability or obligation under the Certificate Insurance Policy and in either case, a City Rating Event has occurred and is continuing; or

(d) the Certificate Insurer shall default in any payment or payments of amounts payable by it under any insurance policy or policies (other than the Certificate Insurance Policy) when due and such default shall continue for a period of five (5) days; (it being understood by the Liquidity Facility Provider that default, for the purposes of this paragraph, shall not mean a situation whereby the Insurer contests in good faith its liability under any such policy or policies in light of the claim or claims made under the Liquidity Facility); or

(e) any material representation or warranty made by the Authority or the City under or in connection with the Liquidity Facility shall prove to be untrue in any material respect on the date as of which it was made; or

(f) any Other Event of Insolvency shall have occurred; or

(g) nonpayment of any fees or any other amount when due to the Liquidity Facility Provider under the Liquidity Facility, if such failure to pay when due shall continue for ten (10) Business Days after the City, the Authority and the Certificate Insurer has received written notice thereof from the Liquidity Facility Provider; or

(h) the breach by the Authority or the City of certain terms or provisions of provisions of the Liquidity; or

(i) the Authority shall default in the performance or observance of any other material covenant or agreement contained (or incorporated by reference) in the Liquidity Facility such default shall continue unremedied for a period of thirty (30) days after the Authority has received written notice thereof from the Liquidity Facility Provider; or

(j) the City shall default in the performance or observance of any other material covenant or agreement contained (or incorporated by reference) in the Liquidity Facility and such default shall continue unremedied for a period of thirty (30) days after the City has received written notice thereof from the Liquidity Facility Provider; or

(k) the Trust Agreement or the 2008 Contract shall terminate or cease to be of full force and effect, other than as a result of any prepayment in full of the 2008 Certificates or provision for such prepayment in full in accordance with the Trust Agreement and discharge of all payment obligations under the 2008 Contract; or

(l) the occurrence of any "event of default" as defined in the Trust Agreement which is not otherwise described in this list of "Events of Default," other than the failure of the Liquidity Facility Provider to provide funds for the purchase of 2008 Certificates when required by the terms and conditions of the Liquidity Facility; or

(m) the Trustee ceases to have an effective security interest in the Trust Estate prior to any lien, pledge, assignment or security interest of any creditors of the City or the Authority; or

(n) for an uninterrupted period of ninety (90) days there is not in effect at least one of the following in respect of the 2008 Certificates: (i) in the case of Fitch, a rating of "BBB-" (or its equivalent) or higher; (ii) in the case of Moody's, a rating of "Baa3" (or its equivalent) or higher; and (iii) in the case of S&P, a rating of "BBB-" (or its equivalent) or higher; or

(o) the City shall default in any payment of principal of or premium, if any, or interest on any of its Debts in excess of \$5,000,000 and such default shall continue beyond the expiration of the applicable grace period, if any, or the City shall fail to perform any other agreement, term or condition contained in any agreement under which any obligation for the payment of \$5,000,000 or more is created or secured, which shall permit or result in the declaring due and payable of such obligation prior to the date on which it would otherwise have become due and payable; or

(p) a final judgment or order for the payment of money for an uninsured claim in excess of \$5,000,000 shall have been rendered against the City and such judgment or order shall not have been satisfied, stayed or bonded pending appeal within a period of thirty (30) days from the date on which it was first so rendered; or

(q) any amendment, replacement or other modification of the Certificate Insurance Policy or substitution of the Certificate Insurer occurs without the prior written consent of the Liquidity Facility Provider.

**Remedies.** In the case of an Event of Default described in paragraphs (a), (b) or (c)(i) above (each, a “Termination Event”), the Available Commitment and **the obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall immediately terminate without notice or demand, and thereafter the Liquidity Facility Provider shall be under no obligation to purchase 2008 Certificates.**

Upon the occurrence and during the continuance of an Event of Default described in clauses (g) or (n) hereof, the Liquidity Facility Provider may terminate the Available Commitment by giving written notice (a “Notice of Termination”) to the City, the Trustee, the Remarketing Agent and the Certificate Insurer, specifying the date on which at 3:00 p.m. California time the Available Commitment shall terminate (the “Termination Date”), which shall be not less than thirty (30) days from the date of receipt of such notice by the Trustee, and after the Termination Date the Liquidity Facility Provider shall be under no further obligation to purchase 2008 Certificates under the Liquidity Facility other than 2008 Certificates which are the subject of the Notice of Liquidity Facility Provider Purchase delivered by the Trustee hereof and received by the Liquidity Facility Provider on or prior to the Termination Date.

In the case of (i) the occurrence of an Event of Default of the type described in clause (ii) of paragraph (c) above or (ii) the commencement of an involuntary case or other involuntary proceeding seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution with respect to the Certificate Insurer or its debts or claims under any bankruptcy, insolvency or other similar law, or seeking the appointment of a trustee, receiver, liquidator, custodian, assignee, sequestrator or other similar official for the Certificate Insurer or any substantial part of its property (an “Involuntary Insolvency Event”), **the Liquidity Facility Provider’s obligation to purchase 2008 Certificates under the Liquidity Facility shall immediately be suspended without further action on the part of any Person.** The obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall be suspended until either (x) the Liquidity Facility Provider delivers a written notice to the Trustee rescinding the automatic suspension of its obligation to purchase 2008 Certificates under the Liquidity Facility (a “Rescission Notice”) or, (y) (1) in the case of a suspension event of the type described in clause (ii) of paragraph (c) above, a final non-appealable order of a court having jurisdiction in the premises shall be entered declaring that all material contested provisions of the Certificate Insurance Policy are upheld in their entirety or (2) in the case of an Involuntary Insolvency Event, a court having jurisdiction in the premises shall dismiss or stay such involuntary case, proceeding or appointment within 60 days. In the event a final non-appealable order is entered declaring any material provision of the Certificate Insurance Policy to be null and void, or declaring that the Certificate Insurer does not have any further liability or obligation under the Certificate Insurance Policy or in the event an Involuntary Insolvency Event is not dismissed or stayed within 60 days by a court having jurisdiction in the premises, then the obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall immediately terminate without any further action by any Person. In the event a final non-appealable order is entered declaring that all material contested provisions of the Certificate Insurance Policy are upheld in their entirety or in the event a court having jurisdiction in the premises shall dismiss or stay any Involuntary Insolvency Event within 60 days, the obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall be automatically reinstated and the terms of the Liquidity Facility will continue in full force and effect (unless the Liquidity Facility Provider Purchase Period shall have otherwise expired or

terminated) as if there had been no such suspension. Notwithstanding the foregoing, if the Liquidity Facility Provider has not delivered a Rescission Notice to the Trustee and if, upon the earlier of (a) the last day of the Liquidity Facility Provider Purchase Period or (b) (i) in the case of the occurrence of an Event of Default of the type described in clause (ii) of paragraph (c) above, the date which is three years after the effective date of suspension of the obligation of the Liquidity Facility Provider to purchase 2008 Certificates, litigation is still pending and a judgment regarding the validity of the Certificate Insurance Policy has not been obtained or (ii) in the case of the occurrence of an Involuntary Insolvency Event, the date which is 60 days after the commencement of the involuntary case, proceeding or appointment, such involuntary case, proceeding or appointment has not been dismissed or stayed, then the Available Commitment and the obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall at such time terminate without notice or demand and thereafter the Liquidity Facility Provider shall be under no further obligation to purchase 2008 Certificates.

In addition to the rights and remedies described above, in the case of any Event of Default, upon the election of the Liquidity Facility Provider: (i) all amounts payable under the Liquidity Facility (other than payments of principal and interest on Liquidity Facility Provider Certificates) shall upon notice to the City become immediately due and payable without presentment, demand, protest or further notice of any kind and (ii) the Liquidity Facility Provider shall have all the rights and remedies available to it under the Liquidity Facility, the Related Documents or otherwise pursuant to law or equity.

#### **Bank of America, N.A.**

Bank of America, N.A. (the "Bank") is a national banking association organized under the laws of the United States, with its principal executive offices located in Charlotte, North Carolina. The Bank is a wholly-owned indirect subsidiary of Bank of America Corporation (the "Corporation") and is engaged in a general consumer banking, commercial banking and trust business, offering a wide range of commercial, corporate, international, financial market, retail and fiduciary banking services. As of December 31, 2007, the Bank had consolidated assets of \$1,312,794,218,000, consolidated deposits of \$793,571,969,000 and stockholder's equity of \$108,480,218,000 based on regulatory accounting principles.

The Corporation is a bank holding company and a financial holding company, with its principal executive offices located in Charlotte, North Carolina. Additional information regarding the Corporation is set forth in its Annual Report on Form 10-K for the fiscal year ended December 31, 2006, together with any subsequent documents it filed with the Securities and Exchange Commission (the "SEC") pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Additional information regarding the foregoing is available from the filings made by the Corporation with the SEC, which filings can be inspected and copied at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549, United States, at prescribed rates. In addition, the SEC maintains a website at <http://www.sec.gov>, which contains reports, proxy statements and other information regarding registrants that file such information electronically with the SEC.

The information concerning the Corporation and the Bank contained herein is furnished solely to provide limited introductory information and does not purport to be comprehensive. Such

information is qualified in its entirety by the detailed information appearing in the documents and financial statements referenced herein.

The Liquidity Facility has been issued by the Bank. Moody's Investors Service, Inc. ("Moody's") currently rates the Bank's long-term debt as "Aaa" and short-term debt as "P-1." The outlook is stable. Standard & Poor's rates the Bank's long-term debt as "AA+" and its short-term debt as "A-1+." The outlook is stable. Fitch Ratings, Inc. ("Fitch") rates long-term debt of the Bank as "AA" and short-term debt as "F1+." The outlook is negative. Further information with respect to such ratings may be obtained from Moody's, Standard & Poor's and Fitch, respectively. No assurances can be given that the current ratings of the Bank's instruments will be maintained.

The Bank will provide copies of the most recent Bank of America Corporation Annual Report on Form 10-K, any subsequent reports on Form 10-Q, and any required reports on Form 8-K (in each case as filed with the SEC pursuant to the Exchange Act), and the publicly available portions of the most recent quarterly Call Report of the Bank delivered to the Comptroller of the Currency, without charge, to each person to whom this document is delivered, on the written request of such person. Written requests should be directed to: Bank of America Corporate Communications, 100 North Tryon Street, 18th Floor, Charlotte, North Carolina 28255, Attention: Corporate Communications

PAYMENTS OF THE PURCHASE PRICE OF THE 2008 CERTIFICATES WILL BE MADE FROM DRAWINGS UNDER THE LIQUIDITY FACILITY IF REMARKETING PROCEEDS ARE NOT AVAILABLE. ALTHOUGH THE LIQUIDITY FACILITY IS A BINDING OBLIGATION OF THE BANK, THE 2008 CERTIFICATES ARE NOT DEPOSITS OR OBLIGATIONS OF THE CORPORATION OR ANY OF ITS AFFILIATED BANKS AND ARE NOT GUARANTEED BY ANY OF THESE ENTITIES. THE 2008 CERTIFICATES ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND ARE SUBJECT TO CERTAIN INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED.

The delivery hereof shall not create any implication that there has been no change in the affairs of the Corporation or the Bank since the date hereof, or that the information contained or referred to herein.

## REMARKETING

**Remarketing Agreement.** The Authority has entered into a Remarketing and Interest Services Agreement, dated as of May 1, 2008 (the "Remarketing Agreement"), with Banc of America Securities LLC as the Remarketing Agent. Under the Remarketing Agreement and subject to the limitations set forth therein, the Remarketing Agent has agreed to use its best efforts to offer for sale all 2008 Certificates tendered in accordance with the provisions of the Indenture.

The Remarketing Agent's responsibilities include determining the interest rate from time to time and remarketing 2008 Certificates that are tendered by the owners thereof either pursuant to an optional or mandatory tender (subject, in each case, to the terms of the Remarketing Agreement), all as further described in this Official Statement. The Remarketing Agent is appointed by the Authority and is paid by the Authority for its services. As a result, the interests of the Remarketing Agent may differ from those of existing owners and potential purchasers of 2008 Certificates.

***The Remarketing Agent Routinely Purchases 2008 Certificates for its Own Account.*** The Remarketing Agent acts as remarketing agent for a variety of variable rate demand obligations and, in its sole discretion, routinely purchases such obligations for its own account. The Remarketing Agent is permitted, but not obligated, to purchase tendered 2008 Certificates for its own account and, in its sole discretion, routinely acquires such tendered 2008 Certificates in order to achieve a successful remarketing of the 2008 Certificates (i.e., because there otherwise are not enough buyers to purchase the 2008 Certificates) or for other reasons. However, the Remarketing Agent is not obligated to purchase 2008 Certificates, and may cease doing so at any time without notice. The Remarketing Agent may also make a market in the 2008 Certificates by routinely purchasing and selling 2008 Certificates other than in connection with an optional or mandatory tender and remarketing. Such purchases and sales may be at or below par. However, the Remarketing Agent is not required to make a market in the 2008 Certificates. The Remarketing Agent may also sell any 2008 Certificates it has purchased to one or more affiliated investment vehicles for collective ownership or enter into derivative arrangements with affiliates or others in order to reduce its exposure to the 2008 Certificates. The purchase of 2008 Certificates by the Remarketing Agent may cause the interest rate to be lower than it would be if the Remarketing Agent did not purchase 2008 Certificates and may create the appearance that there is greater third party demand for the 2008 Certificates in the market than is actually the case. The practices described above also may result in fewer 2008 Certificates being tendered in a remarketing.

***2008 Certificates May be Offered at Different Prices on Any Date Including a Rate Determination Date.*** Pursuant to the Remarketing Agreement, the Remarketing Agent is required to determine the applicable rate of interest that, in its judgment, is the lowest rate that would permit the sale of the 2008 Certificates bearing interest at the applicable interest rate at par plus accrued interest, if any, on and as of the applicable Rate Determination Date. The interest rate will reflect, among other factors, the level of market demand for the 2008 Certificates (including whether the Remarketing Agent is willing to purchase 2008 Certificates for its own account). The purchase of the 2008 Certificates by the Remarketing Agent may cause the interest rate to be lower than it would be if the Remarketing Agent did not purchase 2008 Certificates. There may or may not be 2008 Certificates tendered and remarketed on a rate determination date, the Remarketing Agent may or may not be able to remarket any 2008 Certificates tendered for purchase on such date at par and the Remarketing Agent may sell 2008 Certificates at varying prices to different investors on such date or any other date. The Remarketing Agent is not obligated to advise purchasers in a remarketing if it does not have third party buyers for all of the 2008 Certificates at the remarketing price. The Remarketing Agent, in its sole discretion, may offer 2008 Certificates on any date, including the Rate Determination Date, at a discount to par to some investors.

***The Ability to Sell the 2008 Certificates other than Through Tender Process May Be Limited.*** The Remarketing Agent may buy and sell 2008 Certificates other than through the tender process. However, it is not obligated to do so and may cease doing so at any time without notice and may require owners that wish to tender their 2008 Certificates to do so through the Tender Agent with appropriate notice. Thus, investors who purchase the 2008 Certificates, whether in a remarketing or otherwise, should not assume that they will be able to sell their 2008 Certificates other than by tendering the 2008 Certificates in accordance with the tender process.

***Under Certain Circumstances, the Remarketing Agent May Be Removed, Resign or Cease Remarketing the 2008 Certificates, Without a Successor Being Named.*** Under certain circumstances the Remarketing Agent may be removed or have the ability to resign or cease its remarketing efforts, without a successor having been named, subject to the terms of the Remarketing

Agreement. In the event there is no Remarketing Agent, the Trustee is required to apply to a court of competent jurisdiction for appointment of a successor Remarketing Agent.

## **THE WATER UTILITY SYSTEM**

### **History of the Water Utility System**

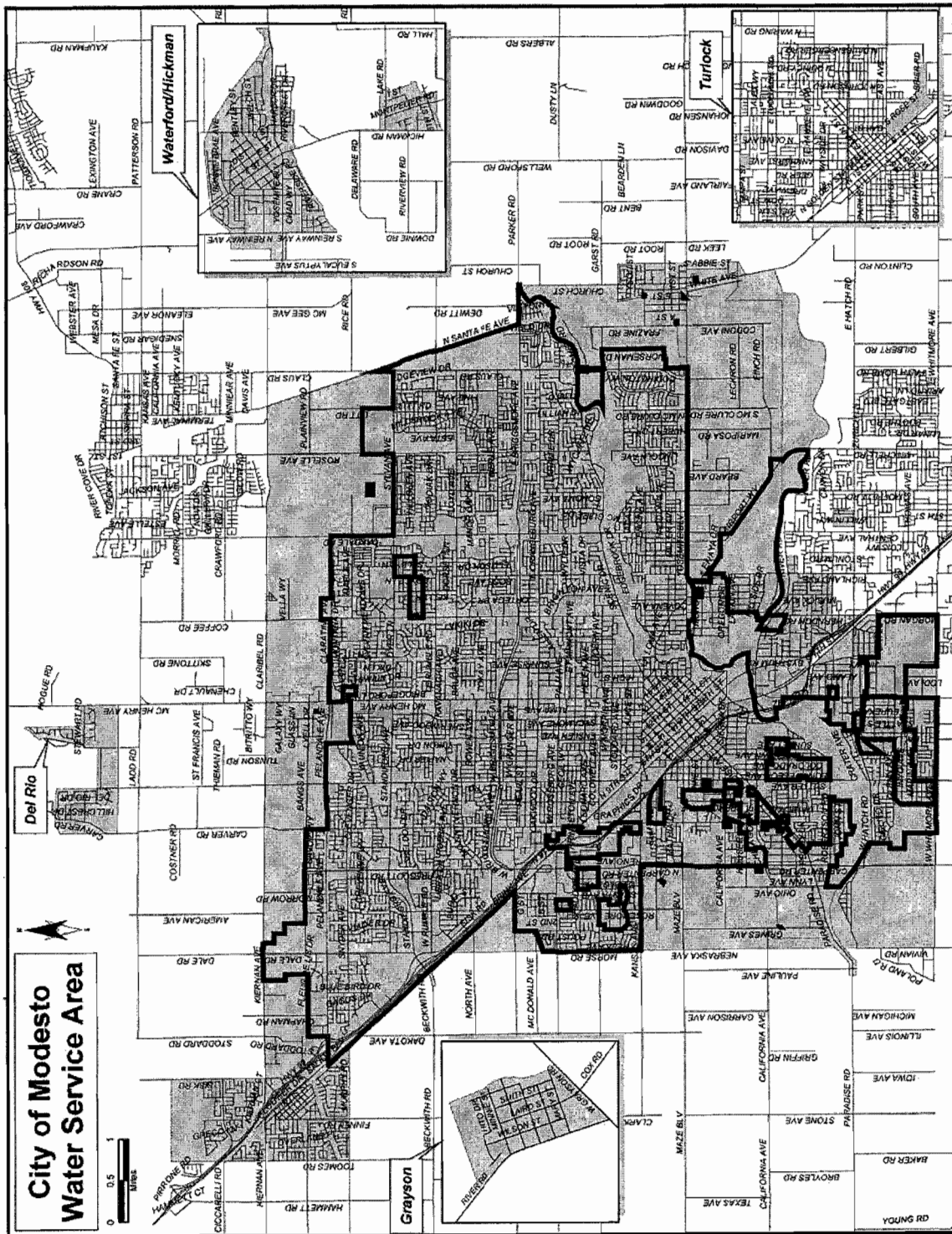
The origin of the City's municipal water system dates back to 1876 when a privately-owned utility, later known as the Modesto Water Company, was established to provide water service to the village of Modesto. In 1895, the City purchased the Modesto Water Company, and in subsequent years it purchased other local water systems that have been incorporated in the present Water Utility System.

In April 1992, the City entered into the original Treatment and Delivery Agreement with MID and the Del Este Water Company ("Del Este"), providing for a supply of treated water for the City and Del Este from the Water Treatment Plant, which was constructed and is owned and operated by MID. See "— Sources of Water" below. In July 1995, the City purchased substantially all of the assets and assumed substantially all of the liabilities of Del Este, the last private water company within City limits. The acquisition included Del Este's other water service areas including the communities of Salida, Waterford, Empire, Hickman, Grayson, and parts of Turlock, Ceres and Del Rio Estates. As a consequence of the varying operating conditions among these communities, the City initially operated the Water Utility System in three separate zones. However, the three zones were essentially merged into a single zone for rate purposes when the City Council adopted a new rate structure that went into effect on January 1, 2005.

The original Treatment and Delivery Agreement provided the terms and conditions under which the City agreed to provide payments for, and MID agreed to finance, construct, own and operate, the Water Treatment Plant. Pursuant to the terms of the original Treatment and Delivery Agreement, the City was entitled to receive 30 million gallons per day of treated water from the Phase One Water Treatment Plant. The original Treatment and Delivery Agreement was amended and restated in 2005 to provide for the funding and construction of Phase Two of the Water Treatment Plant. Upon completion of Phase Two, the City will be entitled to receive 60 million gallons per day of treated water for use within the portion of the City's service area that is within MID's authorized service area. See "— Treatment and Delivery Agreement" below.

In general terms, the City's total water service area consists of one large contiguous area and several outlying, non-contiguous service areas. The contiguous water area includes all of the property currently within the corporate boundaries of the City as well as the property located within its sphere of influence and properties located within the communities of Ceres, Empire and Salida. There are five outlying non-contiguous water service areas. They are the communities of Del Rio, Grayson, Hickman and Waterford, as well as portions of the City of Turlock.

A map showing the City's water service area appears on page 37.



**City of Modesto  
Water Service Area**

## Existing Facilities

The principal facilities of the existing Water Utility System consist of 125 domestic wells (111 of which are currently active), over 900 miles of mains, seven storage tanks, the MID's Water Treatment Plant and a terminal storage area serving surface water and/or groundwater to its customers through nearly 77,000 water connections.

MID surface water is treated at the Water Treatment Plant and conveyed to the City via transmission mains for direct use in the contiguous portion of the City's water service area. The City's facilities are designed to deliver both surface water and groundwater. The Water Treatment Plant does not provide surface water to the outlying portions of the City's water service areas including those portions that are outside of MID's authorized service boundaries.

Groundwater is pumped directly from the wells into the distribution system, which consists of 900 miles of water mains and pipelines. Most of the larger water mains are 10- and 12-inch diameter pipelines which have been installed by the City. The installation of smaller pipelines in subdivisions is typically the responsibility of the subdivider. Seven ground level tanks and booster pump stations provide storage capacities ranging from 500,000 to 1,300,000 gallons each.

The following table sets forth statistical information relating to the Water Utility System during the periods shown.

### WATER UTILITY SYSTEM STATISTICS Calendar Years

	2003	2004	2005	2006	2007
Number of Service Accounts	72,907	73,916	74,779	76,227	76,661
Total Water Production (MG) <sup>(1)</sup>	27,000	26,580	25,720	25,605	25,857
Capacity (MGD) <sup>(2)</sup>	166	166	166	166	166
Peak Daily Distribution (MGD)	133.6	124.9	129.8	131.4	115.4
Average Daily Distribution (MGD)	73.7	72.4	70.4	70.2	70.9

<sup>(1)</sup> "MG" means million gallons.

<sup>(2)</sup> "MGD" means million gallons per day. The actual capacity of the Water Utility System during each of the years shown varied slightly from the 166 MGD figure depending upon the number and capacity of the wells going in and out of service in each of said years.

Source: City of Modesto.

During the five year period covered by the table the City's population grew by nearly 3% while the aggregate volume of water sold declined by approximately 4%. Thus, on a per capita basis, consumption of water in the City's service area has been reduced over the course of this period. This reduction has been the result of many variables including water conservation efforts, weather, system repairs, more efficient water consumption by customers and the availability of alternative water sources (onsite private wells).

## Sources of Water

The City's primary sources of water supply are surface water provided by MID under the Treatment and Delivery Agreement (described below) and its local groundwater sources. During the 1990's, MID, the City, and Del Este partnered to develop a new municipal water supply. This was implemented by the original Treatment and Delivery Agreement, under which the 30 MGD Water

Treatment Plant and delivery system came on line in January 1995. The Water Treatment Plant serves as the baseline supply, and seasonal demands are served by the groundwater wells. In general the Water Treatment Plant currently supplies approximately 60% of the City's water requirement during the winter and approximately 35% thereof during the summer season. Groundwater supplies the remainder.

MID issued the Notice to Proceed on July 16, 2007 to Western Summit Constructors, Inc. for the construction of the Modesto Regional Water Treatment Project – Phase 2 expansion. This project will bring the nominal plant capacity up to 60 million gallons per day (60 MGD) with a peak capacity of 72 MGD. The original contract amount was \$57,333,902 and contract change orders have totaled \$47,813.00 to date. Currently the project is 20% complete and the completion date is October 23, 2009. Performance testing will follow that date and the plant is expected to be fully operational in early 2010.

The following table sets forth the total water production for the Water Utility System during the last five calendar years.

**WATER UTILITY SYSTEM  
Service Area Total Production (Billion Gallons)**

<i>Year Ending December 31</i>	<i>Groundwater</i>	<i>Surface Water</i>	<i>Total</i>
2003	15.49	11.51	27.00
2004	15.15	11.43	26.58
2005	15.13	10.59	25.72
2006	14.74	10.92	25.66
2007	13.94	11.92	25.86

Source: City of Modesto.

Outside of the City corporate limits there are no regulations controlling the number of water wells that are drilled or the quantity of water pumped from such wells. Prior to the availability of surface water from the Water Treatment Plant, the groundwater withdrawal had been increasing and water levels had been declining since the early 1950's. As a result thereof, the groundwater resources of the Water Utility System were subject to long-term overdraft, i.e., the depletion of the water table was greater than the replenishment, of an average of 3,000 acre-feet per year. With the introduction of surface water from the Water Treatment Plant, this long-term overdraft was halted, and the City's dependency upon groundwater was reduced. The City expects that the expansion of the Water Treatment Plant and the installation of the various capital projects associated therewith, including the 2006 Project, will further reduce its reliance on groundwater supplies.

**Treatment and Delivery Agreement**

In April 1992, MID entered into the original Treatment and Delivery Agreement with the City and Del Este. Pursuant to the Treatment and Delivery Agreement, MID agreed to finance, construct, own and operate the Water Treatment Plant and certain related facilities, and the City agreed to pay the costs of acquisition, construction and operation of the Water Treatment Plant. Pursuant to the Treatment and Delivery Agreement, the City was initially allocated a 70% share of

the Water Treatment Plant, and was likewise responsible for 70% of its costs; Del Este was allocated a 30% share and was likewise responsible for 30% of its cost.

The Modesto Irrigation District Financing Authority (“MIDFA”) issued its Series 1992A Water Notes in the aggregate principal amount of \$39,990,000 to provide construction financing for Del Este’s 30% of the estimated acquisition and construction costs of the Water Treatment Plant. MIDFA also issued its Series 1992A Water Bonds and Series 1992B Water Bonds in the aggregate principal amount of \$77,385,000 in order to finance the City’s 70% share of the estimated acquisition and construction costs of the Water Treatment Plant. In 1995, MIDFA issued its Series 1995C Water Bonds in an aggregate principal amount of \$24,235,000 to repay the Series 1992A Water Notes; and in 1998, MIDFA issued its Series 1998D Water Bonds in an aggregate principal amount of \$94,715,000 to defease all of the outstanding Series 1992B Water Bonds and Series 1995C Water Bonds. (MIDFA’s Series 1998D Water Bonds are referred to as the “Domestic Water Bonds.”) On June 26, 2007, MIDFA issued the MIDFA 2007 Bonds in order to provide financing for the Water Treatment Plant Expansion described above. The ultimate source of funds expected to be used to pay debt service on the MIDFA 2007 Bonds consists of payments to be made by the City to MID pursuant to the Treatment and Delivery Agreement. See “THE WATER UTILITY SYSTEM — Treatment and Delivery Agreement.”

In July 1995, the City purchased substantially all of the assets and liabilities of Del Este and in accordance with the provisions of the original Treatment and Delivery Agreement assumed all interests, rights and obligations of Del Este under the original Treatment and Delivery Agreement. Accordingly, Del Este had no further obligation to make payments under the Treatment and Delivery Agreement or otherwise with respect to the Domestic Water Bonds.

Construction of the Water Treatment Plant began in October 1992, and the Water Treatment Plant was placed into operation in May 1995. It is located directly south of the Modesto Reservoir on an approximately 30-acre site, about 15 miles east of the City. Treated water is pumped from a five million gallon treated water storage reservoir through approximately 14 miles of transmission pipeline to two five million gallon terminal-storage reservoirs. The water is then distributed to distribution mains in the City water system.

Raw water delivered for treatment under the original Treatment and Delivery Agreement was provided under MID’s pre-1914 water rights, which are not subject to the permitting authority of the State Water Board. The rights available to MID to treat and deliver water to the City through the Water Treatment Plant consist of (i) various water rights owned by MID, including the pre-1914 water right and (ii) water available to it under a license held by MID and Turlock Irrigation District (License 11058) which authorizes the two districts to store up to 1,046,800 acre-feet of water in New Don Pedro Reservoir between November 1 and the succeeding July 31 for irrigation and recreational use. MID petitioned for and received an order from the State Water Resources Control Board (WR Order 2005-0022-DWR) which amended License 11058 and authorized a long-term transfer of up to 67,200 acre-feet of water per year to the City and which added municipal and industrial uses to the uses of water permitted under the transfer. This long-term transfer is effective through December 31, 2054. During the period of the long-term transfer, MID is required to comply with all of the terms and conditions required by the Federal Energy Regulatory Commission for the New Don Pedro Project. In addition, pursuant to California Water Code Sections 100 and 275 as well as the common law public trust doctrine, all rights and privileges under the long-term transfer order, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to

protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion.

The original Treatment and Delivery Agreement provided that the City would receive 30 million gallons per day of treated water. The terms of the original Treatment and Delivery Agreement were subsequently amended and restated to provide for an expansion of the Water Treatment Plant upon the completion of which the City will be entitled to receive 60 million gallons per day of treated water on an average annual basis.

In accordance with the Treatment and Delivery Agreement, MID owns, operates, and maintains the Water Treatment Plant for the purposes of treatment and delivery of water to the City. MID may not assign its maintenance and operation responsibility for the Water Treatment Plant without the consent of the City. The City is granted a permanent beneficial interest in the Water Treatment Plant output, which may not be transferred or assigned without the consent of MID.

The City has agreed to pay all costs and expenses of all phases of the Water Treatment Plant, including (i) payments of Debt Service in connection with the financing of the Water Treatment Plant (a Parity Obligation), (ii) raw water charges for raw water furnished to the Water Treatment Plant by MID, (iii) payments of operation, maintenance, repair, replacement and modification costs attributable to the operation of the Water Treatment Plant, (iv) costs of administrative services of MID attributable to the operation of the Water Treatment Plant and the administration of the Treatment and Delivery Agreement, (v) costs of insurance required to be maintained by MID pursuant to the Treatment and Delivery Agreement (as described below), (vi) cost of electric energy provided to the Water Treatment Plant by MID, and (vii) other payments or costs (and deductions from payments or costs from the reserve and contingency fund and the certain reserve funds relating to the Domestic Water Bonds) and other amounts as specified by the Treatment and Delivery Agreement.

Some of the key provisions of the Treatment and Delivery Agreement, as amended and restated, are:

The City will continue to receive raw water at the same unit cost as MID's agricultural users.

The City will reimburse MID for all capital and operating costs associated with the treatment of the water.

Reductions in water deliveries required as a result of a drought will be borne proportionately by the City and MID's agricultural customers.

MID's commitments to its agricultural customers and to the City must be met before MID may transfer any water for delivery outside of its boundaries.

The Policy Committee, which advises the Board of Directors of MID and City Council of the City on matters related to the project, consists of two members of the City Council and two members of the MID Board.

***Delivery of Treated Water.*** Under the terms of the Treatment and Delivery Agreement, MID is generally required to make available to the City 33,602.1 acre-feet of treated water per year, or

30 million gallons per day. Upon completion of the expansion of the Water Treatment Plant those amounts will be increased to 67,204.2 acre-feet per year and 60 million gallons per day. However, in a drought situation, MID may reduce its deliveries of water to the City, but only if and to the extent that MID reduces its deliveries to its own agricultural customers proportionally. Moreover, MID's commitments to the City and to its own agricultural customers must be met before any water is transferred for delivery outside of MID's boundaries (other than transfers to and from MID and Turlock Irrigation District that are made in the ordinary course of operations). The City may exchange groundwater for use by MID's irrigation system for treated water in the event of a reduced allocation. The City will bear all costs, including the costs of additional capital facilities, if any are necessary, associated with delivering the groundwater supply to MID's irrigation system. MID may not sell any treated water from the Water Treatment Plant without first offering such water to the City. Treated water delivered by MID to the City must be utilized by the City within MID's irrigation service area. MID will consult with the City regularly with respect to the scheduling of delivery of treated water from the Water Treatment Plant. MID shall be excused from its obligation to deliver treated water in the event that MID is rendered unable, wholly or in part, by force majeure to carry out its obligations under the Treatment and Delivery Agreement. Upon the occurrence of any event of force majeure which impacts MID's ability to deliver treated water, the provisions of the Treatment and Delivery Agreement shall be determinative as to whether the City is excused from its obligation to pay debt service and fixed costs pursuant to the Treatment and Delivery Agreement.

Pursuant to the Treatment and Delivery Agreement two advisory committees are formed for the purposes of the Water Treatment Plant, the Policy Committee and the Technical Committee. Each of these Committees include representatives from MID and the City.

The Board of Directors of MID has the authority to make final decisions with respect to the Water Treatment Plant, subject to the rights of the City to review and advise MID with respect to certain budgetary matters as provided in the Treatment and Delivery Agreement.

***Conservation Program.*** The City has an ongoing water conservation program which includes limitations on watering hours and certain water uses. In the event of drought, the City will likely expand its water conservation program to include additional water use restrictions, such as imposing limitations on the landscaping of new developments.

## **Water Quality**

Land use in the vicinity of the City is a mixture of rural, residential, agricultural, commercial and industrial uses. Potential sanitary hazards include the percolation of agricultural chemicals and fertilizers in adjacent fields and underground storage of fuels in single contained tanks. All wells are adequately located away from sewer lines and sewage disposal facilities. Above-ground on-site fuel storage tanks are or will be provided with a containment system.

Historically, the overall well system has not required major treatment facilities to deliver potable water supplies to date. However, over the past ten years, the number of natural and man-made contaminants which the City is required to monitor has increased from 22 to 96 and there have been significant changes in the maximum contaminant levels permitted under regulations adopted by federal and State regulatory agencies. As a result, concerns over water quality have necessitated the closure of wells with poor water quality and has led to the requirement for treatment of several groundwater wells. The City has commenced litigation to protect, and/or to recover damages to, its groundwater supplies. See “— DBCP Settlement Agreement” and “— PCE Litigation” below.

The operation of the wells is performed automatically in response to system pressure and reservoir water level. All wells are monitored in accordance with State water quality monitoring regulations. Samples are collected for general physical, general mineral, inorganic chemical, radioactivity and organic chemical analysis. Additional monitoring is conducted for bacteriological and general mineral analysis on a routine basis. Bacteriological quality of the groundwater sources is generally good. Follow-up samples on positive total coliform test results are generally negative.

In addition to water wells as a domestic supply source, the City manages approximately 9,500 rock wells for the drainage of stormwater. Stormwater runoff occurs when rainfall intensity exceeds the infiltration rate of the soil. Suspended solids, heavy metals, and oil and grease are the major types of pollutants conveyed by runoff water to drainage facilities. The pollutant loading in runoff typically increases with increased urbanization. About 70 percent of the City service area employs rock wells which vary in depth from 25 to 50 feet. As a precaution to any risk of pollutants from stormwater and other wastewater entering the rock wells and percolating into the usable groundwater aquifer, the City seals its water wells at appropriate depths in relation to rock wells. After 40 years of operation of rock wells, no pollutants attributable to urban drainage have been detected in the drinking water supply. Recent studies of the federal Environmental Protection Agency conclude that properly operated rock wells provide significant treatment and removal of pollutants from percolating water.

### **DBCP Settlement Agreement**

In January 1997, the City came to a settlement in litigation with certain defendants who are the manufacturers and distributors of dibromochloropropane (“DBCP”), which was impacting the drinking water quality throughout the combined City and former Del Este water systems. The settlement agreement (the “Settlement Agreement”) compensated the City for past expenses related to complying with drinking water standards and providing well-head treatment. The Settlement Agreement and the damage recovery covers the City’s entire current and projected service area over the 40 years following the execution of the Settlement Agreement. The Settlement Agreement provides a formula by which the majority of future capital and operating expenses for DBCP mitigation will be compensated by the defendants. The Settlement Agreement includes cost escalation indexes and requires that these payments be used in the area where the damage occurs, as a protection for the defendants against possible Del Este ratepayer actions. The Settlement Agreement puts a variety of operating obligations on the City to ensure that the contamination is managed economically and in compliance with applicable regulations.

The annual proceeds from Settlement Agreement are included in the Historical Operating Results and the Projected Operating Results of the Water Utility System described below. For operating costs, the City receives a specified amount for each well which is receiving well head treatment for DBCP, escalated annually by the Producer Price Index (“PPI”). For each additional or new well requiring GAC equipment, 90% of the capital costs, escalated by the PPI, will be compensated. The actual amount will depend on the type of GAC unit needed for the specific well. The process for compensation provides that the City file an annual claim with the trustee for operation and maintenance and capital costs for the preceding year. The defendants are required to maintain a certain balance in the trustee account, the amount of which declines over the 40 year life of the Settlement Agreement. The City is responsible for any difference between actual operating and capital expense and the stipulated compensation formula. Any shortfall would then be covered by the City through appropriate action, including without limitation a rate adjustment to assure compliance with the covenants in the Settlement Agreement.

Water supplied by the City has and continues to meet all federal and State requirements for quality standards. The City has in place a program to monitor and evaluate proposed regulatory water quality standards. The City anticipates that it will be able to meet increasingly stringent water standards.

### **PCE Litigation**

The City of Modesto Redevelopment Agency brought an action in 1998 against numerous defendants, alleging causes of action for strict liability, negligence, negligence per se, continuing trespass, private and public nuisance, private and public nuisance per se, response costs and declaratory relief under the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Safety Code Section 25300 *et seq.*), ultrahazardous activity, and cost recovery under the Polanco Redevelopment Act (Health & Safety Code Section 33459 *et seq.*) (San Francisco County Superior Court Case No. 999345). Simultaneously with the filing of that action, the City, along with the City of Modesto Sewer District No. 1, brought another action against a nearly identical group of defendants seeking damages for solvent contamination under many of the same legal theories; but this action did not include a Polanco Redevelopment Act cause of action (San Francisco County Superior Court Case No. 999643). The defendants included chlorinated solvent manufacturers, distributors of solvents and dry cleaning equipment, chlorinated solvent equipment manufacturers, and dry cleaning retailers.

The complaints alleged that two cleaning solvents, perchloroethylene (“PERC” or “PCE”) and trichloroethylene, cause risks to health and the environment, that dry cleaners customarily dumped solvent wastewater into the public sewer systems, and that dry cleaners experienced a habitual problem of chlorinated solvents leaking into the environment. According to the complaints, the defendants who manufactured and supplied solvents and equipment instructed dry cleaners that chlorinated solvents could be discharged into sewers and/or failed to issue recalls or warnings regarding the equipment and solvents.

The plaintiffs tried five “bellweather” suits before a jury from February to June of 2006, and won a verdict for compensatory damages of \$3.1 million and a verdict for punitive damages of \$175 million, later lowered to \$12 million. In October of 2007, the plaintiffs reached an agreement with one of the defendants, Vulcan Materials Company (“Vulcan”), pursuant to which Vulcan agreed to pay the plaintiffs \$20 million to settle the actions pending against Vulcan. The City’s water system and its sewer system were each credited with half of net amount of the settlement after payment of litigation fees and expenses and certain other costs (approximately \$6.5 million each), but the money may be expended only for projects that will remediate PCE.

The plaintiffs expect to proceed to trial against the remaining defendants in July.

### **Employees**

The Public Works Director has primary responsibility for the management of the Water Utility System, as well as for the sewer system, streets and storm drains. The Water Utility System currently has 82 full-time employees. Employees are represented by the Modesto City Employees Association (MCEA) whose current Memorandum of Understanding expired in July 2007 and by the Modesto Confidential and Management Association whose current Memorandum of Understanding expires on June 23, 2008. The City and MCEA are participating in mediation procedures in hopes

of reaching a negotiated agreement by the end of the current fiscal year. The City has never experienced a labor strike.

### **Retirement Programs**

All permanent full-time employees of the City are covered under the Public Employees' Retirement System (PERS) of the State of California, a defined benefit plan. Pension costs are funded by monthly contributions from the City. Required contributions by the City during fiscal year 2006-07 were \$12,214,853 of which \$569,648 was allocated to the Water Utility System. The City's net assets available for benefits as of June 30, 2005 (the latest data available) were \$47,334,409 less than pension benefit obligations.

As of June 30, 2007, most employee contributions (7.5% out of a total 9% for fire and police and 6.6% out of a total 7% for miscellaneous employees, including Water Utility System employees) are paid by the City on behalf of the employees. The City is also required to contribute all remaining amounts necessary to fund the benefits for its members, using the actuarial basis recommended by the PERS actuaries and actuarial consultants and adopted by the Board of Administration. The current rate is 9.256% of annual covered payroll for miscellaneous employees and 23.692% for safety employees.

In addition to the defined benefit plan described above, the City also maintains a program providing "other post-employment benefits" ("OPEB") for its employees. The City has created an internal service fund to track the OPEB liability, annual expenses and revenues and has been disclosing its liability for OPEB in its Comprehensive Annual Financial Statements for over ten years.

As of December 1, 2006 the Entry Age Actuarial Accrued Liability was \$89,305,020. The City has been funding the current cost of annual benefits and a portion of the long-term cost in each of the years that the liability has been disclosed in its financial statements.

In June 2004, the Governmental Accounting Standards Board ("GASB") issued Statement No. 45 ("GASB 45"), which addresses how state and local governments should account for and report their costs and obligations related to post-employment health care and other non-pension benefits ("OPEB"). GASB 45 generally requires that employers account for and report the annual cost of OPEB and the outstanding obligations and commitments related to OPEB in essentially the same manner as they currently do for pensions. Annual OPEB costs for most employers will be based on actuarially determined amounts that, if paid on an ongoing basis, generally would provide sufficient resources to pay benefits as they come due. The provisions of GASB 45 may be applied prospectively and do not require governments to fund their OPEB plans. An employer may establish its OPEB liability at zero as of the beginning of the initial year of implementation. However, the unfunded actuarial liability is required to be amortized over future periods on the income statement. GASB 45 also established disclosure requirements for information about the plans in which an employer participates, the funding policy followed, the actuarial valuation process and assumptions, and for certain employers, the extent to which the plan has been funded over time. These disclosure requirements are effective for the City's Fiscal Year ending June 30, 2008. GASB 45 may result in an increase in the annual expense recognized by the City for post retirement health care benefits. The City has retained the services of an actuary to determine the extent of the City's OPEB liability. The City has reported its OPEB liability for over 10 years in its Comprehensive Annual Financial Report (CAFR). Further, the City has been funding both the current and a portion of the long-term

liability for much of this time. Discussions are being held to determine whether the City will utilize an irrevocable trust to hold plan assets.

**Insurance**

The City is exposed to various risks of loss including those related to torts as well as the theft of, damage to and destruction of its assets. The City maintains an Insurance Internal Service Fund to account for and finance its risks of loss. Under this program, the City is self-insured for the following risks up to the maximum amount per claim as follows: workers' compensation - \$750,000, liability - \$1,000,000 and dental care - \$1,200. The City purchases commercial insurance for property loss, airport liability and claims in excess of the preceding self-insured coverage amounts. For liability claims, the City is one of twelve members of the Authority for California Cities Excess Liability risk pool. This pool covers City claims between \$1 million and \$4 million. Commercial insurance covers claims over \$4 million up to an additional \$30 million per claim.

The City currently maintains insurance against damage to the Water Utility System. Coverage thereunder is currently \$10,000,000, but damage resulting from earthquakes is not covered.

**Service Area and Customers**

The water service area of the Water Utility System is within the metropolitan area of the City, located in the central portion of Stanislaus County, consisting of approximately 36 square miles as well as the communities of Salida, Waterford, Empire, Hickman, Grayson, and portions of Turlock, Ceres and Del Rio Estates.

The following tables set forth the revenues for the periods indicated and the ten largest water customers of the Water Utility System in terms of total water sales and total billings for the fiscal year ended June 30, 2007. During calendar year 2007, the Water Utility System delivered approximately 25.9 billion gallons of water to an average of approximately 77,000 customers. Residential accounts (single family as well as multi-family accounts) represent approximately 64.36% of the City's water consumption and water sales revenues. Commercial, industrial and municipal accounts represent approximately 35.64% of the City's water consumption and water sales revenues. The City's ten largest customers represented approximately 8.31% of total water revenues in fiscal year 2006-07.

**WATER UTILITY SYSTEM  
Sale of Water**

	<i>Fiscal Year Ended June 30</i>				
	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006<sup>(1)</sup></i>	<i>2007</i>
Revenues (\$000)					
Residential (Flat Rates)	\$ 16,682	\$ 16,849	\$ 19,117	\$ 26,591	\$ 30,716
Commercial, Industrial and Municipal (Metered)	<u>10,075</u>	<u>10,524</u>	<u>10,847</u>	<u>14,516</u>	<u>17,007</u>
Total	\$ 26,757	\$ 27,323	\$ 29,964	\$ 41,107	\$ 47,723

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Source: City of Modesto.

**WATER UTILITY SYSTEM  
Ten Largest Customers  
(Fiscal Year ended June 30, 2007)**

<i>Customer</i>	<i>Business Type</i>	<i>Usage (ccf)<sup>(1)</sup></i>	<i>% of Total Usage</i>	<i>Water Sales Revenues</i>	<i>% of Total Water Sales Revenue</i>
Signature Fruit Co.	Cannery	541,261	1.58%	\$ 648,435	1.36%
Modesto City Schools	Education	458,038	1.34	635,965	1.33
Grover Landscaping (Parks)	Landscape	392,111	1.14	580,507	1.22
	Maintenance				
Stanislaus Foods	Cannery	377,600	1.10	460,575	0.97
Foster Farms	Dairy Processor	338,786	0.99	398,235	0.83
Stanislaus County	Government	200,874	0.59	284,742	0.60
Modesto Irrigation District	Power Company	206,179	0.60	263,276	0.55
Stanislaus Housing Authority	Housing Authority	176,057	0.51	261,904	0.55
City of Modesto	Government	159,911	0.47	239,405	0.50
Sylvan Union School District	Education	141,445	0.41	191,940	0.40
Top Ten Total		2,992,262	8.73%	\$ 3,964,984	8.31%
Total Flat/Metered Revenues				\$47,723,020	

<sup>(1)</sup> "ccf" means hundred cubic feet  
Source: City of Modesto.

**Water Charges and Billing**

**Water Service Rates.** Water rates are fixed by the City Council and are not subject to regulation by the California Public Utility Commission or any other State or federal agency. Customer service charges for single family residential accounts were historically generally based on a flat monthly service charge, which varied only based on the size of the lot and in which of three zones the lot was located. However, under a new rate structure which went into effect on January 1, 2005, a uniform rate for each applicable lot size has been established for all three zones. See "Rate Setting Process" below for a discussion of the process followed by the City in implementing the new rate structure.

Historically, the City has not metered water use by its single family residential customers; however, since 1992 all new construction has been equipped with a meter; and those single family residential properties that are equipped with water meters that are read for billing purposes are charged the metered water rate. Pursuant to State legislation, the City will be required to install meters and to read and bill for water service based on metered rates by 2025. The City Council has adopted a metering plan schedule pursuant to which those requirements would be satisfied by 2019; and, in connection therewith, the City Council recently approved contracts with Automatic Meter Reading in order to provide the most cost efficient and manner of implementing its plan.

Multifamily residential units are currently metered. Each commercial account pays a monthly service charge and a volume charge per hundred cubic feet of water delivered. All regular customers are liable for service charges unless service is permanently discontinued. In addition, all new regular water service connections, increases in meter sizes, and the connection of additional dwelling units to existing services require the payment of a connection fee.

As noted above, the City Council established a new rate structure that went into effect on January 1, 2005. The new rate structure established a single service area, combining all three prior water zones into a single zone. The new rates include a uniform volume-based charge reflecting the volume of water consumed. Residential metered and flat rates are designed so that monthly bills for these types of customers will be comparable were water consumption is estimated to be comparable. Residential flat rates are standardized by lot size (previously, the size ranges varied between water zones) based upon the number of parcels in each range and patterns of water use.

In addition to the rate increases described above, the rate structure adopted by the City Council also provided for uniform increases of 20% effective July 1, 2005, 15% effective July 1, 2006, 5% effective July 1, 2007 and 5% effective July 1, 2008. On each July 1, commencing July 1, 2009 rates are expected to be adjusted to reflect increases in the Consumer Price Index.

The table below sets forth the adopted single family residential flat rates approved through fiscal year 2008-09.

**CITY WATER UTILITY SYSTEM**  
**Monthly Single Family Residential Flat Water Rates<sup>(1)</sup>**

<i>Lot Size</i>	<i>Effective January 1, 2005</i>	<i>Effective July 1, 2005</i>	<i>Effective July 1, 2006</i>	<i>Effective July 1, 2007</i>	<i>Effective July 1, 2008</i>
0-5,000 sq. ft. lot	\$24.47	\$29.36	\$33.77	\$35.45	\$37.23
5,001-7,000 sq. ft. lot	27.81	33.37	38.38	40.30	42.31
7,001-11,000 sq. ft. lot	33.00	39.60	45.54	47.82	50.21
11,001-17,000 sq. ft. lot	35.03	42.04	48.34	50.76	53.30
Over 17,000 sq. ft. lot	41.19	49.42	56.84	59.68	62.66

<sup>(1)</sup> Single family residential properties with water meters that are read for billing purposes, are charged the metered water rate.  
Source: City of Modesto.

The following table sets forth adopted monthly service charge and volume charge for commercial accounts through fiscal year 2008-09.

**CITY WATER UTILITY SYSTEM  
Water Rates and Charges  
Commercial Accounts**

	<i>Effective January 1, 2005</i>	<i>Effective July 1, 2005</i>	<i>Effective July 1, 2006</i>	<i>Effective July 1, 2007</i>	<i>Effective July 1, 2008</i>
<b>Volume-based Rate (\$/hcf)</b>	\$ 0.84	\$ 1.01	\$ 1.16	\$ 1.22	\$ 1.28
<b>Fixed Monthly Meter Charge (in addition to volume-based charges)</b>					
5/8" – 3/4" meter	\$ 9.01	\$ 10.82	\$ 12.44	\$ 13.06	\$ 13.71
1" meter	12.78	15.34	17.64	18.52	19.45
1-1/2" meter	22.13	26.55	30.53	32.06	33.66
2" meter	33.38	40.06	46.06	48.37	50.79
3" meter	63.43	76.12	87.53	91.91	96.51
4" meter	97.19	116.63	134.13	140.83	147.88
6" meter	190.95	229.14	263.51	276.68	290.51
8" meter	303.49	364.19	418.82	439.76	461.75
10" meter	434.84	521.80	600.07	630.08	661.58
12" meter	809.95	971.95	1,117.74	1,173.62	1,232.31

Source: City of Modesto.

The following table sets forth connection fees for all users except multi-family units by meter size for fiscal year 2007-08.

**CITY WATER UTILITY SYSTEM  
Connection Fees for All Users  
Except Multi-Family Units  
(Fiscal Year 2007-08)**

<i>Meter Size</i>	<i>Connection Fees</i>
5/8"	\$2,162
1"	5,404
1-1/2"	10,808
2"	17,291
3"	34,582
4"	54,035
6"	108,069
8"	172,910
10"	248,558
12" or larger	464,694

Source: City of Modesto.

**Comparison of Rates and Charges.** The following table lists certain water suppliers in the Modesto region and their average monthly residential water service charges.

**WATER UTILITY SYSTEM  
Comparison of  
Average Monthly Water Rates  
Flat Rate (1" Service)  
As of July 1, 2007**

<i>City</i>	<i>Flat Rate Typical Home</i>
Modesto	\$47.82
Tracy	No Flat Rates
Stockton	No Flat Rates
Turlock	\$30 - \$40
Merced	30.43
Sacramento	25.97
Atwater	15.65
Ceres	15.30

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Source: City of Modesto.

The City's water rates reflect the steps the City has taken to assure a long-term water supply by entering into the regional water management partnership with MID. The rates of the other nearby cities reflect the particular circumstances of each city's water system, such as the degree to which it relies on ground water or surface water. The rates also reflect their specific circumstances with regard to the cost of current and prospective water supplies.

**Rate Setting Process.** In connection with its consideration of the new water rate structure which took effect on January 1, 2005, the City Council followed a process which it believes satisfies the requirements of Article XIII D of the California Constitution. See "Impact of Proposition 218 on Water Utility System Fees and Charges" below. Specifically, by October 8, 2004, nearly 75,000 notices of the proposed increase in water rates had been mailed to the owners of record of the parcels within the City's water service area. The notices advised property owners of their right to file written protests to the proposed increase and of a public hearing, set for November 23, 2004, at which such protests would be considered. The number of protests received prior to the completion of the November 23, 2004 public hearing was 8,856, far less than the majority required in order to prevent the implementation of the proposed rate increase. Following the completion of the public hearing, the City Council proceeded to adopt the rate increase as described above. See "Water Charges and Billing" above.

**Rate Study.** Prior to adopting the new water rate structure which took effect on January 1, 2005, the City Council engaged an outside consultant to prepare a water rate study that was ultimately presented to the City Council. In early 2005, the City's staff noted differences between the amount of revenue actually realized from the initial water rate increases adopted by the City Council and the revenue projections contained in the rate study. In light of those differences, the Water Utility System budgets for fiscal years 2005-06 and 2006-07 use revenue estimates based on actual levels of income received from Water Utility System rates and charges and not on projections included in the rate study. Similarly, the projected operating results of the Water Utility System set

forth below under the caption “Summary of Projected Operating Results of the Water Utility System” are also based on the actual amount of income that is being received by the Water Utility System and not on the forecast thereof shown in the rate study.

The errors in the revenue forecast have been traced to one table in the rate study which contains a series of errors unrelated to the formulas underlying the current water rate structure, and the City believes that there is nothing at this time indicating that the rate structure itself is flawed. The City staff has established a revised revenue forecast for each fiscal year for use in establishing the annual budget. Billed revenues are tracking closely with this revised revenue forecast.

**Challenges to Rates.** The 2005-2006 Stanislaus County Civil Grand Jury received complaints from Del Rio, an outlying community that receives its water from the City’s Water Utility System Modesto. Del Rio is a wealthy area which includes homes on large lots that had previously received flat rate water. Part of the City’s new rate structure (see “— Water Charges and Billing – Water Service Rates” above) required metering rates for Del Rio, which had the effect of accentuating the accompanying rate hikes. However, the Civil Grand Jury found no evidence to support Del Rio’s contention that the City’s Proposition 218 notice informing the public of the new rate schedule was inadequate. Del Rio also charged that the City’s water rate policy violated a Proposition 218 requirement that a parcel be charged only its proportional costs. The Civil Grand Jury concluded there is no difference in the rate structure between Del Rio and the rest of the City’s water customers that are billed a metered rate; and the Civil Grand Jury made no recommendation regarding the proportionality issues. Del Rio further charged that there was a misuse of funds by using water collections for purposes other than water. While it did make study recommendations, the Civil Grand Jury ultimately determined that the City is accounting for water costs and revenues separately from non-water related accounts. Del Rio’s last charge was that unfairness in the rate process led to Del Rio paying more than other water customers. The Civil Grand Jury could not substantiate this charge, but rather made study recommendations regarding actual customer costs between metered and flat rates, and a further recommendation that conversion from flat to metered rates occur as quickly as possible. The City is continuing its city-wide meter installation program that was begun several years ago with the intent of having every service location on a metered billing by the year 2019.

### **Delinquencies**

The City’s municipal water department has historically accounted for water system revenues on a full accrual basis. The City has developed procedures for handling delinquent accounts, There has not generally been a significant delinquency problem. The threatened suspension of water delivery is normally sufficient incentive to induce customers to make payment on their billings. In addition, the City customers may have tax liens placed on their property when water bills are delinquent. Uncollectible accounts have historically been less than 1% of revenues and remain at that level. The City staff is monitoring delinquencies closely during this period of high foreclosures. Liens are being filed against many delinquent properties to provide greater leverage in the recovery and collection process.

## Historical Operating Results

The following table summarizes operating revenues, operating expenses and net income of the Water Utility System for the five fiscal years 2002-03 through 2006-07, The information for each of the fiscal years shown was prepared by the City on the basis of its audited financial statements.

### WATER UTILITY SYSTEM Historical Debt Service Coverage

	<i>Fiscal Year 2003</i>	<i>Fiscal Year 2004</i>	<i>Fiscal Year 2005</i>	<i>Fiscal Year 2006</i>	<i>Fiscal Year 2007<sup>(1)</sup></i>
<b>GROSS OPERATING REVENUES</b>					
Charges for services	\$27,986,082	\$ 31,353,046	\$31,315,920	\$42,670,821	\$49,289,417
DBCP Settlement	214,803	210,834	2,960,781	1,259,010	0
Connection charges	1,169,995	1,159,296	1,371,958	1,728,973	2,023,224
Interest and Rental Income	964,817	316,688	279,616	532,794	2,279,905
Draw from (Deposit to) Rate Stab. Fund	<u>153,200</u>	<u>0</u>	<u>0</u>	<u>(153,200)</u>	<u>15,616</u>
<b>GROSS OPERATING REVENUES</b>	<b>\$30,488,897</b>	<b>\$33,039,864</b>	<b>\$35,928,275</b>	<b>\$46,038,398</b>	<b>\$53,608,162</b>
<b>OPERATING EXPENSES:</b>					
Total operating expenses <sup>(2)</sup>	\$27,815,253	\$26,757,108	\$29,227,465	\$25,884,448	\$32,466,468
Less: Depreciation	(1,884,768)	(2,173,845)	(2,305,953)	N/A	(2,396,440)
T&DA debt service component paid to MID <sup>(3)</sup>	(6,713,244)	(6,700,881)	(6,705,344)	(6,690,994)	(6,687,444)
Property taxes	77,676	89,921	82,673	84,556	85,487
Plus: Operating Transfers	<u>0</u>	<u>0</u>	<u>218,902</u>	<u>95,385</u>	<u>65,000</u>
<b>TOTAL OPERATING EXPENSES</b>	<b>\$19,294,917</b>	<b>\$17,972,303</b>	<b>\$20,517,743</b>	<b>\$19,373,395</b>	<b>\$23,533,071</b>
<b>NET OPERATING REVENUES</b>	<b>\$11,193,980</b>	<b>\$15,067,561</b>	<b>\$15,410,532</b>	<b>\$26,665,003</b>	<b>\$30,075,091</b>
<b>TOTAL DEBT SERVICE:</b>					
Revenue obligations:					
1997 Certificates of Participation	\$ 1,774,093	\$ 1,780,288	\$ 1,784,908	\$ 1,790,658	\$ 1,794,120
2006 Certificates of Participation	0	0	0	0	1,082,432
Treatment & Delivery Agreement	6,713,244	6,700,881	6,705,344	6,690,994	6,687,444
CDWR Loan	<u>264,656</u>	<u>264,656</u>	<u>264,654</u>	<u>264,454</u>	<u>264,719</u>
<b>TOTAL DEBT SERVICE</b>	<b>\$ 8,751,993</b>	<b>\$ 8,745,825</b>	<b>\$ 8,754,906</b>	<b>\$ 8,746,106</b>	<b>\$ 9,828,715</b>
<b>DEBT SERVICE COVERAGE</b> (Net Operating Revenues/Total Debt Service)	1.27	1.72	1.76	3.05	3.06

<sup>(1)</sup> Reflects estimated, unaudited amounts.

<sup>(2)</sup> Includes Treatment and Delivery Agreement debt service component paid to MID.

<sup>(3)</sup> Based on debt service paid pursuant to the Treatment and Delivery Agreement.

Source: City of Modesto.

## Capital Improvement Program

The capital improvement program of the City for the Water Utility System for fiscal years 2007-08 through 2014-15 includes budgeted or planned programs and projects expected to be funded by the City from annual revenues and additional parity obligations. Currently underway is a project to construct 2.5 miles of 24 inch transmission mains and installation of 15 pressure reducing valves at the interfaces with the MID transmission main. Other improvements planned include: construction of a 4 million gallon (MG) storage tank; booster pumps and associated transmission mains in the area west of the City; a 6 MG Storage tank in the north area and a 4 MG tank in the industrial area to the south along with associated booster pumps and transmission mains for those tanks; additional pressure reducing valves and additional transmission mains. These projects are expected to be under

construction during fiscal years 2009-10 and 2010-11. Total capital expenditures for fiscal year 2007-2008 are estimated to be approximately \$26 million.

The City's capital improvement program is a 10-year plan revised annually. Consequently, projects planned for future years may be cancelled, and new projects not presently anticipated may be undertaken. To the extent that total funds required exceed cash available, the City expects that the projects will either be funded by bond proceeds or deferred or terminated.

**Summary of Projected Operating Results of the Water Utility System**

The City has prepared the following table of projections of operating results of the Water Utility System for the fiscal years ending June 30, 2008 through 2011. The projected amounts set forth below are based on certain assumptions made by the City. To the extent that actual future conditions vary from those assumed in preparing the projections, the actual results will vary from those set forth herein.

**WATER UTILITY SYSTEM  
Projected Operating Results**

	<i>Fiscal Year 2008</i>	<i>Fiscal Year 2009</i>	<i>Fiscal Year 2010</i>	<i>Fiscal Year 2011</i>	<i>Fiscal Year 2012</i>
<b>GROSS OPERATING REVENUES</b>					
Charges for services <sup>(1)</sup>	\$51,378,353	\$53,926,734	\$55,005,269	\$56,105,374	\$57,227,482
DBCP Settlement	-	-	-	-	-
Connection charges	1,747,487	1,497,500	1,747,500	1,747,500	1,747,500
Interest and Rental Income	2,270,948	523,780	539,500	539,500	539,500
Transfers In	-	-	-	-	-
Miscellaneous Revenue	381,275	390,462	315,000	315,000	315,000
Draw from (Deposit to) Rate Stab. Fund	-	-	-	-	-
<b>GROSS OPERATING REVENUES</b>	<u>\$55,778,063</u>	<u>\$56,338,476</u>	<u>\$57,607,269</u>	<u>\$58,707,374</u>	<u>\$59,829,482</u>
<b>OPERATING EXPENSES:</b>					
Total operating expenses <sup>(2)</sup>	\$32,725,156	\$32,915,103	\$35,323,695	\$41,999,985	\$43,291,609
Less: Depreciation	-	-	-	-	-
T&DA debt service component paid to MID	(6,696,543)	(6,693,931)	(6,703,419)	(10,748,405)	(10,794,040)
Less: Litigation Costs	(600,000)	(600,000)	-	-	-
Property taxes	91,084	96,460	-	-	-
Plus: Operating Transfers	<u>99,634</u>	<u>65,000</u>	<u>65,000</u>	<u>65,000</u>	<u>65,000</u>
<b>TOTAL OPERATING EXPENSES</b>	<u>\$25,619,331</u>	<u>\$25,782,632</u>	<u>\$28,685,277</u>	<u>\$31,316,580</u>	<u>\$32,562,569</u>
<b>NET OPERATING REVENUES</b>	<u>\$30,158,732</u>	<u>\$30,555,844</u>	<u>\$28,921,992</u>	<u>\$27,390,794</u>	<u>\$27,266,913</u>
<b>TOTAL DEBT SERVICE:</b>					
Revenue obligations:					
1997 Certificates of Participation	\$ 1,791,930	\$ 1,792,258	\$ 1,794,688	\$ 1,794,013	\$ 1,795,513
Treatment & Delivery Agreement	6,696,543	6,693,931	6,703,419	10,748,405	10,794,040
CDWR Loan	265,000	265,000	265,000	265,000	265,000
2006 Certificates	1,393,332	-	-	-	-
2008 Certificates <sup>(3)</sup>	<u>106,472</u>	<u>1,871,308</u>	<u>2,138,952</u>	<u>2,132,942</u>	<u>2,112,136</u>
<b>TOTAL DEBT SERVICE</b>	<u>\$10,253,277</u>	<u>\$10,622,497</u>	<u>\$10,902,058</u>	<u>\$14,940,359</u>	<u>\$14,966,689</u>
<b>DEBT SERVICE COVERAGE</b>					
With Connection Fees	2.94	2.88	2.65	1.83	1.82
Without Connection Fees	2.77	2.74	2.49	1.72	1.71

<sup>(1)</sup> Estimated based on approved increase in rates of 5% on July 1, 2008 and of 2%, based on the CPI factor, on each subsequent July 1.

<sup>(2)</sup> Includes estimated Treatment and Delivery Agreement debt service component payable to MID.

<sup>(3)</sup> Assumes an interest rate equal to the fixed rate of interest used in calculating the scheduled payments to be made by the City pursuant to the 2008 Swap Agreement. Includes certain estimated ongoing expenses.

Source: City of Modesto.

**Impact of Proposition 218 on Water Utility System Fees and Charges**

**General.** An initiative measure entitled the “Right to Vote on Taxes Act” (the “Initiative”) was approved by the voters of the State of California at the November 5, 1996 general election. The Initiative added Article XIIC and Article XIID to the California Constitution. According to the “Title and Summary” of the Initiative prepared by the California Attorney General, the Initiative limits “the authority of local governments to impose taxes and property-related assessments, fees and charges.”

**Article XIID.** Article XIID defines the terms “fee” and “charge” to mean “any levy other than an ad valorem tax, a special tax or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property-related

service.” A “property-related service” is defined as “a public service having a direct relationship to property ownership.” Article XIID further provides that reliance by an agency on any parcel map (including an assessor’s parcel map) may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership.

Article XIID requires that any agency imposing or increasing any property-related fee or charge must provide written notice thereof to the record owner of each identified parcel upon which such fee or charge is to be imposed and must conduct a public hearing with respect thereto. The proposed fee or charge may not be imposed or increased if a majority of owners of the identified parcels file written protests against it. As a result, if and to the extent that a fee or charge imposed by a local government for water service is ultimately determined to be a “fee” or “charge” as defined in Article XIID, the local government’s ability to increase such fee or charge may be limited by a majority protest.

In *Richmond et al. v. Shasta Community Services District*, 32 Cal. 4th 409 (2004) the California Supreme Court ruled that water connection fees are not property related fees or charges subject to Article XIID while at the same time stating in *dicta* that fees for ongoing water service through an existing connection were property related fees and charges. On July 24, 2008, in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal. 4th 205 (2008), in what is technically *dicta*, the California Supreme Court cited its decision in *Richmond, supra* in support of its conclusion that a public water agency’s charges for ongoing water delivery are fees and charges within the meaning of Article XIID. Despite the fact that the statement is *dicta*, it does represent the unanimous view of the California Supreme Court. The City believes that it has complied with the requirements of Article XIID, as said article has been construed by the California Supreme Court, in establishing its current rate structure for the Water Service.

In addition, Article XIID includes a number of limitations applicable to pre-existing fees and charges including provisions to the effect that (i) revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service, (ii) such revenues shall not be used for any purpose other than that for which the fee or charge was imposed, (iii) the amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel and (iv) no such fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Property-related fees or charges based on potential or future use of a service are not permitted. It is unclear whether, under the foregoing standards, fees and charges may be established at levels that permit deposits to a rate stabilization fund or maintenance of uncommitted cash reserves.

**Article XIIC.** Article XIIC provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIIC does not define the terms “local tax,” “assessment,” “fee” or “charge.” However, in *dicta* in its decision in *Bighorn-Desert View Water Agency, supra*, the California Supreme Court concluded that a public water agency’s charges for ongoing water delivery (which, as noted above, it had concluded were fees and charges within the meaning of Article XIID) are also fees within the meaning of Article XIIC and are therefore subject to initiative measures. However, the Court did note that, in doing so:

... [W]e are not holding that the authorized initiative power is free of all limitations. In particular, we are not determining whether the electorate's initiative power is subject to the statutory provision [applicable to Bighorn-Desert View Water Agency] requiring that water service charges be set at a level that "will pay the operating expenses of the agency, ... provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due." ... That issue is not currently before us.

Again, while the court's conclusion set forth above is *dicta*, it does represent the unanimous view of the justices.

While the City does not believe that Article XIIC grants to the voters within the City the power to repeal or reduce rates and charges for the Water Service in a manner which would impair its ability to meet its contractual obligations, there can be no assurance as to the availability of particular remedies adequate to protect the Beneficial Owners of the 2008 Certificates. Remedies available to Beneficial Owners of the 2008 Certificates in the event of a default by the City are dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time-consuming to obtain.

#### **Effect of Proposition 218 and of Possible General Limitations on Enforcement Remedies**

The ability of the City to comply with its covenants under the Contract and to generate Gross Revenues sufficient to pay the 1997 Payments, the 2008 Payments and any other Parity Obligations may be adversely affected by actions and events outside of the control of the City and by actions taken (or not taken) under Article XIIC or Article XIID by voters, property owners, taxpayers or payers of assessments, fees and charges. Furthermore, any remedies available to the Owners and Beneficial Owners of the 2008 Certificates upon the occurrence of an Event of Default under the 2008 Trust Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain. In addition to the possible limitations on the ability of the City to comply with its covenants under the Contract, the rights and obligations of the City and the Authority under the 2008 Trust Agreement and the Contract may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against cities in the State of California,

Based on the foregoing, in the event the City fails to comply with its covenants under the Contract, including its covenants to generate sufficient Gross Revenues to pay the 1997 Payments, the 2008 Payments and any other Parity Obligations, there can be no assurance that available remedies will be adequate to fully protect the interests of the Owners or Beneficial Owners of the 2008 Certificates.

#### **Investment Policy**

The cash attributable to the Water Utility System must be invested in accordance with the City's Investment Policy, adopted by the City Council during 1984 and most recently revised during

2008. In accordance with Sections 53601 and following of the California Government Code, idle cash management and investment transactions are the responsibility of the City Finance Director/Treasurer and permitted investments include the following:

- Securities of the U.S. Government, or its agencies,
- Certificates of deposit (or time deposits) and negotiable certificates of deposit placed with commercial banks,
- Banker's acceptances,
- Commercial paper of "prime" quality,
- Local Agency Investment Fund (State Pool) and California Asset Management Program Demand Deposits, and
- Repurchase agreements.

Criteria for selecting investments and the order of priority are:

- Safety of Principal- Preservation of principal and interest,
- Liquidity - Ability to readily convert investment to cash at any moment in time, and
- Yield - Potential dollar earnings on an investment.

The City's cash management system is designed to accurately monitor and forecast expenditures and revenues, thus enabling the City to invest funds to the fullest extent possible. The City attempts to obtain the highest yield when selecting an investment, provided the criteria for safety and liquidity are met.

### **Financial Statements**

The City's annual financial report is audited in accordance with generally accepted auditing standards, and contains opinions that the financial statements present fairly, in all material respects, the financial position of the City. The reports include certain notes to the financial statements. Such notes constitute an integral part of the audited financial statements. The annual financial reports of the City have received the Government Finance Officers Association Certificate of Achievement for each of the past 22 years.

The basic financial statements of the City as of June 30, 2007, which are incorporated by reference in and portions of which are included in Appendix A to this Official Statement, have been audited by Maze & Associates (the "Auditor"), independent certified public accountants, as set forth in their report. In connection with the incorporation of the financial statements and the report of the Auditor thereon in Appendix A to this Official Statement, the City did not request the Auditor to, and the Auditor has not undertaken to, update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement; and no opinion is expressed by the Auditor with respect to any event subsequent to the date of its report. The Auditor has not been engaged to perform, and has not performed, since the date of its report included herein any procedures on the financial statements addressed in that report.

### **RISK FACTORS**

Some of the factors which could impair the ability of the City to pay the 2008 Payments as they become due under the 2008 Contract are summarized below. This discussion is not meant to be an exhaustive list of the risks associated with the purchase of the 2008 Certificates and does not

necessarily reflect the relative importance of the various factors discussed. Potential investors are advised to consider the following factors, along with all other information in this Official Statement, in evaluating the 2008 Certificates. There can be no assurance that other risk factors will not become material in the future.

### **General**

The payment of principal and interest on the 2008 Certificates is secured solely by a pledge of the Gross Revenues of the Water Utility System and money on deposit in certain funds under the 2008 Trust Agreement. Under the terms of the Master Contract, Gross Revenues are to be deposited in the Revenue Fund and used by the City, ratably, without preference or priority, to (i) pay charges for Maintenance and Operation Costs of the Water Utility System (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not immediately required) as such charges are due and payable and (ii) deposit in the Parity Obligation Payment Fund the amount described in the Master Contract (in general terms, debt service which has accrued or will accrue during the next succeeding month on all Parity Obligations and net payments due or which will be due on all Parity Payment Agreements). See "SECURITY FOR THE 2008 CERTIFICATES — Flow of Funds." The realization of revenues sufficient in amount to meet both of said obligations is subject to, among other things, the capabilities of management of the City, the ability of the City to provide water service to its users, and the ability of the City to establish and maintain water fees and charges sufficient to provide the required debt service coverage as well as pay for Maintenance and Operation Costs.

If Gross Revenues are insufficient to meet both of the requirements described above, the amounts available to pay Maintenance and Operation Costs will be reduced ratably along with the money to be deposited in the Parity Obligation Payment Fund. This could result in an inability on the part of the City to pay Maintenance and Operation Costs as the same become due which, in turn, could adversely affect the ability of the City to operate the Water Utility System thereby further reducing Gross Revenues.

Among other matters, drought, general and local economic conditions and changes in law and government regulations (including initiatives and moratoriums on growth) could adversely affect the amount of Gross Revenues realized by the City.

### **Earthquakes, Floods and Other Natural Disasters**

Earthquakes, floods or other natural disasters could interrupt operation of the Water Utility System and cause increased costs thereby impairing the ability of the City to realize Gross Revenues. The Master Contract requires the City to "procure and maintain such insurance relating to the Water Utility System which it shall deem advisable or necessary to protect its interests and the interests of the Authority, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with water systems similar to the Water Utility System." Such insurance is permitted to be maintained under a program of self-insurance so long as such program is maintained in the amounts and manner as is, in the opinion of an accredited actuary, actuarially sound. While City currently maintains insurance against damages to its Water Utility System in amounts up to \$10,000,000, damages resulting from earthquakes are not covered. MID does not currently maintain insurance for damages to the Water Treatment Plant resulting from either floods or earthquakes.

Natural disasters could also adversely affect the service area of the Water Utility System, leading to reduced demand for water service and could also result in a loss or contamination of groundwater supplies and/or surface water supplies otherwise available to the City.

### **Demand for Water**

There can be no assurance that the demand for water service will occur as described in this Official Statement. Not only is it possible that future increases in demand for water service will not occur at the rate described herein, it is also possible that current levels of demand could be reduced. A reduction in the level of demand could require an increase in rates or charges in order to comply with the Rate Covenant. See “SECURITY FOR THE 2008 CERTIFICATES — Rate Covenant.”

### **Water Supply**

There can be no assurance that the supply of water available to the City to meet potential system-wide demand will be consistent with the assumptions described in this Official Statement. Adequacy of supply could be adversely affected by factors such as prolonged drought or increases in water quality standards which restrict the ability of the City to use existing groundwater supplies to meet demand. See “THE WATER UTILITY SYSTEM — Water Quality.” While the expansion of the Water Treatment Plant and the construction of the 2006 Project and subsequent improvements to the Water Utility System are intended to reduce the City’s dependence upon groundwater supplies, there is no assurance that any of such improvements will be completed or that they will be completed within a time frame and at a cost consistent with the various projections set forth in this Official Statement.

In addition to the potential problems of insufficient water to meet system-wide demand discussed above, it is possible that the supply of water to meet the demands of particular portions of the City’s water service area will be inadequate for such purposes. Some portions of the service area lack the wells necessary to supply them with groundwater, and other portions lack the infrastructure which would be required in order to deliver water from other portions of the service area.

### **Water Utility System Expenses**

There can be no assurance that the Maintenance and Operation Costs will be consistent with the descriptions in this Official Statement. Increases in such costs could require a significant increase in rates or charges in order to pay for existing and future improvements to the Water Utility System and comply with the Rate Covenant.

### **Rate Process**

The passage of Proposition 218 by the California electorate affects the City’s ability to impose future rate increases, and no assurance can be given that future rate increases will not encounter majority protest opposition under Proposition 218. See “THE WATER UTILITY SYSTEM — Impact of Proposition 218 on Water Utility System Fees and Charges” and “— Effect of Proposition 218 and of Possible General Limitations on Enforcement Remedies.”

### **Statutory and Regulatory Impact**

Laws and regulations governing the treatment and delivery of water are enacted and promulgated by governmental agencies on the federal, state and local levels. Compliance with these

laws and regulations may prove costly; and, as more stringent statutory and regulatory standards are developed to protect both the health of consumers and environment, these costs will likely continue to increase. Claims against the City with respect to the Water Utility System could be significant, and such claims will be payable from Gross Revenues. No assurance can be given that the cost of compliance with applicable laws and regulations will not materially adversely affect the ability of the City to comply with the Rate Covenant.

### **Limitations on Remedies and Bankruptcy**

The ability of the City to increase fees and charges for water service and to comply with the Rate Covenant may be adversely affected by actions and events outside of the control of the City and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of fees and charges. See “THE WATER UTILITY SYSTEM — Impact of Proposition 218 on Water Utility System Fees and Charges” and “— Effect of Proposition 218 and of Possible General Limitations on Enforcement Remedies.” Furthermore, any remedies available to the Owners of the 2008 Certificates upon the occurrence of an event of default under the Contract are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on remedies contained in the Contract, the rights and obligations under the 2008 Certificates and the Contract may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against cities in the State of California. Various legal opinions to be delivered concurrently with the issuance of the 2008 Certificates will be so qualified. In addition, the opinion to be delivered by Sidley Austin LLP, Special Counsel, concurrently with the execution and delivery of the 2008 Certificates, will also state that the enforceability of the Contract is subject to the limitations on the imposition of fees and charges by the City relating to the Water Utility System under Articles XIII C and XIII D of the California Constitution. A copy of the proposed form of opinion of Special Counsel is set forth in Appendix C hereto. In the event the City fails to comply with its covenants under the Contract or to pay principal or interest evidenced by the 2008 Certificates, there can be no assurance that available remedies will be adequate to fully protect the interests of the Owners of the 2008 Certificates.

The enforcement of the remedies provided in the Contract could prove both expensive and time consuming. In addition, the rights and remedies provided in the Contract may be limited by and are subject to provisions of the federal bankruptcy laws, as now or hereafter enacted, and to other laws or equitable principles that may affect creditors’ rights.

### **Limited Obligations**

The 2008 Certificates are limited obligations of the City are not secured by a legal or equitable pledge or charge or lien upon any property of the City or any of its income or receipts, except the Gross Revenues of the Water Utility System. The obligation of the City to make the 2008 Payments does not constitute an obligation of the City to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

## **THE AUTHORITY**

The Authority was established pursuant to the provisions of Sections 6500 *et seq.* of the California Government Code and a Joint Exercise of Powers Agreement, dated as of December 1, 1989, by and between the City and the Industrial Development Authority of the City of Modesto. The Authority was established for the purpose of financing the acquisition, construction, improvement and equipping of public capital improvements. The governing board of the Authority consists of the City Council of the City.

## **APPROVAL OF LEGAL PROCEEDINGS**

The legality and enforceability of the 2008 Contract and certain other legal matters are subject to the approval of Sidley Austin LLP, San Francisco, California, acting as Special Counsel. The proposed form of said firm's legal opinion with respect to the 2008 Contract and the 2008 Certificates is attached hereto as APPENDIX C, and such legal opinion will be attached to each 2008 Certificate. Special Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Certain legal matters will be passed upon for the City and the Authority by the City Attorney and by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, Disclosure Counsel; for the Trustee by the Jensen Law Office, Orinda, California; for the 2008 Certificate Insurer by its General Counsel, for the Liquidity Facility Provider by Kathleen C. Johnson, Esq., Santa Barbara, California. Both Sidley Austin LLP and Stradling Yocca Carlson & Rauth, a Professional Corporation have represented the Underwriter in transactions not involving the City or the Authority. The payment of the fees of Special Counsel, Disclosure Counsel, Counsel to the Underwriter and the Trustee is contingent upon the execution and delivery of the 2008 Certificates.

## **LITIGATION**

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending or, to the knowledge of the City or the Authority, threatened against the City or the Authority affecting the existence of the City or the Authority or the titles of their respective directors or officers to their respective offices or seeking to restrain or to enjoin the sale or delivery of the 2008 Certificates, the application of the proceeds thereof in accordance with the 2008 Trust Agreement, or in any way contesting or affecting the validity or enforceability of the 2008 Certificates, the 2008 Trust Agreement, the Contract, or any action of the City or the Authority contemplated by any of said documents, or in any way contesting the completeness or accuracy of this Official Statement or any amendment or supplement thereto, or contesting the powers of the City or the Authority or their respective authority with respect to the 2008 Certificates or any action of the City or the Authority contemplated by any of said documents, nor to the knowledge of the City, is there any basis therefor.

## **TAX MATTERS**

In the opinion of Sidley Austin LLP, San Francisco, California, Special Counsel, based on existing statutes, regulations, rulings and judicial decisions and assuming compliance with certain covenants in the Trust Agreement and the 2008 Contract and requirements of the Internal Revenue Code of 1986, as amended (the "Code"), regarding the use, expenditure and investment of proceeds of the 2008 Certificates and the timely payment of certain investment earnings to the United States, interest with respect to the 2008 Certificates is not includable in the gross income of the owners of

the 2008 Certificates for federal income tax purposes. Failure to comply with such covenants and requirements may cause interest with respect to the 2008 Certificates to be included in gross income retroactively to the date of execution and delivery of the 2008 Certificates.

In the further opinion of Special Counsel, interest with respect to the 2008 Certificates is not treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals and corporations. Interest with respect to the 2008 Certificates, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation's alternative minimum tax liability.

Ownership of, or the receipt of interest with respect to, tax-exempt obligations may result in collateral tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, certain foreign corporations doing business in the United States, certain S corporations with excess passive income, individual recipients of Social Security or Railroad Retirement benefits, taxpayers that may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations and taxpayers who may be eligible for the earned income tax credit. Special Counsel expresses no opinion with respect to any collateral tax consequences and, accordingly, prospective purchasers of the 2008 Certificates should consult their tax advisors as to the applicability of any collateral tax consequences.

Certain requirements and procedures contained or referred to in the Trust Agreement and the 2008 Contract may be changed, and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of counsel nationally recognized in the area of tax-exempt obligations. Special Counsel expresses no opinion as to the effect of any change to any document pertaining to the 2008 Certificates or of any action taken or not taken where such change is made or action is taken or not taken without our approval or in reliance upon the advice of counsel other than Sidley Austin LLP with respect to the exclusion from gross income of the interest represented by the 2008 Certificates for federal income tax purposes.

### **Information Reporting and Backup Withholding**

Interest paid on tax-exempt obligations is subject to information reporting in a manner similar to interest paid on taxable obligations. While this reporting requirement does not, by itself, affect the excludability of interest from gross income for federal income tax purposes, the reporting requirement causes the payment of interest with respect to the 2008 Certificates to be subject to backup withholding if such interest is paid to beneficial owners that (a) are not "exempt recipients," and (b) either fail to provide certain identifying information (such as the beneficial owner's taxpayer identification number) in the required manner or have been identified by the IRS as having failed to report all interest and dividends required to be shown on their income tax returns. Generally, individuals are not exempt recipients, whereas corporations and certain other entities are exempt recipients. Amounts withheld under the backup withholding rules from a payment to a beneficial owner are allowed as a refund or credit against such beneficial owner's federal income tax liability so long as the required information is furnished to the IRS.

### **State Tax Exemption**

In the further opinion of Special Counsel, interest with respect to the 2008 Certificates is exempt from personal income taxes imposed by the State of California.

## **Future Developments**

Future legislative proposals, if enacted into law, regulations, rulings or court decisions may cause interest with respect to the 2008 Certificates to be subject, directly or indirectly, to federal income taxation or to State or local income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. Further, legislation or regulatory actions and proposals may affect the economic value of the federal or state tax exemption or the market value of the 2008 Certificates.

Prospective purchasers of the 2008 Certificates should consult their tax advisors regarding pending or proposed federal or state tax legislation, regulations, rulings or litigation, as to which Special Counsel expresses no opinion.

A copy of the proposed form of opinion of Special Counsel is attached hereto as Appendix C.

## **RATINGS**

Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Ratings Services ("S&P") will assign their ratings of "Aaa/VMIG-1" and "AAA/A-1+", respectively, to the 2008 Certificates upon the satisfaction of the following conditions: upon delivery of the 2008 Certificates, (a) the 2008 Certificate Insurance Policy will be issued by the 2008 Certificate Insurer and (b) the Liquidity Facility will be executed and delivered by the Liquidity Facility Provider. In addition, Moody's has assigned an underlying rating of "A2" to the 2008 Certificates, and S&P has assigned them an underlying rating of "A+." Generally, rating agencies base their ratings on information and material furnished directly to them and on investigations, studies and assumptions made by them. The ratings reflect only the views of such organizations and an explanation of the significance of such ratings may be obtained from Moody's Investors Service, 99 Church Street, New York, New York 10017 and Standard & Poor's Ratings Services, 55 Water Street, New York, New York 10041. There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies, if, in the judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the 2008 Certificates.

## **FINANCIAL ADVISOR**

The City has retained Public Financial Management, Inc., of San Francisco, California, as Financial Advisor (the "Financial Advisor") in connection with the execution and delivery of the 2008 Certificates. The Financial Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. Public Financial Management, Inc. is an independent financial advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities.

## **CERTAIN RELATIONSHIPS**

Banc of America Securities LLC, the Underwriter and Remarketing Agent, and Bank of America, N.A., the Swap Provider and the Liquidity Facility Provider, are affiliates, both being subsidiaries of Bank of America Corporation.

**UNDERWRITING**

The 2008 Certificates will be purchased by Banc of America Securities LLC (the “Underwriter”), under a Purchase Contract pursuant to which the Underwriter has agreed to purchase all, but not less than all, of the 2008 Certificates for an aggregate purchase price of \$ \_\_\_\_\_ (representing the principal evidenced thereby less Underwriter’s discount of \$ \_\_\_\_\_).

**MISCELLANEOUS**

Insofar as any statements made in this Official Statement involve matters of opinion or of estimates, whether or not expressly stated, they are set forth as such and not as representations of fact. No representation is made that any of such statements made will be realized. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the Owners of the 2008 Certificates.

The execution and delivery of this Official Statement have been duly authorized by the City and the Authority.

**CITY OF MODESTO, CALIFORNIA**

By: \_\_\_\_\_  
Finance Director/Treasurer

**MODESTO PUBLIC FINANCING AUTHORITY**

By: \_\_\_\_\_  
Auditor and Treasurer

## **APPENDIX A**

### **EXCERPTS FROM THE CITY'S FINANCIAL STATEMENTS**

The City has filed its Comprehensive Annual Financial Report ("CAFR") for Fiscal Year 2006-07 with the Nationally Recognized Municipal Securities Information Repositories. Such CAFR is incorporated herein by reference. The following are excerpts from the CAFR relating to the Water Utility System.

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**CITY OF MODESTO**  
**STATEMENT OF NET ASSETS - PROPRIETARY FUNDS**  
**June 30, 2007**

	<i>Enterprise</i>				<i>Total Enterprise</i>	<i>Internal Service</i>
	<i>Water</i>	<i>Sewer</i>	<i>Bus</i>	<i>Other Enterprise</i>		
<b>ASSETS</b>						
Current assets:						
Cash and cash equivalents	\$ 39,127,144	\$ 22,773,037	\$ 4,152,663	\$ 5,032,664	\$ 71,085,508	\$ 53,382,339
Cash and cash equivalents with fiscal agent	2,445,103	4,049,547		610,647	7,105,297	
Receivables:						
Accounts		44,534	34,844	239,580	318,958	857,956
Interest	337,254	166,699	17,008	16,360	537,321	144,238
Utilities, net	6,441,602	2,641,080		557,922	9,640,604	
Taxes	5,109			796	5,905	
Due from governments			1,803,311	784,877	2,588,188	
Prepaid expenses	706,673				706,673	
Inventories						763,492
Property held for resale				630,000	630,000	
Advances to other funds						<u>1,782,462</u>
Total current assets	<u>49,062,885</u>	<u>29,674,897</u>	<u>6,007,826</u>	<u>7,872,846</u>	<u>92,618,454</u>	<u>56,930,487</u>
Noncurrent assets:						
Restricted assets-cash and cash equivalents	42,767,102	16,432,541			59,199,643	
Unamortized costs of issuance	892,938	892,896			1,785,834	
Land and construction in progress	15,958,371	34,942,347	5,416,369	13,989,727	70,306,814	821,033
Other capital assets, net of accumulated depreciation	<u>63,948,764</u>	<u>103,300,068</u>	<u>13,726,444</u>	<u>43,184,021</u>	<u>224,159,297</u>	<u>19,509,723</u>
Total noncurrent assets	<u>123,567,175</u>	<u>155,567,852</u>	<u>19,142,813</u>	<u>57,173,748</u>	<u>355,451,588</u>	<u>20,330,756</u>
Total assets	<u>172,630,060</u>	<u>185,242,749</u>	<u>25,150,639</u>	<u>65,046,594</u>	<u>448,070,042</u>	<u>77,261,243</u>
<b>LIABILITIES</b>						
Current liabilities:						
Accounts payable	\$ 523,698	\$ 2,715,641	\$ 753,143	\$ 995,442	\$ 4,987,924	\$ 1,401,535
Accrued salaries and benefits	73,227	99,100	18,910	47,027	238,264	87,910
Interest payable	264,620	410,407		51,807	726,834	1,038
Current portion - compensated absences						3,259,769
Current portion - claims liability						4,583,644
Current portion - long-term debt	1,018,977	1,710,000		289,148	3,018,125	102,188
Current portion - developer advances	92,822				92,822	
Deferred revenues			<u>2,897,511</u>	<u>221,058</u>	<u>3,118,569</u>	
Total current liabilities	<u>1,973,344</u>	<u>4,935,148</u>	<u>3,669,564</u>	<u>1,604,482</u>	<u>12,182,538</u>	<u>9,436,084</u>
Noncurrent liabilities:						
Payable from restricted assets refundable deposits	656,522	424,851			1,081,373	
Compensated absences						64,628,743
Claims liability						12,042,593
Long-term debt:						
Revenue bonds payable		49,848,192			49,848,192	
Loan payable	1,754,299				1,754,299	
Notes payable						116,220
Obligations under capital leases				77,485	77,485	137,392
Certificates of participation	63,541,989			5,435,000	68,976,989	
Developer advances	1,990,367				1,990,367	
Advances from other funds				<u>878,704</u>	<u>878,704</u>	
Total noncurrent liabilities	<u>67,943,177</u>	<u>50,273,043</u>	<u>3,669,564</u>	<u>6,391,189</u>	<u>124,607,409</u>	<u>76,924,948</u>
Total liabilities	<u>69,916,521</u>	<u>55,208,191</u>	<u>3,669,564</u>	<u>7,995,671</u>	<u>136,789,947</u>	<u>86,361,032</u>
<b>NET ASSETS</b>						
Invested in capital assets, net of related debt	55,702,450	102,691,913	19,142,813	51,372,115	170,791,021	20,091,176
Unrestricted	47,011,089	27,342,645	2,338,262	5,678,808	140,489,074	(29,190,965)
Total net assets	<u>\$ 102,713,539</u>	<u>\$ 130,034,558</u>	<u>\$ 21,481,075</u>	<u>\$ 57,050,923</u>	<u>311,280,095</u>	<u>\$ (9,099,789)</u>
Adjustment to reflect the consolidation of internal service fund activities related to enterprise funds.					<u>(875,700)</u>	
Net assets of business-type activities					<u>\$ 310,404,395</u>	

The notes to basic financial statements are an integral part of this statement.

**CITY OF MODESTO**  
**STATEMENT OF REVENUES, EXPENSES AND CHANGES**  
**IN FUND NET ASSETS - PROPRIETARY FUNDS**  
**Year Ended June 30, 2007**

	<i>Enterprise</i>				<i>Total Enterprise</i>	<i>Internal Service</i>
	<i>Water</i>	<i>Sewer</i>	<i>Bus</i>	<i>Other Enterprise</i>		
<b>OPERATING REVENUES:</b>						
Charges for services	\$ 49,289,417	\$ 24,776,869	\$ 2,390,892	\$ 11,086,967	\$ 87,544,145	\$ 43,641,010
Sales						4,757,411
Cost of sales						(3,939,828)
Miscellaneous	15,616	56,150	154,898	45,875	272,539	
Total operating revenues	<u>49,305,033</u>	<u>24,833,019</u>	<u>2,545,790</u>	<u>11,132,842</u>	<u>87,816,684</u>	<u>44,458,593</u>
<b>OPERATING EXPENSES:</b>						
Salaries and wages	4,105,016	5,136,040	914,950	2,633,769	12,789,775	4,379,438
Contractual services	2,041,814	2,700,492	7,667,756	4,921,651	17,331,713	983,009
Utilities	1,926,634	1,107,437	78,238	413,330	3,525,639	485,393
Maintenance and supplies	4,034,053	2,770,550	1,599,586	2,375,374	10,779,563	3,935,434
Water purchases	12,904,328				12,904,328	
Insurance	131,337	298,464	55,941	160,279	646,021	13,398,895
Claims expense						9,231,869
Employee benefits	1,561,618	2,100,382	339,276	1,032,997	5,034,273	10,851,683
Administration services	2,237,066	1,238,155	497,071	1,302,286	5,274,578	1,504,323
Allocated indirect administrative costs	1,049,489	760,932	277,794	406,422	2,494,637	264,010
Other	78,673	130,838	89,894	77,925	377,330	147,574
Depreciation	2,396,440	5,028,528	2,093,587	2,527,966	12,046,521	3,198,649
Total operating expenses	<u>32,466,468</u>	<u>21,271,818</u>	<u>13,614,093</u>	<u>15,851,999</u>	<u>83,204,378</u>	<u>48,380,277</u>
<b>OPERATING INCOME (LOSS)</b>	<u>16,838,565</u>	<u>3,561,201</u>	<u>(11,068,303)</u>	<u>(4,719,157)</u>	<u>4,612,306</u>	<u>(3,921,684)</u>
<b>NONOPERATING REVENUES (EXPENSES)</b>						
Operating grants			9,672,682	554,649	10,227,331	4,000
Gain (Loss) on disposition of capital assets	(147,600)	(112,741)	(18,470)	(189,445)	(468,256)	(659,282)
Tax revenue				222,776	222,776	
Tax expense	(85,487)	(91,495)		(14,801)	(191,783)	
Interest income	2,242,135	812,288	113,220	100,579	3,268,222	1,481,764
Net increase in fair value of investments	734,296	400,169	40,923	61,723	1,237,111	628,481
Rental income	37,770	58,354	78,106	727,076	901,306	
Settlements and recoveries	831,798	663,663			1,495,461	
Interest expense	(2,249,824)	(1,931,309)		(305,560)	(4,486,693)	(10,577)
Amortization of costs of issuance	(33,378)	(46,220)			(79,598)	
Total nonoperating revenues (expenses)	<u>1,329,710</u>	<u>(247,291)</u>	<u>9,886,461</u>	<u>1,156,997</u>	<u>12,125,877</u>	<u>1,444,386</u>
<b>INCOME (LOSS) BEFORE CAPITAL CONTRIBUTIONS AND TRANSFERS</b>	<u>18,168,275</u>	<u>3,313,910</u>	<u>(1,181,842)</u>	<u>(3,562,160)</u>	<u>16,738,183</u>	<u>(2,477,298)</u>
<b>CAPITAL CONTRIBUTIONS AND TRANSFERS</b>						
Capital contributions	2,345,957	2,666,690	363,651	1,922,714	7,299,012	558,148
Transfers in	264,000	226,389	1,500	985,437	1,477,326	1,298,335
Transfers out	(65,000)	(65,000)	(65,694)	(128,000)	(323,694)	(38,550)
Special item	(296,407)	(209,091)			(505,498)	
<b>CHANGE IN NET ASSETS</b>	<u>20,416,825</u>	<u>5,932,898</u>	<u>(882,385)</u>	<u>(782,009)</u>	<u>24,685,329</u>	<u>(659,365)</u>
NET ASSETS, July 1	<u>82,296,714</u>	<u>124,101,660</u>	<u>22,363,460</u>	<u>57,832,932</u>		<u>(8,440,424)</u>
NET ASSETS, June 30	<u>\$ 102,713,539</u>	<u>\$ 130,034,558</u>	<u>21,481,075</u>	<u>\$ 57,050,923</u>		<u>\$ (9,099,789)</u>
Adjustment to reflect the consolidation of internal service fund activities related to enterprise funds.					<u>(1,712,901)</u>	
Change in net assets of business-type activities					<u>\$ 22,972,428</u>	

The notes to basic financial statements are an integral part of this statement.

**CITY OF MODESTO**  
**STATEMENT OF CASH FLOWS - PROPRIETARY FUNDS**  
Year Ended June 30, 2007

	<i>Enterprise</i>					<i>Internal Service</i>
	<i>Water</i>	<i>Sewer</i>	<i>Bus</i>	<i>Other Enterprise</i>	<i>Total Enterprise</i>	
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>						
Receipts from customers and users	\$ 47,758,187	\$ 24,828,928	\$ 2,595,078	\$ 11,954,968	\$ 87,137,161	\$ 4,812,775
Receipts from interfund services provided	427,858	65,035		23,521	516,414	39,660,607
Payments to suppliers	(19,473,381)	(2,969,190)	(9,054,243)	(5,884,024)	(37,380,838)	(18,835,253)
Payment of insurance claims						(8,936,742)
Payments to employees	(5,661,907)	(7,237,125)	(1,251,420)	(3,663,140)	(17,813,592)	(8,956,088)
Payments for interfund services used	<u>(5,310,466)</u>	<u>(3,964,147)</u>	<u>(1,412,537)</u>	<u>(3,364,808)</u>	<u>(13,781,958)</u>	<u>(2,244,913)</u>
Net cash provided (used) by operating activities	<u>17,740,291</u>	<u>10,723,501</u>	<u>(8,853,122)</u>	<u>(933,483)</u>	<u>18,677,187</u>	<u>5,500,386</u>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:</b>						
Operating grants received			11,935,926	565,482	12,501,408	5,038
Taxes received				222,776	222,776	
Settlements and recoveries	831,798	663,663			1,495,461	
Transfers in	264,000	226,389	1,500	985,437	1,477,326	1,298,335
Transfers out	(65,000)	(65,000)	(65,694)	(128,000)	(323,694)	(38,550)
New advances from other funds				878,704		121,014
Net cash provided (used) by noncapital financing activities	<u>1,030,798</u>	<u>825,052</u>	<u>11,871,732</u>	<u>2,524,399</u>	<u>15,373,277</u>	<u>1,385,837</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</b>						
Acquisition and construction of capital assets	(6,058,751)	(10,512,609)	(1,222,095)	(2,120,363)	(19,913,818)	(3,732,362)
Proceeds of sale of capital assets		13,502				
Proceeds of debt issues	46,275,000	16,535,000				
Costs of issuance paid	(685,703)	(339,604)				
Bond discount paid		(323,867)				
Principal repayments	(1,072,336)	(1,650,000)		(275,955)	(2,998,291)	(26,587)
Interest paid	(2,163,506)	(2,055,524)		(309,551)	(4,528,581)	(10,577)
Capital grants received			363,651	1,546,459	1,910,110	
Connection fees for capital purposes	<u>2,023,224</u>	<u>663,316</u>			<u>2,686,540</u>	
Net cash used by capital and related financing activities	<u>38,317,928</u>	<u>2,330,214</u>	<u>(858,444)</u>	<u>(1,159,410)</u>	<u>(22,844,040)</u>	<u>(3,769,526)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>						
Interest received	2,029,235	1,227,069	105,360	136,465	3,498,129	1,557,085
Net increase in the fair value of investments	<u>734,296</u>	<u>400,169</u>	<u>40,923</u>	<u>61,723</u>	<u>1,237,111</u>	<u>628,481</u>
Net cash provided by investing activities	<u>2,763,531</u>	<u>1,627,238</u>	<u>146,283</u>	<u>198,188</u>	<u>4,735,240</u>	<u>2,185,566</u>
Net increase (decrease) in cash and cash equivalents	59,852,548	15,506,005	2,306,449	629,694	78,294,696	5,354,364
CASH AND CASH EQUIVALENTS, JULY 1	<u>24,486,801</u>	<u>27,749,120</u>	<u>1,846,214</u>	<u>5,013,617</u>	<u>59,095,752</u>	<u>48,027,975</u>
CASH AND CASH EQUIVALENTS, JUNE 30	<u>\$ 84,339,349</u>	<u>\$ 43,255,125</u>	<u>\$ 4,152,663</u>	<u>\$ 5,643,311</u>	<u>\$ 137,390,448</u>	<u>\$ 53,382,339</u>
<b>RECONCILIATION TO STATEMENT OF NET ASSETS:</b>						
Cash and cash equivalents	\$ 39,127,144	\$ 22,773,037	\$ 4,152,663	\$ 5,032,664	\$ 71,085,508	\$ 53,382,339
Cash and cash equivalents with fiscal agent	2,445,103	4,049,547		610,647	7,105,297	
Restricted assets-cash and cash equivalents	<u>42,767,102</u>	<u>16,432,541</u>			<u>59,199,643</u>	
TOTAL CASH AND CASH EQUIVALENTS	<u>\$ 84,339,349</u>	<u>\$ 43,255,125</u>	<u>\$ 4,152,663</u>	<u>\$ 5,643,311</u>	<u>\$ 137,390,448</u>	<u>\$ 53,382,339</u>

(continued)

	<i>Enterprise</i>					
	<i>Water</i>	<i>Sewer</i>	<i>Bus</i>	<i>Other Enterprise</i>	<i>Total Enterprise</i>	<i>Internal Service</i>
RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES:						
Operating income (loss)	<u>\$ 16,838,565</u>	<u>\$ 3,561,201</u>	<u>\$ (11,068,303)</u>	<u>\$ (4,719,157)</u>	<u>\$ 4,612,306</u>	<u>\$(3,921,684)</u>
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities:						
Depreciation	2,396,440	5,028,528	2,093,587	2,527,966	12,046,521	3,198,649
Rental income	37,770	58,354	78,106	727,076	901,306	
Taxes paid	(85,487)	(91,495)		(15,597)	(192,579)	
Special item	(296,407)	(209,091)			(505,498)	
Change in assets and liabilities:						
(Increase) in accounts receivable	1,440	14,175	(28,818)	120,541	107,338	(23,898)
(Increase) in utilities receivable	(1,149,441)	(200,399)		490	(1,349,350)	
(Increase) in taxes receivable	(1,169)				(1,169)	
Decrease in due from governments		127,064			127,064	38,687
(Increase) decrease in prepaid expenses	296,327				296,327	
(Increase) in inventories						(246,573)
(Decrease) in accounts payable and accrued expenses	(294,886)	2,374,117	69,500	423,236	2,571,967	(114,955)
Increase in accrued salaries and benefits	4,727	(703)	2,806	3,626	10,456	3,475
Increase in compensated absences						6,271,558
(Decrease) in claims liability						295,127
Increase in deferred revenues				(1,664)	(1,664)	
Increase (decrease) in refundable deposits	(7,588)	61,750			54,162	
Total adjustments	<u>901,726</u>	<u>7,162,300</u>	<u>2,215,181</u>	<u>3,785,674</u>	<u>14,064,881</u>	<u>9,422,070</u>
Net cash provided (used) by operating activities	<u>\$ 17,740,291</u>	<u>\$ 10,723,501</u>	<u>\$(8,853,122)</u>	<u>\$ (933,483)</u>	<u>\$ 8,677,187</u>	<u>\$ 5,500,386</u>
NONCASH INVESTING, CAPITAL AND FINANCING ACTIVITIES:						
Capital assets transferred in	\$ 38,683	\$ 444,898		\$ 18,545	\$ 502,126	\$ 558,148
Developer infrastructure contributions	284,050	1,558,476			1,842,526	

## APPENDIX B

### DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

The following is a summary of the provisions of the Contract and the Trust Agreement. This summary is not intended to be definitive and is qualified in its entirety by reference to the aforementioned documents. Copies of the Contract and the Trust Agreement are available upon request from the Trustee.

All capitalized terms not defined herein or elsewhere in this Official Statement shall have the meanings set forth in the Contract and the Trust Agreement.

#### THE CONTRACT

Certain provisions of the Contract are summarized below. THIS SUMMARY DOES NOT PURPORT TO BE COMPLETE OR DEFINITIVE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TERMS OF THE CONTRACT.

#### Definitions

The following are summaries of definitions of certain terms from the Contract used in this Summary of Principal Legal Documents or elsewhere in this Official Statement.

“Accountant’s Report” means a report signed by an Independent Certified Public Accountant.

“Adjusted Annual Gross Revenues” means, for any Fiscal Year or any designated twelve (12) month period in question, the Gross Revenues during such Fiscal Year or twelve (12) month period, plus deposits to the Revenue Fund from amounts on deposit in the Rate Stabilization Fund, but only as and to the extent specified in the Master Contract; minus, (y) amounts transferred from the Revenue Fund to the Rate Stabilization Fund in accordance with the Master Contract and, (z) for the purposes of determining compliance with the rate covenant only set forth in the Master Contract, earnings from the investments in the Parity Reserve Fund that are deposited in the Revenue Fund in such Fiscal Year or twelve (12) month period.

“Adjusted Annual Net Revenues” means, for any Fiscal Year or any designated twelve (12) month period in question, the Adjusted Annual Gross Revenues during such Fiscal Year or twelve (12) month period less the Maintenance and Operation Costs during such Fiscal Year or twelve (12) month period.

“Annual Debt Service” means, for any Fiscal Year or any designated twelve (12) month period in question, the required payments to be made with respect to all Outstanding Parity Obligations in such Fiscal Year or twelve (12) month period; provided, that for purposes of determining compliance with the rate covenant set forth in the Master Contract, the Reserve Fund Requirement and conditions for the execution of Parity Obligations:

(A) Generally. Except as otherwise provided by subparagraph (B) with respect to Variable Interest Rate Parity Obligations and by subparagraph (C) with respect to Parity Obligations with respect to which a Payment Agreement is in force, interest on any Parity Obligation will be calculated based on the actual amount of interest that is payable under that Parity Obligation;

(B) Interest on Variable Interest Rate Parity Obligations. The amount of interest deemed to be payable on any Variable Interest Rate Parity Obligation will be calculated on the assumption that the interest rate on that Parity Obligation would be equal to the rate (the “assumed RBI-based rate”) that is ninety percent (90%) of the average RBI during the twelve (12) calendar month period immediately preceding the date in which the calculation is made;

(C) Interest on Parity Obligations with respect to which a Payment Agreement is in force. The amount of interest deemed to be payable on any Parity Obligations with respect to which a Payment Agreement is in force will, so long as the Qualified Counterparty thereto is not in default thereunder, be based on the net economic effect on the City expected to be produced by the terms of such Parity Obligation and such Payment Agreement, including but not limited to the effects that (i) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a Variable Interest Rate instead will be treated as an obligation bearing interest at a fixed interest rate, and (ii) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a fixed interest rate instead will be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Parity Obligation with respect to which a Payment Agreement is in force will, so long as the Qualified Counterparty thereto is not in default thereunder, be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Parity Obligation plus the Payment Agreement Payments minus the Payment Agreement Receipts, and for the purpose of calculating Payment Agreement Receipts and Payment Agreement Payments under such Payment Agreement, the following assumptions will be made:

(1) Counterparty Obligated to Pay Actual Variable Interest Rate on Variable Interest Rate Parity Obligations. If the Payment Agreement obligates a Qualified Counterparty to make payments to the City based on the actual Variable Interest Rate on a Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation and obligates the City to make payments to the Qualified Counterparty based on a fixed rate, payments by the City to the Qualified Counterparty will be assumed to be made at the fixed rate specified by the Payment Agreement and payments by the Qualified Counterparty to the City will be assumed to be made at the actual Variable Interest Rate on such Parity Obligation, without regard to the occurrence of any event that, under the provisions of the Payment Agreement, would permit the Qualified Counterparty to make payments on any basis other than the actual Variable Interest Rate on such Parity Obligation, and such Parity Obligation will set forth a debt service schedule based on that assumption;

(2) Variable Interest Rate Parity Obligations and Payment Agreements Having the Same Variable Interest Rate Component. If both a Payment Agreement and the related Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation, include a variable interest rate payment component that is required to be calculated on the same basis (including, without limitation, on the basis of the same variable interest rate index), it will be assumed that the variable interest rate payment component payable pursuant to the Payment Agreement is equal in amount to the variable interest rate component payable on such Parity Obligation;

(3) Variable Interest Rate Parity Obligations and Payment Agreements Having Different Variable Interest Rate Components. If a Payment Agreement obligates either the City or the Qualified Counterparty to make payments of a variable interest rate component on a basis that is different (including, without limitation, on a different variable interest rate index) from the basis that

is required to be used to calculate interest on the Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation it will be assumed:

(a) City Obligated to Make Payments Based on Variable Interest Rate Index. If payments by the City under the Payment Agreement are based on a variable interest rate index and payments by the Qualified Counterparty are based on a fixed interest rate, payments by the City to the Qualified Counterparty will be based upon an interest rate equal to the assumed RBI-based rate, and payments by the Qualified Counterparty to the City will be based on the fixed rate specified by the Payment Agreement; and

(b) City Obligated to Make Payments Based on Fixed Interest Rate. If payments by the City under the Payment Agreement are based on a fixed interest rate and payments by the Qualified Counterparty are based on a variable interest rate index, payments by the City to the Qualified Counterparty will be based on an interest rate equal to the rate (the “assumed fixed payor rate”) that is one hundred and five percent (105%) of the fixed interest rate specified by the Payment Agreement to be paid by the City, and payments by the Qualified Counterparty to the City will be based on a rate equal to the actual variable interest rate on the Variable Interest Rate Parity Obligation.

(4) Certain Payment Agreements May be Disregarded. Notwithstanding the provisions of subparagraphs (C)(1), (2) and (3) of this definition, the City will not be required to (but may at its option) take into account as set forth in subparagraph (C) of this definition (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(D) Debt Service on Parity Payment Agreements. No interest will be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on a related Parity Obligation under subparagraph (C) of this definition; provided, that for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any Parity Obligation because the Parity Payment Agreement is not then related to any Parity Obligation, interest on that Parity Payment Agreement will be taken into account by assuming:

(1) City Obligated to Make Payments Based on Fixed Interest Rate. If the City is obligated to make Payment Agreement Payments based on a fixed interest rate and the Qualified Counterparty is obligated to make payments based on a variable interest rate index, payments by the City will be based on the assumed fixed payor rate, and payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the quarter preceding the quarter in which the calculation is made; and

(2) City Obligated to Make Payments Based on Variable Interest Rate Index. If the City is obligated to make Payment Agreement Payments based on a variable interest rate index and the Qualified Counterparty is obligated to make payments based on a fixed interest rate, payments by the City will be based on an interest rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the quarter preceding the quarter in which the calculation is made, and the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement; and

(3) Certain Payment Agreements May be Disregarded. Notwithstanding the provisions of subparagraphs (D)(1) and (2) of this definition, the City will not be required to (but may at its option) take into account (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(E) Balloon Parity Obligations. For purposes of calculating Annual Debt Service on any Balloon Parity Obligations, it will be assumed that the principal of those Balloon Parity Obligations, together with interest thereon at a rate equal to the assumed RBI-based rate, will be amortized in equal annual installments over a term of thirty (30) years from the date of issuance.

“Authority” means the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California.

“Average Annual Debt Service” means the sum of the Annual Debt Service for all Fiscal Years during the period commencing with the Fiscal Year in which such calculation is made (or if appropriate, the first full Fiscal Year following the issuance of Parity Obligations) and terminating with the last Fiscal Year in which payments are due under Outstanding Parity Obligations, divided by the number of such Fiscal Years.

“Balloon Parity Obligation” means any Parity Obligation described as such in such Parity Obligation.

“Business Day” means any day (other than a Saturday or a Sunday) on which banks in New York, New York, are open for business and on which the Trustee is open for business at its corporate trust office in San Francisco, California.

“CDWR Loan” means the loan to the City from the State of California Department of Water Resources in the principal amount of \$3,895,000, which obligation is payable from Gross Revenues on a parity with the Payments under the Contracts.

“Certificate of the City” means an instrument in writing signed by the City Manager, the Finance Director, or any other officer of the City duly authorized by the City Council for that purpose.

“City” means the City of Modesto, a charter city and municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State of California.

“Code” means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code will be deemed to be a reference to any successor to any such section.

“Connection Fees” means all fees and charges payable to the City for the privilege of connecting to the Water Utility System.

“Consultant’s Report” means a report signed by an Independent Consultant.

“Continuing Disclosure Agreement” means any continuing disclosure agreement, by and between the City and the Trustee, delivered pursuant to the Contracts.

“Contracts” means the Master Contract and all Supplemental Contracts.

“Event of Default” means an event described as an event of default under the Master Contract.

“Federal Securities” means United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations for which the full faith and credit of the United States of America are pledged for the payment of interest and principal, or securities evidencing ownership interests in such obligations or in specified portions of the interest on or principal of such obligations.

“Finance Director” means the Finance Director of the City.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the City Council of the City as the Fiscal Year of the City.

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures selected by the City, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Gross Revenues” means all gross income and revenue received or receivable by the City from the ownership or operation of the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges (including all Connection Fees, contributions in aid of construction, and charges and standby water availability charges legally available for debt service) received by the City for the Water Service and the other services and facilities of the Water Utility System and all net proceeds of insurance covering business interruption loss relating to the Water Utility System and all other income and revenue howsoever derived by the City from the ownership or operation of the Water Utility System or arising from the Water Utility System, and including all Payment Agreement Receipts, and including all income from the deposit or investment of any money in the Revenue Fund or, to the extent deposited in the Revenue Fund, in the Parity Reserve Fund, but excluding in all cases any proceeds of taxes and any refundable deposits made to establish credit and advances.

“Improvement Fund” means the City of Modesto Water Utility System Improvement Fund established pursuant to the Master Contract.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State of California, appointed and paid by the City, and who, or each of whom:

(1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the City;

(2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and

(3) is not connected with the City as a director, officer or employee of the City, but who may be regularly retained to audit the accounting records of and make reports thereon to the City.

“Independent Consultant” means any registered engineer or firm of registered engineers of national reputation generally recognized to be well qualified in engineering matters relating to water systems, or any other financial consultant or firm of financial consultants generally recognized to be well qualified in matters relating to water systems, appointed and paid by the City, and who or each of whom:

- (1) is in fact independent and not under the domination of the City;
- (2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and
- (3) is not connected with the City as a director, officer or employee of the City, but may be regularly retained to make reports to the City.

“Maintenance and Operation Costs” means the costs paid or incurred by the City for maintaining and operating the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including, but not limited to, (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water Utility System in good repair and working order, (b) all costs of water purchased by the City, including all costs under the Treatment and Delivery Agreement which do not constitute debt service thereunder, (c) all administrative costs of the City that are charged directly or apportioned to the operation of the Water Utility System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, payments into pension funds, and (d) all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Master Contract or of any resolution authorizing the execution of any Parity Obligation or of such Parity Obligation, such as compensation, reimbursement and indemnification of the trustee or remarketing agent for any such Parity Obligation, letter of credit fees for any such Parity Obligations and fees and expenses of Independent Certified Public Accountants and Independent Consultants; but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, premiums and discounts, (2) interest expense, (3) amounts paid from funds of the City other than Gross Revenues, and (4) in-lieu transfers or recoupment of contributed capital to the City’s general fund.

“Master Contract” means the Master Installment Purchase Contract executed and entered into as of November 1, 1997, by and between the City and the Authority, as the same may be amended or supplemented from time to time.

“Maximum Annual Debt Service” means the greatest Annual Debt Service payable on Parity Obligations in any Fiscal Year during the period commencing with the Fiscal Year in which the determination is being made and terminating with the last Fiscal Year in which payments are due under Outstanding Parity Obligations.

“Moody’s” means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the services of a municipal securities rating agency, then “Moody’s” will be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

“Net Proceeds” means, when used with respect to any condemnation award or with respect to any insurance proceeds, the amount of such condemnation award or such insurance proceeds remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such award or such proceeds.

“1997 Certificates” means the \$25,585,000 Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project), evidencing and representing proportionate interests of the owners thereof in the 1997 Payments to be made by the City.

“1997 Payments” means the installment payments required to be made by the City to the Authority under and pursuant to the 1997 Supplemental Contract.

“1997 Supplemental Contract” means the 1997 Supplemental Installment Purchase Contract, executed and entered into as of November 1, 1997, by and between the City and the Authority, supplementing the Master Contract.

“1997 Trust Agreement” means that certain Trust Agreement, dated as of November 1, 1997, by and between the Authority and State Street Bank and Trust Company, N.A., which has been succeeded by The Bank of New York Trust Company, N.A., as trustee, pursuant to which there was executed and delivered the 1997 Certificates.

“Opinion of Counsel” means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, retained by the City.

“Outstanding,” when used as of any particular time with reference to Parity Obligations, means all Parity Obligations which have not been paid or otherwise satisfied as provided in the Master Contract.

“Parity Bank Agreements” means an agreement with a bank or other financial institution relating to an irrevocable letter of credit, guarantee or other credit enhancement device providing liquidity or irrevocable credit or security for the payment of Parity Obligations.

“Parity Obligation Payment Fund” means the City of Modesto Water Utility System Parity Obligation Payment Fund established pursuant to the Master Contract.

“Parity Obligations” means the payment obligations under the Treatment and Delivery Agreement which constitute debt service, the payment obligations under the CDWR Loan Agreement, and all Supplemental Contracts and all other obligations hereafter incurred by the City the payment of which constitutes a charge and lien on the Gross Revenues equal to and on a parity with the charge and lien upon the Gross Revenues for the payment of the Payments, other than (i) such portion of the payment obligations (including certain payments due upon an early termination thereof) under any Parity Payment Agreement to the extent such obligations are expressly subordinate to Parity Obligations pursuant to the terms of such Parity Payment Agreement and (ii) Parity Bank Agreements; provided that no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City.

“Parity Payment Agreement” means a Payment Agreement which is a Parity Obligation.

“Parity Reserve Fund” means the City of Modesto Water Utility System Parity Reserve Fund established pursuant to the 1997 Trust Agreement.

“Payment Agreement” means a written agreement for the purpose of managing or reducing the City’s exposure to fluctuations in interest rates or for any other interest rate, investment, cash flow, asset or liability managing purposes, entered into either on a current or forward basis by the City and a Qualified Counterparty in connection with, or incidental to, the entering into of any Parity Obligation, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, cash flows, options on such payments, or any combination thereof or any similar device.

“Payment Agreement Payments” means the amounts required to be paid periodically by the City to the Qualified Counterparty pursuant to a Payment Agreement.

“Payment Agreement Receipts” means the amounts required to be paid periodically by the Qualified Counterparty to the City pursuant to a Payment Agreement.

“Payment Date” means any date on which Payments are scheduled to be paid by the City under and pursuant to any Supplemental Contract.

“Payments” means the installment payments scheduled to be paid by the City under and pursuant to the Master Contract and all Supplemental Contracts.

“Permitted Investments” means any of the following obligations if and to the extent that they are permissible investments of funds of the City as stated in its current investment policy (copies of which the City will provide on a current basis to the Trustee) and to the extent then permitted by law:

- (1) Federal Securities;
- (2) Obligations issued by the Resolution Funding Corporation and the Student Loan Marketing Association, or obligations, participations, or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Government National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal);
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or any of its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System and which are drawn on any bank the short-term obligations of which are rated in the highest letter and numerical rating category as provided by Moody’s and by S&P; provided, that purchases of eligible bankers acceptances may not exceed two hundred seventy (270) days’ maturity;
- (4) Commercial paper of “prime” quality of the highest ranking or of the highest letter and numerical rating category as provided by Moody’s and by S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars (\$500,000,000) and that have an “A” or higher rating for the issuer’s unsecured debentures, other than commercial paper, as provided by Moody’s and by S&P; provided, that purchases of eligible commercial paper may not exceed one hundred eighty (180) days’ maturity nor represent more than ten percent (10%) of the outstanding commercial paper of an issuing corporation;

(5) Non-negotiable certificates of deposit issued by a state or national bank (including the Trustee or any of its affiliates) that have maturities of not more than three hundred sixty-five (365) days and that are fully insured by the Federal Deposit Insurance Corporation or the short-term obligations of which state or national bank are rated no lower than “A1” by Moody’s and “A+” by S&P;

(6) Any repurchase agreement of any securities enumerated in subdivisions (1) and (2) with any state or national bank (including the Trustee or any of its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than “A1” by Moody’s and “A+” by S&P or whose commercial paper is rated no lower than “P-1” by Moody’s and no lower than “A-1” by S&P; (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; provided, that (a) the term of such repurchase agreement is less than one (1) year or due on demand; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the market value of the collateral (as determined at least once in every fourteen (14) days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody’s and to S&P; (d) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; and (e) the repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with retail customers which falls under the jurisdiction of the Securities Investors Protection Corporation; provided, that: (a) the market value of the collateral (as determined at least once in every fourteen (14) days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody’s and to S&P; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the Trustee has a perfected first priority security interest in the collateral; (d) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (e) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;

(7) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State of California or any local agencies therein which are rated in the highest short-term rating category or within one of the three highest long-term rating categories by Moody’s and by S&P (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);

(8) For amounts less than one hundred thousand dollars (\$100,000), interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof, and of which an aggregate total of one hundred thousand dollars (\$100,000) is not exceeded in any one financial institution;

(9) Investments in units of a money-market fund portfolio that is rated in the highest letter and numerical rating category by Moody’s and by S&P (including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services) and that is composed of direct obligations of, or on obligations guaranteed by, the full faith and credit of the United States of America or repurchase agreements collateralized by such obligations;

(10) a guaranteed investment contract with a financial institution or insurance company (or guaranteed by a financial institution or insurance company) which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated within the two highest rating categories of any Rating Agency;

(11) Obligations approved in writing by Moody's and by S&P;

(12) The Local Agency Investment Fund or similar pooled fund operated by or on behalf of the State of California and which is authorized to accept investments by or on behalf of the City of the moneys held by the Trustee in any of the accounts or funds established pursuant to the Master Contract; and

(13) The California Asset Management Program (CAMP).

"Project" means any additions, betterments, extensions or improvements to the Water Utility System designated by the City Council of the City as a Project, the acquisition and construction of which (together with the incidental costs and expenses related thereto) is to be financed or refinanced by the proceeds of any Parity Obligation as provided therein.

"Qualified Counterparty" means a party (other than the City) who is the other party to a Payment Agreement and (1) (a) whose senior debt obligations are rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating any Parity Obligations (without regard to any gradations within a rating category), or (b) whose obligations under the Payment Agreement are guaranteed for the entire term of the Payment Agreement by a bond insurer or other institution which has been, or whose debt service obligations have been, assigned a credit rating in one of the three highest rating categories of each of the Rating Agencies then rating any Parity Obligations, and (2) who is otherwise qualified to act as the other party to a Payment Agreement with the City under any applicable laws.

"Rate Stabilization Fund" means the fund by that name established pursuant to the Master Contract.

"Rating Agencies" means Moody's and S&P, and their respective successors or assigns, or any other nationally recognized securities rating agency or agencies rating any Parity Obligations at the Request of the City.

"RBI" means the Bond Buyer Revenue Bond Index or comparable index of long-term municipal obligations chosen by the City, or, if no comparable index can be obtained, eighty percent (80%) of the interest rate on actively traded thirty (30) year United States Treasury obligations.

"Request of the City" means an instrument in writing signed by the City Manager of the City, the Finance Director, or any other officer of the City duly authorized by the City Council for that purpose.

"Reserve Fund Requirement" means, as of any date of determination and excluding any Parity Obligations which are not Supplemental Contracts and the debt service thereon, the least of (a) ten percent (10%) of the initial offering price to the public of the Parity Obligations as determined under the Code, or (b) the Maximum Annual Debt Service, or (c) one hundred twenty-five percent (125%) of the Average Annual Debt Service, all as computed and determined by the City and

specified in writing to the Trustee; provided, that such requirement (or any portion thereof) may be provided by one or more policies of municipal bond insurance or surety bonds issued by a municipal bond insurer or by a letter of credit issued by a bank or other institution if the obligations insured by such insurer or issued by such bank or other institution, as the case may be, have ratings at the time of issuance of such policy or surety bond or letter of credit equal to "Aa" or higher assigned by Moody's (if Moody's is then rating any of the Parity Obligations) and "AA" or higher assigned by S&P (if S&P is then rating any of the Parity Obligations) and that maintain at all times ratings at least equal to the lowest ratings (without giving effect to municipal bond insurance or other credit enhancement) on any of the Parity Obligations provided by Moody's (if Moody's is then rating any of the Parity Obligations) and by S&P (if S&P is then rating any of the Parity Obligations). If at any time, obligations insured by any such municipal bond insurer issuing a policy of municipal bond insurance or surety bond or a bank or other institution issuing a letter of credit as permitted by this definition will no longer maintain such ratings as required in accordance with the immediately preceding sentence, the City will provide or cause to be provided cash or a substitute municipal bond insurance policy or surety bond or a letter of credit meeting such requirements.

"Revenue Fund" means the City of Modesto Water Utility System Revenue Fund established pursuant to the Master Contract.

"S&P" means Standard & Poor's Ratings Services, a division of the McGraw Hill Companies, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors or assigns, except that if such entity will be dissolved or liquidated or will no longer perform the services of a municipal securities rating agency, then "S&P" will be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

"State" means the State of California.

"Subordinate Obligations" means obligations of the City authorized and executed by the City under applicable law, the payments under and pursuant to which are payable from Gross Revenues, subject and subordinate to payments under and pursuant to Parity Obligations and are payable from any fund established for the purpose of paying debt service on such Subordinate Obligations.

"Supplemental Contracts" means all installment purchase contracts of the City supplemental to the Master Contract and authorized and executed by the City under and pursuant to the Master Contract and applicable law, the installment payments under and pursuant to which are payable from Gross Revenues.

"Treatment and Delivery Agreement" means the Treatment and Delivery Agreement, by and among the City of Modesto, the Del Este Water Company, and the Modesto Irrigation District, which obligation is payable from the Gross Revenues on a parity with the Payments under the Master Contract and all Supplemental Contracts.

"Trust Agreements" means all trust agreements or indentures which are executed and delivered in connection with Parity Obligations, including the Trust Agreement.

"Trustee" means The Bank of New York Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America, or any

association or corporation which may at any time be substituted in its place, as provided in the Trust Agreements.

“Special Counsel” will have the meaning given such term in the 2008 Trust Agreement.

“2008 Certificate Insurance Policy” means the municipal bond insurance policy issued by the 2008 Certificate Insurer guaranteeing the scheduled payments of principal of and interest evidenced and represented by the 2008 Certificates.

“2008 Certificate Insurer” means Assured Guaranty Corp., its successors and assigns.

“2008 Certificates” means the City of Modesto Water Refunding Revenue Certificates of Participation, 2008 Series A, evidencing and representing proportionate interests of the owners thereof in the 2008 Payments to be made by the City, executed and delivered pursuant to the 2008 Trust Agreement.

“2008 Interest Rate Swap Agreement” means, collectively, the ISDA Master Agreement (Local Currency–Single Jurisdiction 1992), the U.S. Municipal Counterparty Schedule thereto and a Credit Support Annex, each dated as of May 29, 2008, and an amended Confirmation, originally entered into on September 27, 2006, as amended as of May 29, 2008, between Bank of America, N.A., as a Qualified Counterparty, and the City.

“2008 Payment Date” means each Interest Payment Date and each day on which payments of principal evidenced and represented by the 2008 Certificates become due (whether at maturity or because of prepayment or acceleration).

“2008 Payments” means the Payments scheduled to be paid by the City under and pursuant to the terms of the 2008 Supplemental Contract.

“2008 Project” means the improvements to the Water Utility System to be refinanced with the proceeds of the 2008 Certificates, as shown on Exhibit A to the 2008 Supplemental Contract.

“2008 Supplemental Contract” means the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, by and between the City and the Authority, as originally executed and as it may from time to time be amended or supplemented in accordance with its terms.

“2008 Supplemental Contract Payment Account” means the account by that name within the Parity Obligation Payment Fund established pursuant to the 2008 Supplemental Contract.

“2008 Swap Insurance Policy” means the interest rate swap insurance policy issued by the 2008 Certificate Insurer guaranteeing certain payments due by the City under the 2008 Interest Rate Swap Agreement.

“2008 Tax Certificate” means the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the 2008 Certificates executed and delivered by the City on the date of initial delivery of the 2008 Certificates, including any and all exhibits attached thereto.

“2008 Trust Agreement” means that certain Trust Agreement, dated as of May 1, 2008, by and between the Authority and the Trustee, delivered in connection with the 2008 Certificates.

“Variable Interest Rate” means any variable interest rate or rates to be paid under any Parity Obligations, the method of computing which variable interest rate will be as specified in the applicable Parity Obligation, which Parity Obligation will also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate will remain in effect, and (ii) the time or times based upon which any change in such variable interest rate will become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

“Variable Interest Rate Parity Obligations” means, for any period of time, any Parity Obligations that bear a Variable Interest Rate during such period, except that Parity Obligations will not be treated as Variable Interest Rate Parity Obligations if the net economic effect of interest rates on particular Payments or Parity Obligations and interest rates on other Payments of the same Supplemental Contract or Parity Obligations, as set forth in such Supplemental Contract or Parity Obligations, or the net economic effect of a Payment Agreement with respect to particular Parity Obligations, in either case is to produce obligations that bear interest at a fixed interest rate, and Supplemental Contracts with respect to which a Payment Agreement is in force will be treated as Variable Interest Rate Parity Obligations if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate, all in accordance with the definition of “Annual Debt Service” set forth in the Master Contract.

“Water Service” means the service furnished, made available or provided by the Water Utility System.

“Water Utility System” means (i) all property rights, contractual rights and facilities of the City relating to water, including all facilities, properties, structures or works for the treatment, conservation, storage, transmission or distribution of water now owned by the City; and (ii) all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

### **Acquisition, Construction and Sale of Projects; Funds**

Acquisition, Construction and Sale of Projects. Pursuant to the Master Contract, the Authority agrees to finance and refinance the costs of the acquisition and construction of the Projects for and to sell the Projects to the City, and in order to implement this provision, the Authority appoints the City as its agent for the purpose of such acquisition and construction, and the City agrees to enter into such construction contracts and purchase orders as may be necessary, as agent for the Authority, to provide for the complete acquisition and construction of the Projects.

The City agrees that as such agent it will cause the acquisition and construction of the Projects to be diligently completed after the deposit of funds in the Improvement Fund for such purpose pursuant to the Master Contract, and that it will use its best efforts to cause the acquisition and construction of the Projects to be completed in a timely fashion, unforeseeable delays beyond the reasonable control of the City only excepted, and, pursuant to the Master Contract, the Authority agrees to and sells the Projects to the City. Notwithstanding the foregoing, it is expressly understood and agreed that the Authority will be under no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the City for the acquisition and construction of the Projects and that all such costs and expenses will be paid by the City, regardless of whether the funds deposited in the Improvement Fund are sufficient to cover all such costs.

Improvement Fund. There is established under the Master Contract the City of Modesto Water Utility System Improvement Fund, which fund the City agrees to maintain until the completion of the acquisition and construction of the Projects to be funded from the separate accounts to be established in such fund as provided in the Supplemental Contracts.

Rate Stabilization Fund. There is established under the Master Contract a City of Modesto Water Utility System Rate Stabilization Fund, which fund the City agrees to maintain so long as any Parity Obligations remain unpaid. The City may deposit in the Rate Stabilization Fund any Gross Revenues, after providing for the payment of Parity Obligations and Maintenance and Operation Costs, and any other money received and available to be used therefor, provided that deposits from such Gross Revenues for each Fiscal Year may be made until (but not after) 180 days after the end of such Fiscal Year. The City may withdraw amounts from the Rate Stabilization Fund only for inclusion in Adjusted Annual Net Revenues, such withdrawal to be made until (but not after) 180 days after the end of such Fiscal Year. All interest or other earnings upon deposits in the Rate Stabilization Fund will be accounted for as Gross Revenues. Notwithstanding the foregoing, no Gross Revenues will be deposited in the Rate Stabilization Fund to the extent that such amount was included by the City in Adjusted Annual Net Revenues for purposes of determining compliance with certain provisions of the Master Contract relating to conditions for the execution of Parity Obligations or the rate covenant and deduction of the amounts to be deposited in the Rate Stabilization Fund would have caused noncompliance with such provisions.

Pledge of Gross Revenues; Revenue Fund. Pursuant to the Master Contract, all Gross Revenues of the Water Utility System are irrevocably pledged to the payment of the Payments, all payments required to be made by the City under all other Parity Obligations and the Maintenance and Operation Costs as provided in the Master Contract, and the Gross Revenues of the Water Utility System will not be used for any other purpose while any of the Payments remain unpaid; provided, however, that out of Gross Revenues there may be apportioned such sums for such purposes as are expressly permitted by the Master Contract. Such pledge constitutes a first pledge of and charge and lien upon the Gross Revenues of the Water Utility System for the payment of amounts due with respect to the Contracts, all other Parity Obligations and Maintenance and Operation Costs in accordance with the terms of the Master Contract.

In order to carry out and effectuate the obligation of the City contained in the Master Contract and in all Supplemental Contracts to pay the Payments, the City agrees and covenants that all Gross Revenues received by it will be deposited when and as received in the City of Modesto Water Utility System Revenue Fund, which fund is established under the Master Contract and which fund the City agrees and covenants to maintain separate and apart from other moneys of the City (subject to certain provisions of the Master Contract relating to investments) so long as any Parity Obligations remain unpaid, and all money on deposit in the Revenue Fund will be applied and used as follows. The City will pay at the following times in the following order of priority:

(a) Maintenance and Operation Costs and Parity Obligation Payment Fund Payments. The City will, from the money in the Revenue Fund, without preference or priority, and the event of any insufficiency of such moneys, ratably, without preference or priority, (i) pay charges for Maintenance and Operation Costs of the Water Utility System (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not immediately required) as such charges are due and payable, and (ii) deposit in the City of Modesto Water Utility System Parity Obligation Payment Fund, which fund is established under the Master Contract and which fund the City agrees and covenants to maintain separate and apart

from other moneys of the City (subject to certain provisions of the Master Contract relating to investments) so long as any Parity Obligations remain unpaid, on the last Business Day of each month (1) an amount equal to the interest which has accrued or will accrue under all Parity Obligations during the next succeeding month calculated as if such interest has accrued or will accrue on a daily basis during such period, and (2) an amount equal to the principal which has accrued or will accrue (as a result of maturity, mandatory sinking fund payments or mandatory prepayment or otherwise) under all Parity Obligations during the next succeeding month calculated as if such principal has accrued or will accrue on a daily basis during such period, plus (3) the net payments due or which will be due on all Parity Payment Agreements calculated as if such net payments accrued or will accrue on a daily basis during such period, except that no such deposit need be made if the City then holds money in the Parity Obligation Payment Fund at least equal to the amount of interest and principal due or becoming due and payable under all Parity Obligations on the next succeeding date on which interest or principal becomes due and payable under any Parity Obligation plus the net payments due on all Parity Payment Agreements on such next succeeding due date therefor. Moneys on deposit in the Parity Obligation Payment Fund will be transferred by the City to make and satisfy the payments due on the next applicable date on which interest or principal becomes due and payable under any Parity Obligation or any net payment becomes due and payable by the City under any Parity Payment Agreement at least one Business Day prior to such next applicable due date.

Pursuant to the 2008 Supplemental Contract, there is established within the Parity Obligation Payment Fund a 2008 Supplemental Contract Payment Account to provide for the payment of the 2008 Payments. On or before the third Business Day immediately preceding each 2008 Payment Date or the date on which any net scheduled payment or insured termination payment is due under the 2008 Interest Rate Swap Agreement, the City will, from the money in the Parity Obligation Payment Fund, deposit in the 2008 Supplemental Contract Payment Account (i) a sum equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Supplemental Contract on the next succeeding 2008 Payment Date and (ii) the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement, except that no such deposit need be made if the amount then on deposit in the 2008 Supplemental Contract Payment Account is at least equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Supplemental Contract on the next succeeding 2008 Payment Date plus the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement on such next succeeding due date therefor. Moneys on deposit in the 2008 Supplemental Contract Payment Account will (i) be transferred by the City to the Trustee on the Business Day immediately preceding each 2008 Payment Date to make and satisfy the 2008 Payment due on such 2008 Payment Date and (ii) be transferred by the City to the Trustee on the due date therefor to satisfy the net scheduled payment and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement, all in accordance with the Master Contract and the 2008 Trust Agreement.

(b) Parity Reserve Fund Deposits. On or before the last Business Day of each month, the City will, from the remaining money on deposit in the Revenue Fund after deposits and transfers pursuant to paragraph (a) above, transfer to the Trustee for deposit in the Parity Reserve Fund that sum, if any, necessary to restore the Parity Reserve Fund to an amount equal to the Reserve Fund Requirement. The City will also, from such remaining moneys in the Revenue Fund, transfer or cause to be transferred to the applicable reserve fund or account for any Parity Obligations for which a separate reserve has been funded pursuant to the Master Contract, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any

insufficiency of such moneys ratably without any discrimination or preference, the sum or sums, if any, equal to the amount required to be deposited therein pursuant to such Parity Obligations.

After making the foregoing deposits and transfers required to be made, the City may apply any remaining money in the Revenue Fund for any lawful purpose of the City, including for the payment of any Subordinate Obligations in accordance with the instruments authorizing such Subordinate Obligations.

2008 Interest Rate Swap Agreement. Pursuant to the 2008 Supplemental Contract, the City and the Authority agree and acknowledge that the 2008 Interest Rate Swap Agreement (excluding the obligations thereunder to post collateral under certain circumstances and to make termination payments upon any early termination event or event of default except to the extent such termination payment is insured under the terms of the 2008 Swap Insurance Policy) constitutes a Parity Payment Agreement and a Parity Obligation payable solely from and secured by a pledge of Gross Revenues on a parity with all other existing and future Parity Obligations. The City and the Authority agree and acknowledge that obligations under the 2008 Interest Rate Swap Agreement to post collateral under certain circumstances or to make termination payments upon an early termination event or event of default under the 2008 Interest Rate Swap Agreement (other than to the extent such termination payment is insured under the terms of the 2008 Swap Insurance Policy) are Subordinate Obligations payable solely from and secured by a pledge of Gross Revenues on a subordinate basis to the Parity Obligations. Amounts payable by the City as a termination payment under the 2008 Interest Rate Swap Agreement upon an event of default with respect to the City thereunder and the designation of an early termination by the 2008 Certificate Insurer pursuant to the terms of the 2008 Interest Rate Swap Agreement (which payments are insured under the terms of the 2008 Swap Insurance Policy) constitute a Parity Obligation payable solely from and secured by a pledge of Gross Revenues on a parity with all other existing and future Parity Obligations. In the event any obligation of the City to post collateral or to make payments upon an early termination or event of default under the 2008 Interest Rate Swap Agreement constituting a Subordinate Obligation will arise, the City will establish a fund as necessary for the purpose of satisfying such obligation. As provided and on the dates under the Master Contract, the City will from the money in the Revenue Fund deposit in the 2008 Supplemental Contract Payment Account of the Parity Obligation Payment Fund a sum equal to the scheduled payments next due on the 2008 Interest Rate Swap Agreement. The City will not be required to advance any moneys derived from any source of income other than the Gross Revenues for the payments due under the 2008 Interest Rate Swap Agreement or for the performance of any agreements or covenants required to be performed by it contained in the 2008 Interest Rate Swap Agreement. The general fund of the City is not liable, and neither the faith and credit nor the taxing power of the City is pledged, for the payments under the 2008 Interest Rate Swap Agreement.

Investments. Any moneys held in the Revenue Fund or the Parity Obligation Payment Fund will be invested in Permitted Investments which will, as nearly as practicable, mature on or before the dates when such moneys are anticipated to be needed for disbursement under the Contracts. Any moneys held in the Rate Stabilization Fund will be invested in Permitted Investments which will mature at such dates as the City will determine but prior to the final date on which payments are due under any Outstanding Parity Obligation. All investment earnings from moneys or deposits in the Revenue Fund, the Parity Obligation Payment Fund and the Rate Stabilization Fund will be retained in such fund.

The City may commingle any of the funds or accounts (except for funds held in any rebate fund, which will be held separately) established pursuant to the Master Contract into a separate fund or funds for investment purposes only; provided however, that all funds or accounts held by the City under the Master Contract will be accounted for separately notwithstanding such commingling. For the purpose of determining the amount in any such fund or account, all Permitted Investments credited to such fund or account will, except as otherwise provided in the Master Contract, be valued at the lower of cost or market value (inclusive of all interest accrued but not paid).

### **Execution of Parity Obligations and Other Obligations**

Conditions for the Execution of Parity Obligations. The City may at any time execute any Parity Obligations the payments under and pursuant to which are payable from the Gross Revenues on a parity with the Payments due under all Supplemental Contracts; provided there will be on file with the Trustee either:

(1) A Certificate of the City demonstrating that during any twelve (12) consecutive calendar months out of the immediately preceding eighteen (18) calendar month period, the Adjusted Annual Net Revenues were at least equal to one hundred twenty-five percent (125%) of the Maximum Annual Debt Service for all existing Parity Obligations plus the Parity Obligations proposed to be executed; provided, that for the purpose of providing this Certificate, the City may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from each new connection to the Water Utility System that was made prior to the execution of such Parity Obligations but which, during all or any part of said twelve (12) month period, was not in existence, in an amount equal to the estimated additional Gross Revenues that would have been derived from each such connection if it had been made prior to the beginning of said twelve (12) month period, and

(ii) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges fixed and prescribed for Water Service which became effective prior to the execution of such Parity Obligations but which, during all or any part of said twelve (12) month period, was not in effect, in an amount equal to the estimated additional Gross Revenues that would have been derived from such increase in rates, fees and charges if it had been in effect prior to the beginning of said twelve (12) month period; or

(2) A Consultant's Report showing that the Adjusted Annual Net Revenues for the Fiscal Year next following the end of the period during which interest on the Parity Obligations proposed to be executed is to be capitalized or, if no interest is capitalized, the Fiscal Year in which the Parity Obligations proposed to be executed are executed, will be at least equal one hundred twenty-five percent (125%) of the Maximum Annual Debt Service; provided, that for the purpose of providing such Consultant's Report, the Independent Consultant may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges prescribed for Water Service in effect and being charged, or rates, fees and charges for Water Service that are expected to be charged in accordance with a program of specific rates, fees, charges, rate levels or increases in overall Gross Revenues approved by a resolution of the City Council; and

(ii) An allowance for Gross Revenues from customers of the Water Utility System anticipated to be served by the facilities or improvements financed in substantial part by the Parity Obligations proposed to be executed together with any additional Parity Obligations expected to be executed prior to the Fiscal Year of determination.

Notwithstanding the foregoing provisions, there will be no limitations on the ability of the City to execute any Parity Obligation at any time to refund any Outstanding Parity Obligation.

Other Obligations. The City may incur Subordinate Obligations without meeting any of the tests set forth above.

### **Covenants of the City**

Compliance with Contracts. The City will punctually pay the Payments in strict conformity with the terms of the Master Contract, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Master Contract required to be observed and performed by it, and will not terminate the Contracts or fail to make any Payment required by the Contracts for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Projects or the Water Utility System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Authority to observe or perform any agreement, condition, covenant or term contained in the Contracts required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected with the Contracts or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Authority or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

Use of Proceeds. The Authority and the City agree that the proceeds of the Contracts will be used by the City, as agent for the Authority, to pay the costs of financing or refinancing the acquisition and construction of the Projects and to pay the incidental costs and expenses related thereto as provided in the Contracts.

Against Encumbrances. The City will pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished, or alleged to have been furnished, to or for the City in, upon, about or relating to the Water Utility System and will keep the Water Utility System free of any and all liens against any portion of the Water Utility System. In the event any such lien attaches to or is filed against any portion of the Water Utility System, the City will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so if contesting such lien will not materially impair operation of the Water Utility System. If any such lien will be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City will forthwith pay or cause to be paid and discharged such judgment. The City will, to the maximum extent permitted by law, indemnify and hold the Authority harmless from, and defend it against, any claim, demand, loss, damage, liability or expense (including attorneys' fees) as a result of any such lien or claim of lien against any portion of the Water Utility System.

Sale or Other Disposition of Property. The City will not sell, transfer or otherwise dispose of any of the works, plant, properties, facilities or other part of the Water Utility System or any real or personal property comprising a part of the Water Utility System if such sale, transfer or disposition would cause the City to be unable to meet the requirements of the rate covenant set forth in the Master Contract.

Prompt Acquisition and Construction of the Projects. The City will take all necessary and appropriate steps to acquire and construct the Projects, with all practicable dispatch and in an expeditious manner and in conformity with law so as to complete the same in a timely fashion.

Maintenance and Operation of the Water Utility System; Budgets. The City will maintain and preserve the Water Utility System in good repair and working order at all times and will operate the Water Utility System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable. The City will adopt and file with the Authority, not later than October 1 of each year, a budget approved by the City Council setting forth the estimated Maintenance and Operation Costs for the then current Fiscal Year and will take such action as may be necessary to include all Payments required to be made under the Contracts in its annual budget; provided, that any such budget may be amended at any time during any Fiscal Year and such amended budget will be filed by the City with the Authority.

Compliance with Contracts for Use of the Water Utility System. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Water Utility System and all other contracts affecting or involving the Water Utility System to the extent that the City is a party thereto.

Insurance. The City will procure and maintain such insurance relating to the Water Utility System which it will deem advisable or necessary to protect its interests and the interests of the Authority, which insurance will afford protection in such amounts and against such risks as are usually covered in connection with water systems similar to the Water Utility System; provided, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner as is, in the opinion of an accredited actuary, actuarially sound. All policies of insurance required to be maintained under the Master Contract will provide that the Authority will be given thirty (30) days, written notice of any intended cancellation thereof or reduction of coverage provided thereby.

#### **Accounting Records; Financial Statements and Other Reports.**

(a) The City will keep appropriate accounting records in which complete and correct entries will be made of all transactions relating to the Water Utility System, which records will be available for inspection by the Authority at reasonable hours and under reasonable conditions.

(b) The City will prepare and file with the Authority annually within one hundred eighty (180) days after the close of each Fiscal Year:

(1) financial statements of the City for such Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon and a special report prepared by the Independent Certified Public Accountant who examined such financial statements stating that nothing came to its attention in connection with such examination that caused

it to believe that the City was not in compliance with any of the agreements or covenants contained in the Master Contract; and

(2) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the City with respect to the Water Utility System as of the close of such Fiscal Year, including the names of the insurers which have issued the policies and the amounts thereof and the property or risks covered thereby.

Protection of Security and Rights of the Authority. The City will preserve and protect the security of the Payments under the Contracts and the rights of the Authority to the Payments under the Contracts and will warrant and defend such rights against all claims and demands of all persons.

Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Water Utility System or any part thereof when the same will become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water Utility System or any part thereof, but the City will not be required to comply with any regulations or requirements so long as the validity or application thereof will be contested in good faith and contesting such validity or application will not materially impair operation of the Water Utility System.

Amount of Rates, Fees and Charges. The City will at all times fix, prescribe and collect rates, fees and charges for the Water Service during each Fiscal Year which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield Adjusted Annual Net Revenues for such Fiscal Year equal to at least 125% of Annual Debt Service to be paid during the Fiscal Year.

Collection of Rates, Fees and Charges. The City will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Water Utility System to pay the rates, fees and charges applicable to the Water Service to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The City will not permit any part of the Water Utility System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof); provided, that the City may without charge use the Water Service.

Eminent Domain and Insurance Proceeds. If all or any part of the Water Utility System will be taken by eminent domain proceedings, or if the City receives any insurance proceeds resulting from a casualty loss to the Water Utility System, the Net Proceeds thereof, at the option of the City, will be applied either to the proportional prepayment of Outstanding Parity Obligations or will be used to substitute other components for the condemned or destroyed components of the Water Utility System.

Tax Covenants. Pursuant to the 2008 Supplemental Contract, the City covenants it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the portion of the 2008 Payments constituting interest under Section 103 of the Code. The City will not, directly or indirectly, use or permit the use of proceeds of the 2008 Supplemental Contract or any of the property financed or refinanced with proceeds of the 2008 Supplemental Contract, or any portion thereof, by any person other than a

governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 2008 Payments constituting interest.

The City will not take any action, or fail to take any action, if any such action or failure to take action would cause any obligations delivered in connection with the 2008 Supplemental Contract to be “private activity bonds” within the meaning of Section 141 of the Code, and in furtherance thereof, will not make any use of the proceeds of the 2008 Supplemental Contract or any of the property financed or refinanced with proceeds of the 2008 Supplemental Contract, or any portion thereof, or any other funds of the City, that would cause any of the 2008 Certificates on other obligations delivered in connection with the 2008 Supplemental Contract to be “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any 2008 Payments are unpaid, the City, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, applicable and in effect. The City will establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of any obligations delivered in connection with the 2008 Supplemental Contract as “governmental bonds.”

The City will not, directly or indirectly, use or permit the use of any proceeds of the 2008 Supplemental Contract, or of any property financed or refinanced thereby, or other funds of the City, or take or omit to take any action, that would cause any obligations delivered in connection with the 2008 Supplemental Contract to be “arbitrage bonds” within the meaning of Section 148 of the Code. To that end, the City will comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the 2008 Supplemental Contract.

The City will not make any use of the proceeds of the 2008 Supplemental Contract or any other funds of the City, or take or omit to take any other action, that would cause the 2008 Supplemental Contract to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

In furtherance of the foregoing tax covenants, the City covenants that it will comply with the provisions of the 2008 Tax Certificate. Such covenants will survive payment in full or discharge of the 2008 Certificates and the 2008 Payments.

The Authority and the City covenant that, in the event of any change in the 2008 Trust Agreement, the 2008 Supplemental Contract or other relevant documents relating to the 2008 Certificates, or any other actions taken or omitted by the City or the Authority, upon the advice or with the approving opinion of Special Counsel other than Sidley Austin LLP, Special Counsel in connection with the original execution and delivery of the 2008 Certificates, the Authority and the City will, upon the making of any such change, or the taking or omission of any such other action, cause to be delivered an opinion of Special Counsel (together with a reliance letter thereon addressed to the 2008 Certificate Insurer and the Trustee) nationally recognized in the area of municipal bonds to the effect that the portion of each 2008 Payment due under the 2008 Supplemental Contract designated as and comprising interest with respect to the 2008 Certificates is excluded from gross income for federal income tax purposes.

Continuing Disclosure. Pursuant to the 2008 Supplemental Contract, the City covenants and agrees that it will comply with and carry out all of its obligations under the Continuing Disclosure Agreement delivered in connection with the execution and delivery of the 2008 Certificates. Notwithstanding any other provision of the Master Contract or hereof, failure of the City to comply with the Continuing Disclosure Agreement will not be considered an Event of Default under the Master Contract or the 2008 Supplemental Contract.

Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of the Contracts and for the better assuring and confirming unto the Authority of the rights and benefits provided to it in the Contracts.

### **Events of Default and Remedies**

Events of Default and Acceleration of Principal. If one or more of the following Events of Default will happen, that is to say:

(1) if default will be made in the due and punctual payment of any payment on any Parity Obligation when and as the same will become due and payable;

(2) if default will be made by the City in the performance of any of the agreements or covenants contained in the Master Contract or in any Parity Obligation required to be performed by it, and such default will have continued for a period of sixty (60) days after the City will have been given notice in writing of such default by the Authority; or

(3) if the City will file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction will approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction will assume custody or control of the City or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default specified in clause (1) above, the Authority will, and for any other such Event of Default the Authority may, by notice in writing to the City, declare the entire principal amount of the unpaid Payments and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same will become immediately due and payable, anything contained in the Master Contract to the contrary notwithstanding. The foregoing provision is subject to the condition, however, that if at any time after the entire principal amount of the unpaid Payments and the accrued interest thereon will have been so declared due and payable and before any judgment or decree for the payment of the money due will have been obtained or entered the City will deposit with the Authority a sum sufficient to pay the unpaid principal amount of the Payments or the unpaid principal amount of any payments under any Parity Obligation referred to in clause (i) above due and payable prior to such declaration and the accrued interest thereon, with interest on such overdue installments at the rate or rates applicable to such unpaid principal amounts of the Payments if paid in accordance with their terms, and the reasonable expenses of the Authority, and any and all other defaults known to the Authority (other than in the payment of the entire principal amount of the unpaid Payments and the accrued interest thereon due and payable solely by reason of such declaration) will have been made good or

cured to the satisfaction of the Authority or provision deemed by the Authority to be adequate will have been made therefor, then and in every such case the Authority, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment will extend to or will affect any subsequent default or will impair or exhaust any right or power consequent thereon.

Application of Gross Revenues upon Acceleration. All Gross Revenues upon the date of the declaration of acceleration by the Authority as provided in the Master Contract and all Gross Revenues thereafter received will be applied in the following order:

First, to the payment of the costs and expenses of the Authority, if any, in carrying out the provisions of the Master Contract relating to Events of Default and acceleration of principal, including reasonable compensation to its agents, accountants and counsel and including any indemnification expenses; and

Second, to the payment of the Maintenance and Operation Costs of the Water Utility System and the payment of the entire principal amount of the unpaid Parity Obligations, and the accrued interest thereon, with interest on the overdue principal and interest amounts of the unpaid Parity Obligations at the rate or rates of interest then applicable to such Parity Obligations if paid in accordance with their terms, provided that if the amount available will not be sufficient to pay in full all such amounts then due and payable, then to the payment thereof ratably, according to the amounts due thereon without any discrimination or preference.

Gross Revenues may also be applied to make payments required under any Parity Payment Agreement on a parity with the payments under paragraph Second above, to the extent and in the manner provided by the terms of such Parity Obligation relating to such Parity Payment Agreement.

Other Remedies. The Authority will have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform and carry out its or his duties under the law and the agreements and covenants required to be performed by it or him contained in the Contracts;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Authority; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its directors, officers and employees to account as the trustee of an express trust.

Non-Waiver. Nothing in the Master Contract will affect or impair the obligation of the City, which is absolute and unconditional, to pay the Payments from the Gross Revenues to the Authority at the respective due dates or upon acceleration or prepayment, or will affect or impair the right of the Authority, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied in the Contracts.

A waiver of any default or breach of duty or contract by the Authority will not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise

any right or remedy accruing upon any default or breach of duty or contract will impair any such right or remedy or will be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by law or by the Master Contract may be enforced and exercised from time to time and as often as will be deemed expedient by the Authority.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the City and the Authority will be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Remedies Not Exclusive. No remedy in the Master Contract conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, and each such remedy will be cumulative and will be in addition to every other remedy given under the Master Contract or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

### **Discharge of Obligations**

(a) If the City will pay or cause to be paid all the Payments at the times and in the manner provided in the Master Contract, the right, title and interest of the Authority in the Master Contract and the obligations of the City under the Master Contract and under all Supplemental Contracts will cease, terminate, become void and be completely discharged and satisfied.

(b) Any unpaid principal installment of any of the Payments will on its payment date or date of prepayment be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) above if the City makes payment of such Payment and the prepayment premium, if applicable, in the manner provided in the Master Contract.

(c) All or any portion of unpaid principal installments of the Payments will, prior to their payment dates or dates of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) above if (i) there will have been deposited with the Trustee either money in an amount which will be sufficient, or Federal Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form) or municipal obligations which have been defeased under irrevocable escrow instructions with Federal Securities and which are rated in the highest rating category by the Rating Agencies, the interest on and principal of which when paid will provide money which, together with money, if any, deposited with the Trustee, will be sufficient (as evidenced by a report of an Independent Certified Public Accountant regarding such sufficiency) to pay when due the principal installments of such Payments or such portions thereof on their payment dates or their dates of prepayment, as the case may be, the interest installments of such Payments due on and prior to such payment dates or dates of prepayment, and the prepayment premiums, if any, applicable thereto, and (ii) an Opinion of Counsel is filed with the Trustee to the effect that the action taken pursuant to this subsection will not cause the interest installments of such Payments so paid to be includable in gross income under the Code for federal income tax purposes.

(d) After the payment of all Payments and prepayment premiums, if any, as provided in this section, and payment in full of all fees and expenses of the Authority, the Authority, upon request of the City, will cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and the Authority, and will execute and deliver to the City

all such instruments as may be necessary or desirable to evidence such total discharge and satisfaction of the Contracts, and the Authority will pay over and deliver to the City, as an overpayment of Payments, all such money or investments held by it pursuant to the Master Contract other than such money and such investments as are required for the payment or prepayment of the Payments and interest installments of such Payments and the prepayment premiums, if any, applicable thereto, which money and investments will continue to be held in trust for the payment of the Payments.

### **Liability of City Limited to Gross Revenues**

Notwithstanding anything contained in Contracts, the City will not be required to advance any moneys derived from any source of income other than the Gross Revenues for the payment of the Payments or for the performance of any agreements or covenants required to be performed by it contained in the Master Contract. The City may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Payments is a special obligation of the City payable solely from the Gross Revenues as provided in the Master Contract. The general fund of the City is not liable, and neither the credit nor taxing power of the City is pledged, for the payment of the Payments under the Contracts or any other payments required to be made by the City under other Parity Obligations.

## **THE TRUST AGREEMENT**

Certain provisions of the Trust Agreement are summarized below. THIS SUMMARY DOES NOT PURPORT TO BE COMPLETE OR DEFINITIVE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TERMS OF THE TRUST AGREEMENT.

### **Definitions**

The following are summaries of definitions of certain terms from the Trust Agreement used in this Summary of Principal Legal Documents or elsewhere in this Official Statement.

“Alternate Liquidity Facility” means a letter of credit, line of credit, surety bond, standby purchase agreement or other security or liquidity instrument, as the case may be, approved by the 2008 Certificate Insurer and issued in accordance with the terms hereof with respect to the 2008 Certificates as a replacement or substitute for any Liquidity Facility then in effect.

“Authority” means the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State.

“Authorized Denominations” means (i) with respect to 2008 Certificates in a Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; (ii) with respect to 2008 Certificates in a Flexible Mode, \$100,000 and any integral multiple of \$1,000 in excess thereof; and (iii) with respect to 2008 Certificates in a Term Rate Mode or Fixed Rate Mode, \$5,000 and any integral multiple thereof.

“Automatic Termination Event” means an event of default set forth in a Reimbursement Agreement between the Authority and a Liquidity Facility Provider which would result in the

immediate termination of the Liquidity Facility provided pursuant to such Reimbursement Agreement prior to its stated expiration date without prior notice from the Liquidity Facility Provider to the Trustee.

“Book-Entry System” means a system under which physical certificates in fully registered form are registered only in the name of a Securities Depository or its nominee.

“Business Day” means any day other than (i) a Saturday or Sunday or (ii) a day on which the Trustee is required or authorized to be closed or (iii) a day on which the office of the applicable Credit Enhancement Provider at which draws or advances will be paid is required or authorized to be closed or (iv) a day on which The New York Stock Exchange is closed.

“Certificate of the Authority” means an instrument in writing signed by the Auditor and Treasurer of the Authority or by any other officer of the Authority duly authorized by the Authority for that purpose.

“Certificate Payment Date” means, with respect to any 2008 Certificate, the Certificate Payment Date designated therein, which is the October 1 on which or, in the case of 2008 Certificates subject to mandatory sinking fund prepayment, by which, the principal component of the final 2008 Payment evidenced and represented thereby will become due and payable.

“City” means the City of Modesto, a charter city and municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State.

“Code” means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code will be deemed to be a reference to any successor to any such section.

“Contract” means that certain Master Contract, as supplemented by the 1997 Supplemental Contract and the 2008 Supplemental Contract, and as otherwise amended or supplemented from time to time.

“Corporate Trust Office” means the corporate trust office of the Trustee in San Francisco, California, or such other office as may be specified by written notice from the Trustee to the Authority.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City or the Authority and related to the authorization, execution and delivery of the 2008 Supplemental Contract and the Trust Agreement and the execution, sale and delivery of the 2008 Certificates, including, but not limited to, costs of preparation and reproduction of documents, costs of rating agencies and costs to provide information required by rating agencies, filing and recording fees, initial fees and charges of the Trustee and its counsel, legal fees and charges, fees and disbursements of consultants and professionals, fees and expenses of the underwriter, fees and charges for preparation, execution and safekeeping of the 2008 Certificates, fees of the Liquidity Facility Provider, fees of the Authority and any other cost, charge or fee in connection with the original execution and delivery of the 2008 Certificates.

“Costs of Issuance Fund” means the fund by that name established pursuant to the Trust Agreement.

“Credit Enhancement Provider” means the 2008 Certificate Insurer.

“Daily Mode” means the Mode during which the 2008 Certificates evidence interest at the Daily Rate.

“Daily Rate” means the per annum interest rate with respect to the 2008 Certificates in the Daily Mode determined pursuant to the Trust Agreement.

“Daily Rate Period” means the period during which the 2008 Certificates in the Daily Mode will evidence interest at a Daily Rate, which will be from the Business Day upon which a Daily Rate is set to but not including the next succeeding Business Day.

“Delivery Date” means May 29, 2008.

“Event of Default” means an event described in the Trust Agreement.

“Expiration Date” means the stated expiration date of a Liquidity Facility, as it may be extended from time to time as provided in such Liquidity Facility, or any earlier date on which such Liquidity Facility will terminate at the direction of the Authority, expire or be cancelled (other than the date on which a Liquidity Facility will terminate as a result of an Automatic Termination Event or an event of default under the Reimbursement Agreement entered into in connection with such Liquidity Facility).

“Favorable Opinion of Special Counsel” means, with respect to any action the occurrence of which requires such an opinion, an Opinion of Special Counsel, addressed to the Trustee, to the effect that the action proposed to be taken will not, in and of itself, adversely affect any exclusion from gross income of interest with respect to the 2008 Certificates.

“Federal Securities” shall have the meaning ascribed thereto in the Contract.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the Authority as its Fiscal Year.

“Fixed Rate” means the per annum interest rate or interest rates evidenced by the 2008 Certificates in a Fixed Rate Mode determined pursuant to the Trust Agreement.

“Fixed Rate Mode” means the Mode during which the 2008 Certificates evidence interest at a Fixed Rate.

“Fixed Rate Period” means, with respect to 2008 Certificates converted to the Fixed Rate Mode, the period from the Mode Change Date upon which the 2008 Certificates were converted to a Fixed Rate Mode to but not including the Maturity Date.

“Flexible Mode” means the Mode during which the 2008 Certificates evidence interest at Flexible Rates.

“Flexible Rate” means, with respect to the 2008 Certificates in a Flexible Mode, the per annum interest rate determined for the 2008 Certificate pursuant to the Trust Agreement.

“Flexible Rate Certificates” means the 2008 Certificates in a Flexible Mode.

“Flexible Rate Period” means, with respect to the 2008 Certificates in a Flexible Mode, the period of from 1 to 397 calendar days (which Flexible Rate Period must end on a day preceding a Business Day) during which a Flexible Rate Certificate will evidence interest at a Flexible Rate, as established by the Remarketing Agent pursuant to the Trust Agreement.

“Improvement Fund” means the fund by that name established pursuant to the Contract.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State, appointed and paid by the Authority, and who, or each of whom:

(1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the Authority;

(2) does not have a substantial financial interest, direct or indirect, in the operations of the Authority; and

(3) is not connected with the Authority as a member, officer or employee of the Authority, but who may be regularly retained to audit the accounting records of and make reports thereon to the Authority.

“Information Services” means Financial Information, Inc.’s “Daily Called Bond Service,” 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; FIS/Mergent, Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attn: Call Notification; Standard & Poor’s Securities Evaluation, Inc., 55 Water Street, 45th Floor, New York, New York 10041, Attention: Notification Department; Xcitek, 5 Hanover Square, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to the redemption of bonds or the prepayment of certificates of participation as the Authority may designate in a Certificate of the Authority filed with the Trustee.

“Interest Payment Date” means each date on which interest is to be paid and is: (i) with respect to the 2008 Certificates in a Daily Mode or a Weekly Mode, the first Business Day of each month; (ii) with respect to the 2008 Certificates in a Flexible Mode, each Mandatory Purchase Date applicable thereto; (iii) with respect to the 2008 Certificates in a Fixed Rate Mode or a Term Rate Mode, the first day of April or October, which is at least 3 months after the month in which such Long-Term Mode takes effect, and the first day of each April and October thereafter or, upon the receipt by the Trustee of a Favorable Opinion of Special Counsel, any other six-month interval chosen by the Authority (beginning with the first such day which is at least three months after the Mode Change Date) and, with respect to a Term Rate Mode, the final day of the current Interest Period if other than a regular six-month interval; (iv) (without duplication as to any Interest Payment Date listed above) any Mode Change Date, other than a change between a Daily Mode and a Weekly Mode, and each Maturity Date; and (v) with respect to any Liquidity Provider Certificates, the day set forth in the applicable Reimbursement Agreement.

“Interest Period” means, for the 2008 Certificates in a particular Mode, the period of time that the 2008 Certificates evidence interest at the rate (per annum) which becomes effective at the

beginning of such period, and will include a Daily Rate Period, a Weekly Rate Period, a Flexible Rate Period, a Term Rate Period, and a Fixed Rate Period.

“Liquidity Facility” means, initially, the Stand-by Certificate Purchase Agreement, dated as of May 1, 2008, between the Authority and Bank of America, N.A., and any future line of credit, letter of credit, standby purchase agreement or other instrument, if any, which provides for the payment of the purchase price of the 2008 Certificates upon the tender thereof in the event remarketing proceeds are insufficient therefor.

“Liquidity Facility Provider” means, initially, Bank of America, N.A., and any future bank, insurance company, pension fund or other financial institution acceptable to the 2008 Certificate Insurer which provides a Liquidity Facility or Alternate Liquidity Facility for the 2008 Certificates.

“Liquidity Provider Certificates” means any 2008 Certificates purchased by a Liquidity Facility Provider with funds drawn on or advanced under the Liquidity Facility provided by such Liquidity Facility Provider.

“Mandatory Purchase Date” means (i) with respect to a Flexible Rate Certificate, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Certificate; (ii) for the 2008 Certificates in a Term Rate Mode, the first Business Day following the last day of each Term Rate Period for such 2008 Certificates; (iii) any Mode Change Date; (iv) any Substitution Date; (v) the fifth Business Day prior to an Expiration Date; (vi) the date specified by the Trustee following the occurrence of an event of default with respect to the Liquidity Facility which requires or gives the Liquidity Facility Provider the option to terminate the Liquidity Facility upon notice and requires that all Outstanding 2008 Certificates secured by such Liquidity Facility be tendered for purchase under the applicable Reimbursement Agreement, which date shall be a Business Day not less than 20 days after the Trustee’s receipt of notice of such event of default from the applicable Liquidity Facility Provider and in no event later than the Business Day preceding the termination date specified in the notice of event of default delivered to the Trustee by such Liquidity Facility Provider; and (vii) for the 2008 Certificates in a Daily Mode or a Weekly Mode, any Business Day specified by the Authority in a notice delivered to the Trustee, which Mandatory Purchase Date shall be not less than twenty (20) days after the Trustee’s receipt of such notice from the Authority.

“Master Contract” means that certain Master Installment Purchase Contract, executed and entered into as a November 1, 1997, by and between the City and the Authority, as the same may be amended or supplemented from time to time.

“Maturity Date” means, with respect to the 2008 Certificates, the maturity date specified for the 2008 Certificates in the Trust Agreement or, if Serial Certificates or more than one Term Certificates are established for the 2008 Certificates pursuant to the Trust Agreement upon a change of the 2008 Certificates to a Fixed Rate Mode, the maturity dates established for such Serial Certificates or Term Certificates.

“Maximum Rate” or “Maximum Interest Rate” means, with respect to all 2008 Certificates other than Liquidity Provider Certificates, a rate of interest of 12% per annum, and with respect to Liquidity Provider Certificates, such rate not greater than 25% as is provided for in the applicable Liquidity Facility; provided, however, that such rate will not in any event exceed the highest rate then permitted by law.

“Mode” means, as the context may require, the Daily Mode, the Weekly Mode, the Flexible Mode, the Term Rate Mode, or the Fixed Rate Mode.

“Mode Change Date” means with respect to the 2008 Certificates in a particular Mode, the day on which another Mode for the 2008 Certificates begins.

“Moody’s” means Moody’s Investors Service Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the services of a municipal securities rating agency, then “Moody’s” will be deemed to refer to any other nationally recognized municipal securities rating agency selected by the Authority.

“1997 Certificates” means the \$25,585,000 Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project), evidencing and representing and proportionate interests of the owners thereof in the 1997 Payments to be made by the City.

“1997 Payments” means the installment payments required to be made by the City to the Authority under and pursuant to the 1997 Supplemental Contract.

“1997 Supplemental Contract” means the 1997 Supplemental Installment Purchase Contract, executed and entered into as of November 1, 1997, by and between the City and the Authority, supplementing the Master Contract.

“1997 Trust Agreement” means that certain Trust Agreement, dated as of November 1, 1997, by and between the Authority and State Street Bank and Trust Company, N.A., which has been succeeded by The Bank of New York Trust Company, N.A., as trustee, pursuant to which there was executed and delivered the 1997 Certificates.

“Notice Parties” means the Authority, the City, the Trustee, the Credit Enhancement Provider, if any, the Liquidity Facility Provider, if any, the Remarketing Agent, if any, and the Fixed Rate Remarketing Agent, if any.

“Opinion of Counsel” means a written opinion of counsel of recognized standing in the field of law being addressed in such opinion retained the Authority.

“Outstanding” when used as of any particular time with reference to 2008 Certificates, means (subject to the provisions of the Trust Agreement) all 2008 Certificates except (1) 2008 Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) 2008 Certificates paid or deemed to have been paid within the meaning of the Trust Agreement; and (3) 2008 Certificates in lieu of or in substitution for which other 2008 Certificates will have been executed and delivered by the Trustee pursuant to the Trust Agreement.

“Owner” means any person who will be the registered owner of any Outstanding 2008 Certificate.

“Parity Reserve Fund” means the fund by that name continued pursuant to the Trust Agreement.

“Payment Agreement Payments” has the meaning given such term in the Master Contract.

“Payment Agreement Receipts” has the meaning given such term in the Master Contract.

“Permitted Investments” means any of the following obligations if and to the extent then permitted by law:

(1) Federal Securities;

(2) Obligations issued by the Resolution Funding Corporation and the Student Loan Marketing Association, or obligations, participations, or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Government National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal);

(3) Bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or any of its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System and which are drawn on any bank the short-term obligations of which are rated in the highest letter and numerical rating category as provided by Moody’s and by S&P; provided, that purchases of eligible bankers acceptances may not exceed 270 days’ maturity;

(4) Commercial paper of “prime” quality of the highest ranking or of the highest letter and numerical rating category as provided by Moody’s and by S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of \$500,000,000 and that have an “A1” or higher rating for the issuer’s unsecured debentures, other than commercial paper, as provided by Moody’s and by S&P; provided, that purchases of eligible commercial paper may not exceed 180 days’ maturity nor represent more than 10% of the outstanding commercial paper of an issuing corporation;

(5) Non-negotiable certificates of deposit issued by a state or national bank (including the Trustee or any of its affiliates) that have maturities of not more than 365 days or deposit accounts with a state or national bank and that are fully insured by the Federal Deposit Insurance Corporation or the short-term obligations of which state or national bank are rated no lower than “A1” by Moody’s and “A+” by S&P;

(6) Any repurchase agreement of any securities enumerated in subdivisions (1) and (2) with any state or national bank (including the Trustee or any of its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than “A1” by Moody’s and “A+” by S&P or whose commercial paper is rated no lower than “P-1” by Moody’s and no lower than “A-1” by S&P; (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; provided, that (a) the term of such repurchase agreement is less than one (1) year or due on demand; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the market value of the collateral (as determined at least once in every 14 days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody’s and to S&P; (d) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; and (e) the repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with “retail customers” which falls under the jurisdiction

of the Securities Investors Protection Corporation; provided, that: (a) the market value of the collateral (as determined at least once in every 14 days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody's and to S&P; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the Trustee has a perfected first priority security interest in the collateral; (d) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (e) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;

(7) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State or any local agencies therein which are rated in the highest short-term rating category or within one of the three highest long-term rating categories by Moody's and by S&P (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);

(8) For amounts less than \$100,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof, and of which an aggregate total of \$100,000 is not exceeded in any one financial institution;

(9) Investments in units of a money-market fund portfolio that is rated in the highest letter and numerical rating category by Moody's and by S&P (including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services) and that is composed of obligations guaranteed by the full faith and credit of the United States of America or repurchase agreements collateralized by such obligations;

(10) A guaranteed investment contract with a financial institution or insurance company (or guaranteed by a financial institution or insurance company) which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated within the two highest rating categories of any Rating Agency;

(11) Other investments approved in writing by the 2008 Certificate Insurer; and

(12) The Local Agency Investment Fund, the California Asset Management Program, or similar pooled fund operated by or on behalf of the State and which is authorized to accept investments by or on behalf of the Authority of the moneys held by the Trustee in any of the accounts or funds established pursuant to the Trust Agreement to the extent deposits and withdrawals may be made by the Trustee directly.

"Person" will mean an individual, a corporation, an association, a joint venture, a partnership, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Prepayment Date" means the date fixed for prepayment of any 2008 Certificate in any notice of prepayment given in accordance with the terms of the Trust Agreement.

"Purchase Date" means any Mandatory Purchase Date.

“Purchase Price” means an amount equal to the principal amount of the 2008 Certificates purchased on any Purchase Date, plus accrued interest to such Purchase Date (unless such Purchase Date is also an Interest Payment Date, in which case the Purchase Price will not include accrued interest, which will be paid in the normal course).

“Rating Agencies” means Moody’s and S&P, and their respective successors or assigns, or any other nationally recognized securities rating agency or agencies rating the 2008 Certificates at the request of the City.

“Rating Confirmation Notice” means a written notice from the Rating Agencies then rating the 2008 Certificates, confirming that the rating on the 2008 Certificates (without giving effect to any Liquidity Facility) will not be lowered or withdrawn (other than a withdrawal of a short-term rating upon a change to a Fixed Rate Mode) as a result of the action proposed to be taken.

“Record Date” means (i) with respect to the 2008 Certificates in a Short-Term Mode, the last Business Day before each Interest Payment Date; and (ii) with respect to the 2008 Certificates in a Long-Term Mode, the 15th day (whether or not a Business Day) of the month next preceding each Interest Payment Date.

“Reimbursement Agreement” means any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement, between a Credit Enhancement Provider or a Liquidity Facility Provider, as applicable, and the Authority and/or the City, as the same may be amended from time to time pursuant to its terms.

“Remarketing Agent” means the remarketing agent for the 2008 Certificates selected by the Authority pursuant to the Trust Agreement and approved by the 2008 Certificate Insurer.

“Reserve Funding Instruments” will have the meaning given such term in the Trust Agreement, including the 2008 Parity Reserve Fund Insurance Policy.

“Reserve Fund Requirement” will have the meaning ascribed thereto in the Contract.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Company, and its successors or assigns, except that if such entity will be dissolved or liquidated or will no longer perform the services of a municipal securities rating agency, then “S&P” will be deemed to refer to any other nationally recognized municipal securities rating agency selected by the Authority.

“Securities Depositories” means: The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attention: Call Notification Department, Fax: (212) 855-7232; or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority may designate in a Certificate of the Authority to the Trustee.

“Serial Certificate” means any 2008 Certificate not subject to mandatory prepayment from Sinking Fund Payments.

“Sinking Fund Payments” means the payments required under the Trust Agreement to be deposited in the 2008 Sinking Fund Subaccount.

“Special Counsel” means any firm of nationally recognized municipal bond attorneys selected by the Authority and experienced in the issuance of municipal bonds and matters relating to the exclusion of the interest thereon from gross income for federal income tax purposes.

“State” means the State of California.

“Supplemental Contract” will have the meaning given such term in the Contract.

“Supplemental Trust Agreement” means any trust agreement then in full force and effect which has been duly executed and delivered by the Authority and the Trustee amendatory of or supplemental to the Trust Agreement; but only if and to the extent that such Supplemental Trust Agreement is specifically authorized under the Trust Agreement.

“Tax Certificate” means, collectively, the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the 2008 Certificates, executed and delivered by the City on the date of delivery of the 2008 Certificates, including any and all exhibits attached thereto.

“Term Certificates” means the 2008 Certificates subject to mandatory prepayment from Sinking Fund Payments.

“Term Rate” means the per annum interest rate for the 2008 Certificates in the Term Rate Mode determined pursuant to the Trust Agreement.

“Term Rate Mode” means the Mode during which the 2008 Certificates evidence interest at a Term Rate.

“Term Rate Period” means the period from (and including) the Mode Change Date or the date of initial conversion of the 2008 Certificates to a Term Rate Mode, as applicable, to (but excluding) the last day of the first period that 2008 Certificates will be in the Term Rate Mode as established by the Authority pursuant to the Trust Agreement and, thereafter, the period from (and including) the beginning date of each successive Interest Rate Period selected for the 2008 Certificates by the Authority pursuant to the Trust Agreement while the 2008 Certificates are in the Term Rate Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period. Except as otherwise provided in the Trust Agreement, an Interest Period for the 2008 Certificates in the Term Rate Mode must be at least 180 days in length.

“Trust Agreement” means that certain Trust Agreement, dated as of May 1, 2008, between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented by all Supplemental Trust Agreements executed pursuant to the provisions of the Trust Agreement.

“Trustee” means The Bank of New York Trust Company, N.A., or any other association or corporation which may at any time be substituted in its place as provided in the Trust Agreement.

“2008 Certificate Insurance Policy” means the financial guaranty insurance policy issued by the 2008 Certificate Insurer guaranteeing the scheduled payment of principal of and interest evidenced and represented by the 2008 Certificates.

“2008 Certificate Insurer” means Assured Guaranty Corp., its successors and assigns.

“2008 Debt Service Fund” means the fund by that name established pursuant to the Trust Agreement.

“2008 Interest Account” means the account by that name established within the 2008 Debt Service Fund pursuant to the Trust Agreement.

“2008 Interest Rate Swap Agreement” has the meaning given such term in the 2008 Supplemental Contract.

“2008 Parity Reserve Fund Insurance Policy” means the reserve fund financial guaranty insurance policy issued by the 2008 Certificate Insurer and deposited in the Parity Reserve Fund pursuant to the Trust Agreement.

“2008 Payments” means the installment payments of interest, principal, and prepayment premium, if any, payable by the City under and pursuant to the 2008 Supplemental Contract.

“2008 Prepayment Subaccount” means the subaccount by that name established within the 2008 Principal Account of the 2008 Debt Service Fund pursuant to the Trust Agreement.

“2008 Principal Account” means the account by that name established within the 2008 Debt Service Fund pursuant to the Trust Agreement.

“2008 Project” means the refinancing of improvements to the Water Utility System described in Exhibit A to the 2008 Supplemental Contract.

“2008 Sinking Fund Subaccount” means the subaccount by that name within the 2008 Principal Account of the 2008 Debt Service Fund established pursuant to the Trust Agreement.

“2008 Supplemental Contract” means that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, by and between the City and the Authority, supplementing the Master Contract.

“Weekly Mode” means the Mode during which the 2008 Certificates evidence interest at the Weekly Rate.

“Weekly Rate” means the per annum interest rate with respect to the 2008 Certificates in the Weekly Mode determined pursuant to the Trust Agreement.

“Weekly Rate Period” means the period during which the 2008 Certificates evidence interest at a Weekly Rate, which will be the period commencing on Thursday of each week to and including Wednesday of the following week, except the first Weekly Rate Period which will be from the Mode Change Date for the 2008 Certificates to and including the Wednesday of the following week and the last Weekly Rate Period which will be from and including the Thursday of the week prior to the Mode Change Date to and including the day next preceding the Mode Change Date.

“Written Request of the Authority” means an instrument in writing signed by the Auditor and Treasurer of the Authority or by any other officer of the Authority duly authorized by the Authority for that purpose.

## **Equal Security**

In consideration of the acceptance of the 2008 Certificates by the Owners thereof, the Trust Agreement will be deemed to be and will constitute a contract between the Authority and the Owners from time to time of all 2008 Certificates authorized, executed, and delivered under the Trust Agreement and then Outstanding to secure the full and final payment of the interest, principal, and prepayment premiums, if any, evidenced and represented by the 2008 Certificates which may from time to time be authorized, executed, issued and delivered under the Trust Agreement, subject to the agreements, conditions, covenants and provisions contained in the Trust Agreement; and all agreements and covenants set forth in the Trust Agreement to be performed by or on behalf of the Trustee will be for the equal and proportionate benefit, protection and security of all Owners without distinction, preference or priority as to security or otherwise of any 2008 Certificates over any other 2008 Certificates by reason of the number or date thereof or the time of authorization, sale, execution, or delivery thereof or for any cause whatsoever, except as expressly provided in the Trust Agreement or therein.

## **2008 Payments; 2008 Project**

2008 Payments Held in Trust. The 2008 Payments will be held in trust by the Trustee for the benefit of the Owners from time to time of the 2008 Certificates, but will nonetheless be disbursed, allocated and applied solely for the uses and purposes provided in the Trust Agreement.

Deposit of 2008 Payments. The Trustee agrees to establish, maintain and hold in trust a separate fund designated as the 2008 Debt Service Fund, for so long as any 2008 Certificates will be Outstanding under the Trust Agreement. All 2008 Payments (except as otherwise provided) received by the Trustee will be immediately deposited in the 2008 Debt Service Fund and will be disbursed and applied only as provided in the Trust Agreement.

Establishment and Maintenance of Accounts for Use of Money in the 2008 Debt Service Fund. All money in the 2008 Debt Service Fund will be set aside by the Trustee in the following respective special accounts within the 2008 Debt Service Fund (each of which is created by the Trust Agreement and each of which the Trustee agrees and covenants to maintain pursuant to the Trust Agreement) in the following order of priority:

- (a) 2008 Interest Account, and
- (b) 2008 Principal Account (with a 2008 Prepayment Subaccount and a 2008 Sinking Fund Subaccount therein).

All money in each of such accounts and subaccounts will be held in trust by the Trustee for the benefit of the Owners and will be applied, used and withdrawn only for the purposes authorized in the Trust Agreement.

(a) 2008 Interest Account. On the Delivery Date, the Trustee will deposit in the 2008 Interest Account any Payment Agreement Receipts relating to the 2008 Interest Rate Swap Agreement which the City has directed under the 2008 Interest Rate Swap Agreement to be transferred to the Trustee for deposit in the 2008 Interest Account and any amounts transferred to the Trustee pursuant to the 2008 Supplemental Contract for the payment of payments due under the 2008 Interest Rate Swap Agreement. On the Business Day immediately preceding each Interest Payment

Date, the Trustee will set aside from the 2008 Debt Service Fund and deposit in the 2008 Interest Account that amount of money which is equal to the amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on each such Interest Payment Date. The Trustee will also apply amounts on deposit in the 2008 Fees Subaccount to pay on behalf of the City, the Payment Agreement Payments required to be paid under the 2008 Interest Rate Swap Agreement and to pay the Remarketing Agent fees as the same will become due on each due date therefor until such 2008 Fees Subaccount will be depleted (expected to be on or about November 29, 2008). Investment earnings on amounts on deposit in the 2008 Fees Subaccount will be transferred to the City for deposit in the Revenue Fund.

No deposit need be made in the 2008 Interest Account if the amount contained therein (exclusive of amounts transferred for the payment of amounts due under the 2008 Interest Rate Swap Agreement) is at least equal to the aggregate amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on such Interest Payment Date.

Except as otherwise provided in the Trust Agreement, all money in the 2008 Interest Account will be used and withdrawn by the Trustee solely for the purpose of paying the interest (including accrued interest evidenced and represented by any 2008 Certificates purchased or prepaid prior to their respective Certificate Payment Date) with respect to the 2008 Certificates as it will become due and payable and paying the Payment Agreement Payments due under the 2008 Interest Rate Swap Agreement as they will become due and payable.

(b) 2008 Principal Account. On the Business Day immediately preceding each October 1, commencing on October 1, 2008, the Trustee will set aside from the 2008 Debt Service Fund and deposit in the 2008 Principal Subaccount an amount of money equal to the principal amount evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1, and in the 2008 Sinking Fund Subaccount in the 2008 Principal Account the amount of all Sinking Fund Payments required to be made on such October 1.

Amounts to be applied to the optional prepayment of the principal component of the 2008 Certificates pursuant to the Trust Agreement will be deposited in the 2008 Prepayment Subaccount of the 2008 Principal Account.

No deposit need be made in the 2008 Principal Account if the amount contained therein is at least equal to the aggregate amount of the principal evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1 and the amount contained in the 2008 Sinking Fund Subaccount therein is at least equal to the aggregate amount of all Sinking Fund Payments required to be made on such October 1.

All money in the 2008 Principal Account will be used and withdrawn by the Trustee solely for the purpose of paying the principal evidenced and represented by the Serial Certificates as they will become due and payable, whether at their respective Certificate Payment Dates or on prior prepayment, and all money in the 2008 Sinking Fund Subaccount of the 2008 Principal Account will be used and withdrawn by the Trustee only to purchase or to prepay or to pay Term Certificates, and with respect to the 2008 Sinking Fund Subaccount, on each Sinking Fund Payment date, the Trustee will apply the Sinking Fund Payment required on that date to the prepayment (or payment at Certificate Payment Date, as the case may be) of the Term Certificates upon the notice and in the manner provided in the Trust Agreement; provided, that at any time prior to giving such notice of such prepayment, the Trustee may, upon the Written Request of the Authority and receipt of moneys

sufficient therefor, purchase for cancellation Term Certificates in accordance with the Trust Agreement.

Parity Reserve Fund. The Parity Reserve Fund created pursuant to the 1997 Trust Agreement is continued by the Trust Agreement. Pursuant to the Trust Agreement, the Trustee agrees and covenants to maintain the Parity Reserve Fund so long as the Contract has not been discharged in accordance with its terms or any 2008 Certificates remain Outstanding under the Trust Agreement. Amounts on deposit in the Parity Reserve Fund are pledged to the payment of the 1997 Certificates, the 2008 Certificates and any other obligations hereafter issued in connection with a Supplemental Contract and will be applied only for such purposes as provided in the Trust Agreement. The Trustee will deposit in the Parity Reserve Fund from the proceeds of the 2008 Certificates, the amount specified in the Trust Agreement, such amount being sufficient to cause the balance on deposit in or credited to the Parity Reserve Fund, to be equal to the Reserve Fund Requirement upon delivery of the 2008 Certificates. The Trustee will deposit in the Parity Reserve Fund such other amounts transferred to the Trustee by the City pursuant to the Contract, as directed by the Authority in a Written Request of the Authority. Moneys on deposit in the Parity Reserve Fund will be transferred by the Trustee to the 2008 Debt Service Fund to pay principal and interest evidenced and represented by the 2008 Certificates on any Interest Payment Date in the event amounts on deposit therein are insufficient for such purposes. The Trustee will also, from such amounts on deposit in the Parity Reserve Fund, transfer or cause to be transferred to any applicable debt service fund established under the 1997 Trust Agreement and under any other trust agreement under which any obligations are issued in connection with a Supplemental Contract, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without discrimination or preference, that sum or sums, if any, equal to the amount required to be deposited therein pursuant to such trust agreement under which any obligations are issued in connection with a Supplemental Contract. All investments in the Parity Reserve Fund will (notwithstanding anything in the 1997 Trust Agreement to the contrary) be valued on or before October 1 of each year at the lesser of the cost or market value thereof. Following such valuation, any moneys on deposit in the Parity Reserve Fund representing an excess of the Reserve Fund Requirement will be transferred by the Trustee to the City for deposit in the Revenue Fund. The Trustee may create such subaccounts in the Parity Reserve Fund as may be necessary or convenient for the purposes of the Trust Agreement.

The Reserve Fund Requirement may be provided by one or more surety bonds, insurance policies, or letters of credit as described in the definition of Reserve Fund Requirement (“Reserve Funding Instruments”) set forth in the Contract.

Notwithstanding anything to the contrary contained in the Trust Agreement, at any time one or more Reserve Funding Instruments are on deposit in the Parity Reserve Fund, the Trustee will: (i) withdraw and use all cash, if any, on deposit in the Parity Reserve Fund prior to using and withdrawing any amounts derived from payments under any Reserve Funding Instruments; and (ii) draw on all Reserve Funding Instruments on a pro rata basis based on the draw limit of each Reserve Funding Instrument. Amounts received by the Trustee from the City pursuant to the Master Contract as a replenishment of amounts withdrawn from the Parity Reserve Fund will be applied (i) first on a pro rata basis to reimburse draws on any Reserve Funding Instruments and (ii) to replenish cash withdrawn from the Parity Reserve Fund.

Establishment and Application of Costs of Issuance Fund. Pursuant to the Trust Agreement, the Trustee agrees to establish, maintain and hold in trust a separate fund designated as the Costs of

Issuance Fund, which fund is created by the Trust Agreement and which fund the Authority agrees to maintain with the Trustee until November 29, 2008. The Trustee will deposit to the Costs of Issuance Fund the amounts specified in the Trust Agreement. All money in the Costs of Issuance Fund will be used and withdrawn by the Trustee to pay the Costs of Issuance relating to the 2008 Certificates upon receipt of a Written Request of the Authority filed with the Trustee, each of which will be sequentially numbered and will state the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On November 29, 2008, or upon the earlier Written Request of the Authority, any remaining balance in the Costs of Issuance Fund will be transferred to the City for deposit in the 2008 Debt Service Fund.

Deposit and Investments of Money in Accounts and Funds. All money held by the Trustee in any of the accounts or funds established pursuant to the Trust Agreement will be invested in Permitted Investments at the Written Request of the Authority filed with the Trustee which such Permitted Investments will, as nearly as practicable, mature on or before the dates on which such money is anticipated to be needed for disbursement under the Trust Agreement, and the Trustee will have no liability or responsibility for any loss resulting from any investment made in accordance with the Trust Agreement; provided, that if no such Written Request is received by the Trustee, the Trustee will invest such money in those Permitted Investments described in clause (9) of the definition thereof. Except as otherwise provided in the Trust Agreement with respect to the Parity Reserve Fund, all interest or profits received on any money so invested will be deposited in the 2008 Debt Service Fund.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority periodic cash transaction statements which include detail for all investment transactions made by the Trustee under the Trust Agreement.

The Trustee or any of its affiliates may act as principal or agent, sponsor, advisor or manager in connection with any investments made by the Trustee under the Trust Agreement. For investment purposes, the Trustee may commingle the funds and accounts established under the Trust Agreement, but will account for each separately.

The Trustee will not be liable for any loss from any Permitted Investment acquired, held, or disposed of at the written request of the Authority. Any Permitted Investments that are registered securities will be registered in the name of the Trustee.

**Assignment to Trustee; Enforcement of Obligations.**

(a) Pursuant to the Trust Agreement, the Authority transfers, assigns and sets over to the Trustee all of the 2008 Payments and any and all rights and privileges it has under the Contract, including, without limitation, the right to collect and receive directly all of the 2008 Payments, and any 2008 Payments collected or received by the Authority will be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee, and will forthwith be paid by the Authority to the Trustee. The Trustee also will, subject to the provisions of the Trust Agreement, take all steps, actions and proceedings required to be taken as provided in any Opinion of Counsel delivered to it, reasonably necessary to maintain in force for the benefit of the Owners of the 2008

Certificates the Trustee's rights in and priority to the following security granted to it for the payment of the 2008 Certificates: the Trustee's rights as assignee of the 2008 Payments under the Contract and as beneficiary of any other rights to security for the 2008 Certificates which the Trustee may receive in the future.

(b) The Trustee may, in performing the obligations set out above, rely and will be protected in acting or refraining from acting upon an Opinion of Counsel furnished by the City.

#### **Covenants of the Authority and the Trustee**

Compliance with Trust Agreement. The Trustee will not execute or deliver any 2008 Certificates in any manner other than in accordance with the provisions of the Trust Agreement; and the Authority will not suffer or permit any default by it to occur under the Trust Agreement, but will faithfully comply with, keep, observe and perform all the agreements and covenants to be observed or performed by it contained in the Trust Agreement and in the 2008 Certificates.

Observance of Laws and Regulations. The Authority and the Trustee will faithfully comply with, keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on them by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of each and every franchise, right or privilege now owned or hereafter acquired by them, including their right to exist and carry on their respective businesses, to the end that such franchises, rights and privileges will be maintained and preserved and will not become abandoned, forfeited or in any manner impaired.

Accounting Records and Reports. The Trustee will keep or cause to be kept proper books of record and accounts in which complete and correct entries will be made of all transactions made by the Trustee relating to the receipts, disbursements, allocation and application of the 2008 Payments and the proceeds of the 2008 Certificates, and such books will be available for inspection by the Authority, at reasonable hours and under reasonable conditions. Not more than 180 days after the close of each Fiscal Year, the Trustee will furnish or cause to be furnished to the Authority and the 2008 Certificate Insurer a complete financial statement covering receipts, disbursements, allocation and application of 2008 Payments received by the Trustee for such Fiscal Year. The Authority will keep or cause to be kept such information as required under the Tax Certificate.

Prosecution and Defense of Suits. The Authority will defend against every suit, action or proceeding at any time brought against the Trustee upon any claim to the extent arising out of the receipt, application or disbursement of any of the 2008 Payments and the proceeds of the 2008 Certificates or to the extent involving the failure of the Authority to fulfill its obligations under the Trust Agreement; provided that the Trustee or any affected Owner at its election may appear in and defend any such suit, action or proceeding. The Authority will indemnify and hold harmless the Trustee against any and all liability claimed or asserted by any person to the extent arising out of such failure by the Authority, and will indemnify and hold harmless the Trustee against any attorney's fees or other expenses which it may incur in connection with any litigation to which it may become a party by reason of its actions under the Trust Agreement, except for any loss, cost, damage or expense resulting from the active or passive negligence, willful misconduct or breach of duty by the Trustee. Notwithstanding any contrary provision of the Trust Agreement, this covenant will remain in full force and effect even though all 2008 Certificates secured by the Trust Agreement may have been fully paid and satisfied.

Amendments to Contract. Except for any Supplemental Contract delivered in accordance with the terms of the Contract, the Authority will not supplement, amend, modify or terminate any of the terms of the Contract, or consent to any such supplement, amendment, modification or termination, without the prior written consent of the Trustee, which such consent will be given only if (a) such supplement, amendment, modification or termination will not materially adversely affect the interests of the Owners or result in any material impairment of the security given for the payment of the 2008 Certificates, or (b) the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount evidenced and represented by the 2008 Certificates then Outstanding to such supplement, amendment, modification or termination; provided, that no such supplement, amendment, modification or termination will reduce the amount of 2008 Payments to be made to the Authority or the Trustee by the City pursuant to the Contract, or extend the time for making such 2008 Payments in any manner that would require the amendment of the Trust Agreement in any manner not in compliance with the Trust Agreement, or permit the creation of any lien prior to or on a parity with the lien created by the Trust Agreement on the 2008 Payments without the written consent of all of the Owners of the 2008 Certificates then Outstanding.

Recording and Filing. The Trustee upon receipt of a Written Request of the Authority, at the expense of the Authority, will file, record, register, renew, refile and rerecord all such documents, including financing statements (or continuation statements in connection therewith), all in such manner, at such times and in such places as may be required and to the extent permitted by law in order to fully perfect, preserve and protect the security of the Owners and the rights and interests of the Trustee; provided, however, that the Trustee will not be required to execute a special or general consent to service of process, or to qualify as a foreign corporation in connection with any such filing, recording, registration, refile or rerecording in any jurisdiction in which it is not now so subject.

Further Assurances. Whenever and so often as reasonably requested to do so by the Trustee or any Owner, the Authority will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Owners all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by the Trust Agreement.

### **The Trustee**

The Trustee. The Bank of New York Trust Company, N.A., will serve as the Trustee for the purpose of receiving all money which the Authority is required to deposit with the Trustee under the Trust Agreement and for the purpose of allocating, applying and using such money as provided in the Trust Agreement and for the purpose of paying the interest and principal and prepayment premiums, if any, evidenced and represented by the 2008 Certificates presented for payment, and for the purpose of canceling all paid or prepaid 2008 Certificates as provided in the Trust Agreement. The Authority agrees that it will at all times maintain a Trustee having a corporate trust office in either San Francisco, California or Los Angeles, California.

The Authority may at any time, unless there exists any Event of Default as defined in the Trust Agreement, remove the Trustee initially appointed and any successor thereto and may appoint a successor or successors thereto by an instrument in writing; provided that any successor appointed under the Trust Agreement will be approved by the 2008 Certificate Insurer and will be a bank with trust powers or trust company doing business and having a principal office in either San Francisco,

California or Los Angeles, California, having (or if such bank or trust company is a member of a bank holding company system, its bank holding company has) a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000 and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this provision the combined capital and surplus of such bank or trust company will be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Trustee may at any time resign by giving written notice of such resignation to the Authority and by mailing to the Owners notice of such resignation. Upon receiving such notice of resignation, the Authority will promptly appoint a successor Trustee by an instrument in writing. Any removal or resignation of a Trustee and appointment of a successor Trustee will become effective only upon the acceptance of appointment by the successor Trustee. If, within 30 days after notice of the removal or resignation of the Trustee no successor Trustee will have been appointed and will have accepted such appointment, the removed or resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Trustee having the qualifications required by the Trust Agreement. Any successor trustee will signify its acceptance of the duties under the Trust Agreement by an instrument in writing provided to the Authority and the Notice Parties.

Liability of the Trustee. The recitals of facts, agreements and covenants in the Trust Agreement and in the 2008 Certificates will be taken as recitals of facts, agreements and covenants of the Authority, and the Trustee assumes no responsibility for the correctness of the same or makes any representation as to the sufficiency or validity of the Trust Agreement or of the 2008 Certificates, or will incur any responsibility in respect thereof other than in connection with the rights or obligations assigned to or imposed upon it in the Trust Agreement, in the 2008 Certificates or in law or equity. The Trustee will not be liable in connection with the performance of its duties under the Trust Agreement except for its own active or passive negligence or willful misconduct.

The Trustee will not be liable for any error of judgment made in good faith by a responsible officer, unless it will be proved that the Trustee was negligent in ascertaining the pertinent facts.

The Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the 2008 Certificates at the time Outstanding, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under the Trust Agreement.

The Trustee will be under no obligation to exercise any of the rights or powers vested in it by the Trust Agreement at the request, order or direction of any of the Owners pursuant to the provisions of the Trust Agreement unless such Owners will have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby. The Trustee has no obligation or liability to the Owners for the payment of interest, principal or prepayment premium, if any, evidenced and represented by the 2008 Certificates from its own funds; but rather the Trustee's obligations will be limited to the performance of its duties under the Trust Agreement.

The Trustee will not be deemed to have knowledge of any default under the Trust Agreement or default under the Contract unless and until it will have actual knowledge thereof or will have

received written notice thereof at its Corporate Trust Office. Except as otherwise expressly provided in the Trust Agreement, the Trustee will not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements in the Trust Agreement or of any of the documents executed in connection with the 2008 Certificates or as to the existence of a default under the Trust Agreement.

The Trustee will not be considered in breach of or in default in its obligations under the Trust Agreement or progress in respect thereto in the event of enforced delay (“unavoidable delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

#### **Amendment of the Trust Agreement**

Amendment of the Trust Agreement. The Trust Agreement and the rights and obligations of the Authority and of the Owners may be amended at any time by a Supplemental Trust Agreement which will become binding when the written consents of the Owners of a majority in aggregate principal amount of the 2008 Certificates then Outstanding, exclusive of 2008 Certificates disqualified as provided in Trust Agreement, are filed with the Trustee; provided, that before executing any such Supplemental Trust Agreement the Trustee may first obtain at the Authority’s expense an Opinion of Counsel that such Supplemental Trust Agreement complies with the provisions of the Trust Agreement, on which opinion the Trustee may conclusively rely. No such amendment will (1) extend the Certificate Payment Date of, or change the payment dates of, or reduce the rate of interest or principal or prepayment premium, if any, evidenced and represented by any 2008 Certificate without the express written consent of the Owner of such Certificate, or (2) reduce the percentage of 2008 Certificates required for the written consent to any such amendment, or (3) modify any rights or obligations of the Trustee without its prior written assent thereto.

The Trust Agreement and the rights and obligations of the Authority and of the Owners may also be amended at any time by a Supplemental Trust Agreement which will become binding upon adoption without the consent of any Owners, but only to the extent permitted by law, for any purpose that will not materially adversely affect the interests of the Owners, including (without limitation) for any one or more of the following purposes:

(a) to add to the agreements and covenants required in the Trust Agreement to be performed by the Authority other agreements and covenants thereafter to be performed by the Authority, or to surrender any right or power reserved in the Trust Agreement to or conferred in the Trust Agreement on the Authority;

(b) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained in the Trust Agreement or in regard to questions arising under the Trust Agreement which the Authority may deem desirable or necessary and not inconsistent with the Trust Agreement;

(c) to add to the agreements and covenants required in the Trust Agreement, such agreements and covenants as may be necessary to qualify the Trust Agreement under the Trust Indenture Act of 1939;

(d) to make any amendments or supplements necessary or appropriate to preserve or protect the exclusion of interest evidenced and represented by the 2008 Certificates from gross income for federal income tax purposes under the Code or the exemption of such interest from State of California personal income taxes;

(e) to make such amendments or supplements as may be necessary or appropriate to maintain any then current rating on the 2008 Certificates by any of the Rating Agencies;

(f) to add to the rights of the Trustee;

(g) to modify, alter, amend or supplement the Trust Agreement in any other respect, including amendments which would otherwise be described in the Trust Agreement, if the effective date of such amendments is a date on which all 2008 Certificates affected thereby are subject to mandatory tender for purchase pursuant to the provisions of the Trust Agreement or if notice of the proposed amendments is given to Owners of the affected 2008 Certificates at least thirty (30) days before the proposed effective date of such amendments and, on or before such effective date, such Owners have the right to demand purchase of their 2008 Certificates pursuant to the provisions of the Trust Agreement; or

(h) for any other purpose that does not materially and adversely affect the interests of the Owners of the 2008 Certificates.

Amendment by Mutual Consent. Subject to certain provisions in the Trust Agreement related to the 2008 Certificate Insurance Policy, the Trust Agreement does not prevent any Owner from accepting any amendment as to the particular 2008 Certificates held by him, provided that due notation thereof is made on such 2008 Certificates.

Consent of the Liquidity Facility Provider. Notwithstanding anything to the contrary contained in the Trust Agreement, the Trust Agreement may not be amended without the prior written consent of the Liquidity Facility Provider.

Notice. The Trustee will give notice to the Rating Agencies of any amendments pursuant to the Trust Agreement.

#### **Events of Default and Remedies of Owners**

Events of Default: Acceleration; Waiver of Default. If an Event of Default (as that term is defined in the Contract) will happen, then such Event of Default will constitute a default under the Trust Agreement, and in each and every such case during the continuance of such Event of Default the Trustee or the Owners of not less than a majority in aggregate principal amount of the 2008 Certificates then Outstanding will exercise the remedies provided to the Authority in the Contract; provided, that nothing contained in the Trust Agreement will affect or impact the right of action of any Owner to institute suit directly against the City to enforce payment of the obligation evidenced and represented by such Owner's 2008 Certificates. Upon the occurrence of any Event of Default, the Trustee will give notice to the Credit Facility Provider and the Liquidity Facility Provider.

In determining whether a payment default has occurred under the Trust Agreement or whether a payment on the 2008 Certificates has been made under the Trust Agreement, no effect will be given to payments made under the 2008 Certificate Insurance Policy.

Other Remedies of the Trustee. The Trustee will have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce the Authority's rights under the Contract against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform or carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained in the Contract;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Trustee; or

(c) by suit in equity upon the happening of any Event of Default under the Trust Agreement to enforce the Authority's rights under the Contract to require the City and its directors, officers and employees to account as the trustee of an express trust.

Non-Waiver. A waiver of any default or breach of any duty or contract by the Trustee will not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Trustee to exercise any right or remedy accruing upon any default or breach of duty or contract will impair any such right or remedy or will be construed to be a waiver of any such default or breach of duty or contract or any acquiescence therein, and every right or remedy conferred upon the Trustee by law or by the Trust Agreement may be enforced and exercised from time to time and as often as will be deemed expedient by the Trustee.

If any action, proceeding or suit to enforce any right or to exercise any remedy is abandoned or determined adversely to the Trustee, the Trustee, and the City will be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Remedies Not Exclusive. No remedy in the Trust Agreement conferred upon or reserved to the Trustee or the Owners is intended to be exclusive of any other remedy, and each such remedy will be cumulative and will be in addition to every other remedy given thereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

No Liability by the City to the Owners. Except for the payment when due of the 2008 Payments and the performance of the other agreements and covenants required to be performed by it contained in the Contract, the City will not have any obligation or liability to the Owners with respect to the Trust Agreement or the preparation, execution, delivery or transfer of the 2008 Certificates or the disbursement of the 2008 Payments by the Trustee to the Owners, or with respect to the performance by the Trustee of any right or obligation required to be performed by it contained in the Trust Agreement.

No Liability by the Trustee to the Owners. Except as expressly provided in the Trust Agreement, the Trustee will not have any obligation or liability to the Owners with respect to the

payment when due of the 2008 Payments by the City, or with respect to the performance by the City of the other agreements and covenants required to be performed by it contained in the Contract.

Control of Remedies by Credit Facility Provider or Liquidity Facility Provider. Provided that the Credit Facility or the Liquidity Facility remain in effect, notwithstanding anything in the Trust Agreement to the contrary, the Credit Facility Provider will have the right to direct all remedies upon the occurrence of an Event of Default. If the Credit Facility is no longer in effect or a default has occurred with respect to the Credit Facility, the Liquidity Facility Provider will have the right to direct all remedies upon the occurrence of an Event of Default.

## **Defeasance**

Discharge of Trust Agreement. When the obligations of the City under the Contract will cease pursuant to the Contract (except for the right of the Trustee and the obligation of the City to have the money and Federal Securities mentioned therein applied to the payment of 2008 Payments as therein set forth), and either (i) the 2008 Certificates are in Fixed Rate Mode at the time moneys or Federal Securities are deposited, (ii) the deposit of money and Federal Securities is sufficient to pay the 2008 Certificates at the Maximum Rate to the earlier of the first possible tender or redemption date, or (iii) the City will have received a Rating Confirmation Notice on any 2008 Certificate that will remain Outstanding following such redemption, then and in such case the obligations created by the Trust Agreement will thereupon cease, terminate and become void except for the right of the Owners and the obligation of the Trustee to apply such moneys and Federal Securities to the payment of the 2008 Certificates as set forth in the Trust Agreement and the right of the Trustee to collect any fees or expenses due thereunder and the Trustee will turn over to the City, as an overpayment of 2008 Payments, all balances remaining in any other funds or accounts other than moneys and Federal Securities held for the payment of the 2008 Certificates at maturity or on prepayment, which moneys and Federal Securities will continue to be held by the Trustee in trust for the benefit of the Owners and will be applied by the Trustee to the payment, when due, of the principal and interest and premium if any represented by the 2008 Certificates, and after such payment, the Trust Agreement will become void.

If moneys or Federal Securities are deposited with and held by the Trustee as provided in the Trust Agreement, the Trustee will mail a notice, first-class postage prepaid, to the Owners at the addresses listed on the registration books kept by the Trustee pursuant to the Trust Agreement, stating that (a) moneys or Federal Securities are so held by it, and (b) that the Trust Agreement has been released in accordance with the provisions of the Trust Agreement.

Notice of discharge of the Trust Agreement will be provided to the Rating Agencies by the Trustee.

Deposit of Money or Securities with Trustee. Whenever in the Trust Agreement or the Contract it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities (certified to be sufficient by a report of an Independent Certified Public Accountant) in the necessary amount to pay or prepay any 2008 Certificates, the money or securities to be so deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Trust Agreement and will be:

(a) lawful money of the United States of America in an amount equal to the principal amount represented by such 2008 Certificates and all unpaid interest represented thereby to maturity,

except that, in the case of 2008 Certificates which are to be prepaid prior to maturity and in respect of which notice of such prepayment will have been given as provided in the Trust Agreement or provision satisfactory to the Trustee will have been made for the giving of such notice, the amount to be deposited or held will be the principal amount plus accrued interest to such date of prepayment plus a prepayment premium, if any, represented by such 2008 Certificates; or

(b) Federal Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form) or municipal obligations which have been defeased under irrevocable escrow instructions with Federal Securities and which are rated in the highest rating category by the Rating Agencies, the principal of and interest on which when due will provide, in its opinion of an Independent Certified Public Accountant, delivered to the Trustee, money sufficient to pay the principal plus prepayment premium, if any, plus all accrued interest to maturity or to the prepayment date, as the case may be, represented by the 2008 Certificates to be paid or prepaid, as such amounts become due, provided that, in the case of 2008 Certificates which are to be prepaid prior to the maturity thereof, notice of such prepayment will have been given as provided in the Trust Agreement or provision satisfactory to the Trustee will have been made for the giving of such notice;

provided, in each case, that the Trustee will have been irrevocably instructed (by the terms of the Trust Agreement and the Contract or by Written Request of the City) to apply such money to the payment of such principal plus prepayment premium, if any, plus interest represented by such 2008 Certificates.

Unclaimed Money. Notwithstanding anything contained in the Trust Agreement to the contrary, any money held by the Trustee in trust for the payment and discharge of any of the 2008 Certificates which remains unclaimed for two years after the date when such 2008 Certificates have become due and payable, either at their stated Certificate Payment Dates or by call for prepayment prior to Certificate Payment Date, if such money was held by the Trustee at such date, or for two years after the date of deposit of such money if deposited with the Trustee after the date when such Certificates have become due and payable, will be repaid by the Trustee to the City as its absolute property free from trust, and the Trustee will thereupon be released and discharged with respect thereto and the Owners will look only to the City for the payment of the 2008 Payments evidenced and represented by such 2008 Certificates; provided, however, that before being required to make any such payment to the City, the Trustee will, at the request of and at the expense of the City, cause to be mailed to all Owners and the Securities Depositories and the Information Services a notice that such money remains unclaimed and that, after a date named in such notice, which date will not be less than 30 days after the date of the first publication of each such notice, the balance of such money then unclaimed will be returned to the City.

#### **Additional Provisions Relating to the 2008 Certificate Insurance Policy**

(a) Notwithstanding anything in the Trust Agreement to the contrary so long as the 2008 Certificate Insurance Policy relating to the 2008 Certificates will be in full force and effect and the 2008 Certificate Insurer will not be in default of any of its obligations thereunder, the 2008 Certificate Insurer will be deemed to be sole Owner of the 2008 Certificates it insures for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the 2008 Certificate Owners are entitled to take pursuant to the Trust Agreement, including any consent to any modification, amendment or supplement to the Trust Agreement pursuant to the Trust Agreement.

(b) Notwithstanding anything in the Trust Agreement to the contrary the 2008 Certificate Insurer shall be deemed to be the Owners of all of the 2008 Certificates for purposes of (a) exercising all remedies and directing the Trustee to take actions or for any other purposes following an Event of Default (as defined herein), and (b) granting any consent, direction or approval or taking any action permitted or required by the Owners of the 2008 Certificates.

(c) Notwithstanding anything in the Trust Agreement to the contrary so long as the 2008 Certificate Insurance Policy will be in full force and effect and the 2008 Certificate Insurer will not be in default of any of its obligations thereunder, upon the occurrence and continuance of an Event of Default, the Trustee may, with the consent of the 2008 Certificate Insurer, and will at the direction of the 2008 Certificate Insurer or the Bondholders with the prior written consent of the 2008 Certificate Insurer, by written notice to the Authority and the 2008 Certificate Insurer, as applicable (i) declare the principal of the 2008 Certificates immediately due and payable, whereupon that portion of the principal of the 2008 Certificates thereby coming due and the interest thereon accrued to the date of payment will, without further action, become and be immediately due and payable, anything in the Trust Agreement or the 2008 Certificates to the contrary notwithstanding or (ii) annul any declaration of acceleration.

**APPENDIX C**

**PROPOSED FORM OF OPINION OF SPECIAL COUNSEL**

[Closing Date]

City Council  
City of Modesto  
Modesto, California

\$ \_\_\_\_\_  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Ladies and Gentlemen:

We have acted as special counsel to the City of Modesto (the "City") in connection with the execution and delivery of \$ \_\_\_\_\_ principal amount of Water Revenue Certificates of Participation, 2008 Series A (the "Certificates"), evidencing and representing proportionate interests of the owners thereof in 2008 Payments (as that term is defined in the Trust Agreement referred to below) to be made by the City under and pursuant to that certain Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Installment Purchase Contract"), by and between the City and the Modesto Public Financing Authority (the "Authority"), as previously supplemented and as amended and supplemented by that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Supplemental Installment Purchase Contract"), by and between the City and the Authority. The Master Installment Purchase Contract, as previously supplemented and as amended and supplemented by the 2008 Supplemental Installment Purchase Contract, is referred to herein as the "Installment Purchase Contract." All of the Authority's rights to receive such 2008 Payments have been assigned by the Authority to The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), pursuant to that certain Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Authority and the Trustee. The Certificates have been executed by the Trustee pursuant to the terms of the Trust Agreement.

In our capacity as special counsel, we have reviewed relevant laws of the State of California, including the City Charter; executed copies of the Installment Purchase Contract and the Trust Agreement; certifications and resolutions of the City, the Authority, the Trustee, and others; opinions of counsel to the City, the Authority and the Trustee; and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. Our services as special counsel were limited to such examination and to rendering the opinions set forth below. We have assumed the genuineness of all documents and signatures presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents. Furthermore, we have assumed compliance with all covenants and agreements contained in the Installment Purchase Contract and the Trust Agreement, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest represented by the Certificates to be included in gross income for federal income tax purposes.

Certain requirements and procedures contained or referred to in the Installment Purchase Contract and the Trust Agreement or other relevant documents relating to the Certificates may be changed, and certain actions may be taken (including, without limitation, defeasance of the Certificates) or omitted, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of counsel nationally recognized in the area of municipal bonds. We express no opinion as to the effect of any change to any document pertaining to the Certificates or of any action taken or not taken where such change is made or action is taken or not taken without our approval or in reliance upon the advice of counsel other than ourselves with respect to the exclusion from gross income of the interest represented by the Certificates for federal income tax purposes.

With respect to the opinions expressed herein, the enforceability of the Installment Purchase Contract is subject to the limitations on the imposition of certain fees and charges by the City relating to the Water Utility System under Articles XIIC and XIID of the California Constitution. In addition, the rights and obligations under the Certificates, the Installment Purchase Contract and the Trust Agreement are subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting the enforcement of creditors' rights generally, to the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California. Furthermore, we express no opinion with respect to any indemnification, contribution, penalty, choice of forum or waiver provisions contained in the foregoing documents.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Master Installment Purchase Contract, the 2008 Supplemental Installment Purchase Contract and the Trust Agreement have been duly authorized, executed and delivered by the Authority; the Master Installment Purchase Contract and the 2008 Supplemental Installment Purchase Contract have been duly authorized, executed and delivered by the City; and, assuming (in the case of the Trust Agreement) due authorization, execution and delivery by the Trustee, such agreements are valid and binding obligations of the Authority and the City (as the case may be), enforceable against the Authority and the City (as the case may be) in accordance with their respective terms.

2. The Certificates, assuming due execution and delivery by the Trustee, are entitled to the benefits of the Trust Agreement.

3. The obligation of the City to make the 2008 Payments under the Installment Purchase Contract is a special obligation of the City payable solely from Gross Revenues (as such term is defined in the Installment Purchase Agreement). The general fund of the City is not liable, and neither the credit nor taxing power of the City is pledged, for the payment of the 2008 Payments under the Installment Purchase Contract.

4. Based on existing statutes, regulations, rulings and judicial decisions and assuming compliance by the City with certain covenants in the Installment Purchase Contract and with requirements of the Internal Revenue Code of 1986, as amended, regarding the use, expenditure and investment of Certificate proceeds and the timely payment of certain investment earnings to the United States Treasury, interest represented by the Certificates is not includable in the gross income

of the owners of the Certificates for purposes of federal income taxation. Failure by the City to comply with the above covenants and requirements may cause interest represented by the Certificates to be included in gross income retroactive to the date of execution and delivery of the Certificates.

Interest represented by the Certificates will not be treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals or corporations; however, interest represented by the Certificates will be included as an adjustment in the calculation of the alternative minimum taxable income of corporations and may therefore affect the federal alternative minimum tax liability of corporations.

5. Interest represented by the Certificates is exempt from present State of California personal income taxes.

Other than as described herein, we neither addressed nor are we opining on the tax consequences to any person of the investment in, or the receipt of interest represented by, the Certificates.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

This opinion is limited to the laws of the State of California and the federal laws of the United States. The opinions in this letter are expressed solely as of the date hereof for your benefit and may not be relied upon in any manner for any purposes by any other person.

Respectfully submitted,

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## APPENDIX D

### INFORMATION CONCERNING DTC

*The information in this Appendix concerning DTC and DTC's book entry only system has been obtained from sources that the Authority and the City believe to be reliable, but neither the Authority nor the City takes any responsibility for the completeness or accuracy thereof. The following description of the procedures and recordkeeping with respect to beneficial ownership in the 2008 Certificates, payment of principal, premium, if any, and interest with respect to the 2008 Certificates to all DTC Participants or to Beneficial Owners, confirmation and transfers of Beneficial Ownership interests in the 2008 Certificates and other related transactions by and between DTC, DTC Participants and Beneficial Owners is based solely on information provided by DTC.*

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the 2008 Certificates. The 2008 Certificates will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered security certificate will be issued for each maturity of the 2008 Certificates, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation, (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission.

Purchases of 2008 Certificates under the DTC system must be made by or through Direct Participants, which will receive credit for the 2008 Certificates on DTC's records. The ownership interest of each actual purchaser of each 2008 Certificate (a "Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchases. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2008 Certificates are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Certificates, except in the event that use of the book-entry system for the 2008 Certificates is discontinued.

To facilitate subsequent transfers, all 2008 Certificates deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co, or such other name as may be requested by an authorized representative of DTC. The deposit of 2008 Certificates with DTC and their registration in the

name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2008 Certificates; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2008 Certificates are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of 2008 Certificates may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2008 Certificates, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of 2008 Certificates may wish to ascertain that the nominee holding the 2008 Certificates for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Prepayment notices shall be sent to DTC. If less than all of the 2008 Certificates within a maturity are being prepaid, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be prepaid.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to 2008 Certificates unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts 2008 Certificates are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Prepayment proceeds, principal and interest payments on the 2008 Certificates will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of prepayment proceeds, principal and interest payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its 2008 Certificates purchased tendered, through its Participant, to the Remarketing Agent, and shall effect delivery of 2008 Certificates by causing the Direct Participant to transfer the Participant's interest in the 2008 Certificates, on DTC's records, to the Remarketing Agent. The requirement for physical delivery of 2008 Certificates in connection with an optional tender or a mandatory purchase will be deemed satisfied when ownership rights in the 2008 Certificates are transferred by Direct Participants on DTC's records followed by a book-entry credit of tendered 2008 Certificates to the Remarketing Agent's account.

DTC may discontinue providing its services as securities depository with respect to the 2008 Certificates at any time by giving reasonable notice to the City or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, 2008 Certificates are required to be printed and delivered.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, 2008 Certificates will be printed and delivered.

**APPENDIX E**  
**SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY**



Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, NY 10019  
t. 212.974.0100  
www.assuredguaranty.com

**Financial Guaranty Insurance Policy**

Issuer:

Policy No.:

Obligations:

Premium:

Effective Date:

Assured Guaranty Corp., a Maryland corporation ("**Assured Guaranty**"), in consideration of the payment of the Premium and on the terms and subject to the conditions of this Policy (which includes each endorsement hereto), hereby unconditionally and irrevocably agrees to pay to the trustee (the "**Trustee**") or the paying agent (the "**Paying Agent**") for the Obligations (as set forth in the documentation providing for the issuance of and securing the Obligations) for the benefit of the Holders that portion of the Insured Payments which shall become Due for Payment but shall be unpaid by reason of Nonpayment.

Assured Guaranty will make such Insured Payments to the Trustee or the Paying Agent on the later to occur of (i) the date applicable principal or interest becomes Due for Payment, or (ii) the Business Day next following the day on which Assured Guaranty shall have Received a completed Notice of Nonpayment. If a Notice of Nonpayment by Assured Guaranty is incomplete or does not in any instance conform to the terms and conditions of this Policy, it shall be deemed not Received, and Assured Guaranty shall promptly give notice to the Trustee or the Paying Agent. Upon receipt of such notice, the Trustee or the Paying Agent may submit an amended Notice of Nonpayment. The Trustee or the Paying Agent will disburse the Insured Payments to the Holders only upon receipt by the Trustee or the Paying Agent in form reasonably satisfactory to it of (i) evidence of the Holder's right to receive such payments, and (ii) evidence, including without limitation any appropriate instruments of assignment, that all of the Holder's rights to payment of such principal or interest Due for Payment shall thereupon vest in Assured Guaranty. Upon and to the extent of such disbursement, Assured Guaranty shall become the Holder of the Obligations, any appurtenant coupon thereto and right to receipt of payment of principal thereof or interest thereon, and shall be fully subrogated to all of the Holder's right, title and interest thereunder, including without limitation the right to receive payments in respect of the Obligations. Payment by Assured Guaranty to the Trustee or the Paying Agent for the benefit of the Holders shall discharge the obligation of Assured Guaranty under this Policy to the extent of such payment.

This Policy is non-cancelable by Assured Guaranty for any reason. The Premium on this Policy is not refundable for any reason. This Policy does not insure against loss of any prepayment premium or other acceleration payment which at any time may become due in respect of any Obligation, other than at the sole option of Assured Guaranty, nor against any risk other than Nonpayment.

Except to the extent expressly modified by any endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "**Avoided Payment**" means any amount previously distributed to a Holder in respect of any Insured Payment by or on behalf of the Issuer, which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder. "**Business Day**" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or Assured Guaranty are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York or in the State of Maryland. "**Due for Payment**" means (i) when referring to the principal of an Obligation, the stated maturity date thereof, or the date on which such Obligation shall have been duly called for mandatory sinking fund redemption, and does not refer to any earlier date on which payment is due by reason of a call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless Assured Guaranty in its sole discretion elects to make any principal payment, in whole or in part, on such earlier date) and (ii) when referring to interest on an Obligation, the stated date for payment of such interest. "**Holder**" means, in respect of any Obligation, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Obligation to payment of principal or interest thereunder, except that Holder shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Obligations. "**Insured Payments**" means that portion of the principal of and interest on the Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment. Insured Payments shall not include any additional amounts owing by the Issuer solely as a result of the failure by the Trustee or the Paying Agent to pay such amount when due and payable, including without limitation any such additional amounts as may be attributable to penalties or to interest accruing at a default rate, to amounts payable in respect of indemnification, or to any other additional amounts payable by the Trustee or the Paying Agent by reason of such failure. "**Nonpayment**" means, in respect of an Obligation, the failure of the Issuer to have provided sufficient funds to the Trustee or the Paying Agent for payment in full of all principal and interest Due for Payment on such Obligation. It is further understood that the term "Nonpayment" in respect of an Obligation includes any Avoided Payment. "**Receipt**" or "**Received**" means actual receipt or notice of or, if notice is given by overnight or other delivery service, or by certified or registered United States mail, by a delivery receipt signed by a person authorized to accept delivery on behalf of the person to whom the notice was given. Notices to Assured Guaranty may be mailed by registered mail or personally delivered or telecopied to it at 1325 Avenue of the Americas, New York, New York 10019, Telephone Number: (212) 974-0100, Facsimile Number: (212) 581-3268, Attention: Risk Management Department - Public Finance Surveillance, with a copy to the General Counsel, or to such other address as shall be specified by Assured Guaranty to the Trustee or the Paying Agent in writing. A Notice of Nonpayment will be deemed to be Received by Assured Guaranty on a given Business Day if it is Received prior to 12:00 noon (New York City time) on such Business Day; otherwise it will be deemed Received on the

next Business Day. "Term" means the period from and including the Effective Date until the earlier of (i) the maturity date for the Obligations, or (ii) the date on which the Issuer has made all payments required to be made on the Obligations.

At any time during the Term of this Policy, Assured Guaranty may appoint a fiscal agent (the "Fiscal Agent") for purposes of this Policy by written notice to the Trustee or the Paying Agent, specifying the name and notice address of such Fiscal Agent. From and after the date of Receipt of such notice by the Trustee or the Paying Agent, copies of all notices and documents required to be delivered to Assured Guaranty pursuant to this Policy shall be delivered simultaneously to the Fiscal Agent and to Assured Guaranty. All payments required to be made by Assured Guaranty under this Policy may be made directly by Assured Guaranty or by the Fiscal Agent on behalf of Assured Guaranty. The Fiscal Agent is the agent of Assured Guaranty only, and the Fiscal Agent shall in no event be liable to the Trustee or the Paying Agent for any acts of the Fiscal Agent or any failure of Assured Guaranty to deposit, or cause to be deposited, sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, Assured Guaranty hereby waives, in each case for the benefit of the Holders only, all rights and defenses of any kind (including, without limitation, the defense of fraud in the inducement or in fact or any other circumstance that would have the effect of discharging a surety, guarantor or any other person in law or in equity) that may be available to Assured Guaranty to deny or avoid payment of its obligations under this Policy in accordance with the express provisions hereof. Nothing in this paragraph will be construed (i) to waive, limit or otherwise impair, and Assured Guaranty expressly reserves, Assured Guaranty's rights and remedies, including, without limitation, its right to assert any claim or to pursue recoveries (based on contractual rights, securities law violations, fraud or other causes of action) against any person or entity, in each case, whether directly or acquired as a subrogee, assignee or otherwise, subsequent to making any payment to the Trustee or the Paying Agent, in accordance with the express provisions hereof, and/or (ii) to require payment by Assured Guaranty of any amounts that have been previously paid or that are not otherwise due in accordance with the express provisions of this Policy.

This Policy (which includes each endorsement hereto) sets forth in full the undertaking of Assured Guaranty with respect to the subject matter hereof, and may not be modified, altered or affected by any other agreement or instrument, including, without limitation, any modification thereto or amendment thereof. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. This Policy will be governed by, and shall be construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, Assured Guaranty has caused this Policy to be affixed with its corporate seal, to be signed by its duly authorized officer, and to become effective and binding upon Assured Guaranty by virtue of such signature.

ASSURED GUARANTY CORP.

(SEAL)

**SPRETTI**

By: \_\_\_\_\_  
[Insert Authorized Signatory Name]  
[Insert Authorized Signatory Title]

Signature attested to by:

\_\_\_\_\_  
Counsel

## APPENDIX F

### CERTAIN INFORMATION REGARDING THE CITY OF MODESTO

The following information with respect to the City is presented for information purposes only. The 2008 Certificates do not constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitations and the City is not obligated to levy any ad valorem taxes therefor or to use any other funds of the City to pay the 2008 Payments or the interest thereon (other than Gross Revenues of the Water Utility System).

#### General Description

The City, which is the county seat of Stanislaus County, was incorporated in 1884. It covers approximately 36 square miles. The City operates under a council-manager form of government pursuant to a charter adopted in 1963. The City is located in central California approximately 93 miles east of the City and County of San Francisco.

The City Council (the "Council") appoints the City Clerk and Auditor, the City Attorney, and the City Manager. The City Manager heads the executive branch of government, implements Council directives and policies, and manages the administrative and operational functions through the various department heads who are appointed by the City Manager.

The City provides the full range of services normally associated with a municipality, including public safety (police and fire), highways and streets, sanitation, health and social services, culture-recreation, public improvements, planning and zoning and general administrative services. The City also provides parking and airport facilities and water, sewer and bus service. The school districts in the City are separate governmental entities which receive no funding from the City.

#### Population

The following table represents historical population statistics for the City, the County and the State.

#### CITY OF MODESTO Population Estimates<sup>(1)</sup>

<i>Calendar Year</i>	<i>City of Modesto</i>	<i>Stanislaus County</i>	<i>State of California</i>
2008	209,936	525,903	38,049,462
2007	208,150	518,938	37,559,440
2006	207,096	511,848	37,114,598
2005	207,029	503,003	36,675,346
2004	206,861	493,515	36,199,342
2003	203,813	483,705	35,652,700
2002	199,398	472,185	35,063,959
2001	193,640	458,512	34,430,970

<sup>(1)</sup> As of January 1.

Source: California State Department of Finance, Population Estimates for Cities, Counties and State, 2001-2008 with 2000 Benchmark.

## Employment

The following table summarizes the civilian labor force, employment and unemployment in the County for the calendar years 2003 through 2007. These figures are county-wide statistics and may not necessarily accurately reflect employment trends in the City.

### MODESTO METROPOLITAN STATISTICAL AREA Industry Employment and Labor Force (Annual Averages)

	2007	2006	2005	2004	2003
<u>Civilian Labor Force</u>					
Employment	231,200	227,100	210,800	204,600	201,500
Unemployment	20,300	18,100	19,000	20,700	22,000
Unemployment Rate	8.8%	8.0%	8.3%	9.2%	9.8%
<u>Wage and Salary Employment:</u>					
Total Farm	12,800	14,100	14,100	13,800	14,000
Natural Resources, Mining and Construction	11,400	13,400	13,300	12,300	11,400
Manufacturing	22,700	23,100	22,300	22,700	23,100
Wholesale Trade	6,000	5,900	6,200	6,000	5,700
Retail Trade	22,200	22,500	22,700	21,500	21,800
Transport., Warehousing, Utilities	5,600	5,200	5,200	4,700	4,600
Information	2,300	2,400	2,500	2,500	2,200
Financial Activities	6,200	6,400	6,200	6,100	6,000
Professional and Business Services	14,900	14,800	14,900	14,200	13,800
Educational and Health Services	21,100	19,600	19,500	19,200	18,900
Leisure and Hospitality	15,400	15,500	14,800	14,200	13,700
Other Services	6,000	5,900	6,100	6,200	6,200
Federal Government	1,100	1,200	1,200	1,200	1,200
State Government	1,800	1,800	1,700	1,700	1,900
Local Government	<u>23,300</u>	<u>23,300</u>	<u>22,700</u>	<u>22,100</u>	<u>21,900</u>
Total All Industries	172,800	172,500	173,300	168,500	166,300

<sup>(1)</sup> Latest available information.

Note: Totals may not add up because of rounding.

Source: Labor Division of the California State Employment Development Department.

## Effective Buying Income

“Effective Buying Income” is defined as money income less personal tax and non-tax payments, a number often referred to as “disposable” or “after-tax” income. Money income is the aggregate of wages and salaries, net farm and non-farm self-employment income, interest, dividends, net rental and royalty income, Social Security and railroad retirement income, other retirement and disability income, public assistance income, unemployment compensation, Veterans Administration payments, alimony and child support, military family allotments, net winnings from gambling and other periodic income. Deducted from this total money income are personal income taxes (federal, state and local), personal contributions to social insurance (Social Security and federal retirement payroll deductions), and taxes on owner-occupied non-business real estate.

The following table summarizes the total effective buying income for the County and the State for the period from 2002 through 2006.

**CITY OF MODESTO, STANISLAUS COUNTY AND THE STATE OF CALIFORNIA  
Total Effective Buying Income and Median Household Effective Buying Income  
2002 through 2006<sup>(1)</sup>**

<i>Year</i>	<i>Area</i>	<i>Total Effective Buying Income (000's Omitted)</i>	<i>Median Household Effective Buying Income</i>
2006	City of Modesto Stanislaus County California		
2005	City of Modesto	\$3,274,173	\$37,874
	Stanislaus County	7,416,705	37,815
	California	705,108,410	43,915
2004	City of Modesto	\$3,274,173	\$37,874
	Stanislaus County	7,416,705	37,815
	California	705,108,410	43,915
2003	City of Modesto	\$3,165,245	\$36,774
	Stanislaus County	7,078,408	36,670
	California	647,879,427	42,484
2002	City of Modesto	\$2,957,668	\$36,573
	Stanislaus County	6,679,400	36,331
	California	650,521,407	43,532

<sup>(1)</sup> In 2002, the publisher of Sales and Marketing Management, altered the methodology used in order to produce current year estimates. The 2006 edition of Sales and Marketing Management has not been published as of the date hereof, and therefore 2006 estimates are not available.

Source: Survey of Buying Power, Sales & Marketing Management Magazine, dated 2002 through 2006.

## Major Employers

The following table summarizes the largest employers in the City in fiscal year 2006-07.

### CITY OF MODESTO Ten Largest Employers 2006-07

<i>No.</i>	<i>Company Name</i>	<i>No. Employees</i>	<i>Percentage of Total City Employment</i>
1.	Stanislaus County	4,764	4.8%
2.	Modesto City Schools	3,345	3.4
3.	E&J Gallo Winery	3,311	3.3
4.	Memorial Medical Center	2,700	2.7
5.	Del Monte Foods	2,600	2.6
6.	Modesto Junior College	2,550	2.6
7.	Signature Fruit Company	2,321	2.3
8.	Stanislaus Food Products	2,000	2.0
9.	Doctors Medical Center	1,967	2.0
10.	City of Modesto	<u>1,700</u>	<u>1.7</u>
	Subtotal	27,258	27.5
	Total City Employment	99,100	

Source: Stanislaus Economic Development and Workforce Alliance.

## Commercial Activity

The following two tables show the dollar volume of taxable transactions in the City of Modesto and County of Stanislaus from 2002 through 2006.

### CITY OF MODESTO Taxable Transactions Calendar Years 2002 through 2006 (in Thousands of Dollars)

Retail Outlets	2006	2005	2004	2003	2002
Apparel stores	\$ 163,548	\$ 165,575	\$ 148,097	\$ 126,372	\$ 129,773
General merchandise stores	543,987	550,143	538,323	518,024	507,438
Food stores	131,263	131,100	133,058	136,462	119,423
Eating and drinking places	275,393	275,550	258,357	245,609	235,337
Home furnishing and appliances	121,102	138,642	136,143	130,089	131,234
Bldg. materials and farm implements	204,034	248,287	233,124	204,427	188,388
Auto dealers and supplies	218,243	232,889	253,170	259,395	247,861
Service stations	175,359	153,008	131,695	115,317	101,551
Other retail stores	449,981	452,236	418,822	392,650	381,371
<b>Subtotal</b>	<u>\$2,282,910</u>	<u>\$2,347,430</u>	<u>\$2,250,789</u>	<u>\$2,128,345</u>	<u>\$2,042,376</u>
All Other Outlets	<u>395,515</u>	<u>400,579</u>	<u>414,841</u>	<u>433,387</u>	<u>372,899</u>
<b>All Outlets</b>	<u>\$2,678,425</u>	<u>\$2,748,009</u>	<u>\$2,665,630</u>	<u>\$2,561,732</u>	<u>\$2,415,275</u>

Source: State of California, Board of Equalization.

### COUNTY OF STANISLAUS Taxable Transactions Calendar Years 2002 through 2006 (in Thousands of Dollars)

Retail Outlets	2006	2005	2004	2003	2002
Apparel stores	\$224,909	\$213,850	\$192,858	\$154,867	\$154,083
General merchandise stores	956,378	927,418	846,742	803,255	784,431
Specialty stores	558,432	535,480	501,694	465,562	432,777
Food stores	320,361	308,864	291,867	282,781	260,781
Eating and drinking places	505,384	489,169	452,120	421,793	403,421
Household	192,275	210,720	198,691	187,214	181,384
Building materials	567,014	572,552	508,825	416,983	368,472
Automotive	1,573,719	1,516,702	1,396,277	1,305,986	1,248,936
Other retail stores	369,917	368,269	331,376	297,729	273,693
<b>Subtotal</b>	<u>\$5,268,389</u>	<u>\$5,143,024</u>	<u>4,720,450</u>	<u>4,336,170</u>	<u>4,107,978</u>
Business and Personal Services	240,304	253,838	240,245	224,429	233,862
All Other Outlets	<u>\$1,843,839</u>	<u>\$1,889,038</u>	<u>\$1,804,973</u>	<u>\$1,614,893</u>	<u>\$1,494,025</u>
<b>All Outlets</b>	<u>\$7,352,532</u>	<u>\$7,285,900</u>	<u>\$6,765,668</u>	<u>\$6,175,492</u>	<u>\$5,825,865</u>

Source: State of California, Board of Equalization.

## **Construction Trends**

“Single Family Housing,” includes detached, semi-detached, rowhouse and townhouse units. Rowhouses and townhouses are included when each unit is separated from the adjacent unit by an unbroken ground-to-roof party or fire wall. Condominiums are included in single-family when they are of zero-lot-line or zero-property-line construction; when units are separated by an air space; or, when units are separated by an unbroken ground-to-roof party or fire wall. “Multi-Family Housing,” includes duplexes, 3-4-unit structures and apartment-type structures with five units or more. Multi-family housing also includes condominium units in structures of more than one living unit that do not meet the above single-family housing definition. “Residential Alterations and Additions,” means alterations, additions, and conversions to residential structures, excluding special installation permits for electrical, plumbing, heating, air-conditioning, or similar mechanical work, or installation of fire escapes, elevators, signs, etc.

“New Commercial,” includes new hotels and motels, office and bank buildings, stores and other mercantile buildings, parking garages, service stations, and amusement and recreational buildings. “New Industrial,” includes manufacturing plants and affiliated buildings. “Other New Nonresidential,” includes churches and religious buildings, hospitals and institutional buildings, schools and educational buildings, residential garages, public works and utilities buildings, and miscellaneous nonresidential structures. “Nonresidential Alterations and Additions,” means alterations, additions, and conversions to nonresidential structures, excluding special installation permits for electrical, plumbing, heating, air-conditioning, or similar mechanical work, or installation of fire escapes, elevators and signs, etc.

Provided below are the building permits and valuations for the City of Modesto for calendar years 2003 through 2007.

**CITY OF MODESTO  
Residential and Nonresidential Building Permit Valuations  
and Total Residential Building Permits**

	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>
<b>Permit Valuation</b>					
New Single-family	\$ 169,031,342	\$ 69,285,758	\$ 168,770,716	\$ 80,245,831	\$ 55,199,615
New Multi-family	6,105,669	20,343,871	1,118,710	3,812,649	30,912,544
Res. Alterations & Additions	39,686,601	80,226,181	45,317,392	39,017,104	80,583,151
Total Residential	214,823,612	169,855,810	215,206,818	123,075,584	166,695,310
New Commercial	24,687,807	46,240,400	11,798,301	27,027,077	59,163,453
New Industrial	994,822	3,204,092	1,202,465	2,279,197	10,000
New Other	39,686,601	37,838,523	62,440,247	21,941,020	5,188,331
Non-Res. Alterations & Additions	33,473,125	36,444,721	69,587,431	36,071,154	40,412,881
Total Nonresidential	<u>98,842,355</u>	<u>123,727,736</u>	<u>145,028,444</u>	<u>87,318,448</u>	<u>104,774,665</u>
Total All Building	\$313,665,967	\$293,583,546	\$360,235,262	\$210,394,032	\$271,469,975
<b>New Dwelling Units</b>					
Single Family	838	345	868	378	288
Multiple Family	77	288	13	37	288
Total	915	633	881	415	576

Source: Building Permit Summary, City of Modesto.

**Agriculture**

The following table summarizes historical agricultural production within the County for calendar years 2002 through 2006.

**STANISLAUS COUNTY  
Agricultural Production  
2002-2006**

<i>Commodity</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>
Fruit and Nut Crops	\$393,520,000	\$431,642,000	\$616,452,000	\$686,897,000	\$660,001,000
Vegetable Crops	105,508,000	105,667,000	125,903,000	91,454,000	93,239,000
Field Crops	132,418,000	127,329,000	137,871,000	147,744,000	167,576,000
Seed Crops	561,000	533,000	401,000	810,000	617,000
Apiary	7,323,000	7,565,000	8,865,000	12,045,000	12,745,000
Nursery Crops	85,889,000	99,164,000	111,272,000	71,240,000	87,351,000
Livestock & Poultry	242,677,000	239,990,000	403,205,000	401,244,000	628,551,000
Livestock & Poultry Products	400,075,000	443,042,000	574,465,000	566,161,000	498,072,000
<b>TOTALS</b>	\$1,367,971,000	\$1,454,932,000	\$1,978,434,000	\$1,977,595,000	\$2,148,152,000

Source: Stanislaus County Department of Agriculture.



In the opinion of Sidley Austin LLP, San Francisco, California, Special Counsel, based on existing statutes, regulations, rulings and judicial decisions and assuming compliance with certain covenants in the documents pertaining to the 2008 Certificates and requirements of the Internal Revenue Code of 1986, as amended (the "Code"), as described herein, interest with respect to the Certificates is not includable in the gross income of the owners of the Certificates for federal income tax purposes. In the further opinion of Special Counsel, interest with respect to the 2008 Certificates is not treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals and corporations. Interest with respect to the Certificates, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation's alternative minimum tax liability. In the further opinion of Special Counsel, interest with respect to the 2008 Certificates is exempt from personal income taxes imposed by the State of California. See "TAX MATTERS" herein.

**\$47,625,000**

**CITY OF MODESTO, CALIFORNIA  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A**

**Dated: Date of delivery****Price: 100%****CUSIP<sup>†</sup> 607804AB7****Due: October 1, 2036**

The 2008 Certificates are being executed and delivered pursuant to the 2008 Trust Agreement, dated as of May 1, 2008, by and between the Modesto Public Financing Authority and The Bank of New York Trust Company, N.A., as trustee, for the principal purpose of refinancing certain improvements to the Water Utility System of the City of Modesto. The 2008 Certificates are payable solely from installment payments to be made by the City to the Authority pursuant to the Master Installment Purchase Contract, dated as of November 1, 1997, as supplemented by the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, by and between the City and the Authority. The obligation of the City to make such installment payments is a special obligation of the City payable solely from Gross Revenues of its Water Utility System and certain funds and accounts created under the 2008 Trust Agreement. As described herein, those Gross Revenues are also pledged to the payment of certain other Parity Obligations of the City.

The 2008 Certificates will be initially executed and delivered in the Weekly Mode, and interest with respect to the 2008 Certificates in the Weekly Mode will be evidenced at the Weekly Rate. In general, the Weekly Rate is the rate of interest per annum determined by Banc of America Securities LLC, as Remarketing Agent, on and as of the applicable Rate Determination Date to be the minimum rate of interest which would result in the sale of the 2008 Certificates at a price equal to 100% of the principal amount thereof. Such interest is payable on the first Business Day of each month. The 2008 Certificates are subject to conversion to a different interest rate mode pursuant to the 2008 Trust Agreement. *This Official Statement describes the 2008 Certificates only while they are in the Weekly Mode.*

While the 2008 Certificates are in the Weekly Mode, they are subject to optional and mandatory tender for purchase under the circumstances described herein. Funds for the payment of the purchase price of the 2008 Certificates that are so subject to optional tender or mandatory tender for purchase and that are not remarketed by the Remarketing Agent will be available (subject to certain conditions precedent and automatic termination events) under a Standby Certificate Purchase Agreement, dated as of May 1, 2008, between the Authority and Bank of America, N.A., as the Liquidity Facility Provider.



The Standby Certificate Purchase Agreement does not support, secure or guaranty the payments of the principal of, premium, if any, or interest with respect to the 2008 Certificates.

The 2008 Certificates are being executed and delivered in book-entry form only and when executed and delivered will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York. Beneficial interests in the 2008 Certificates while the 2008 Certificates are in the Weekly Mode will be available for purchase in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof. Purchasers of such beneficial interests will not receive certificates representing their beneficial ownership in the 2008 Certificates but will receive credit balances on the books of their respective nominees. The principal of and interest evidenced by the 2008 Certificates are payable by the Trustee to Cede & Co.; and such interest and principal payments are to be disbursed to the beneficial owners of the 2008 Certificates through their nominees.

**The 2008 Certificates are subject to optional prepayment and mandatory sinking fund prepayment prior to maturity as well as optional and mandatory tender for purchase as described herein.**

The scheduled payment of principal of and interest with respect to the 2008 Certificates when due will be guaranteed under a financial guaranty insurance policy to be issued concurrently with the delivery of the 2008 Certificates by Assured Guaranty Corp.



**THE OBLIGATION OF THE CITY TO PAY INSTALLMENTS OF PRINCIPAL AND INTEREST IS A SPECIAL OBLIGATION OF THE CITY PAYABLE SOLELY FROM THE GROSS REVENUES OF ITS WATER UTILITY SYSTEM LESS MAINTENANCE AND OPERATIONS COSTS THEREOF (AS DEFINED IN THE MASTER INSTALLMENT PURCHASE CONTRACT), ALL AS FURTHER DESCRIBED HEREIN. SAID OBLIGATION DOES NOT CONSTITUTE A DEBT OF THE CITY OR THE STATE OF CALIFORNIA, OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY OR THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE INSTALLMENT PAYMENTS OR THE INTEREST THEREON.**

*THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR GENERAL REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS ARE ADVISED TO READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.*

The 2008 Certificates are offered when, as and if delivered and received by the Underwriter, subject to the approval of legality by Sidley Austin LLP, San Francisco, California, Special Counsel, and certain other conditions. Certain legal matters will be passed upon for the City and the Authority by the City Attorney of the City and by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, Disclosure Counsel; for the Trustee by the Jensen Law Office, Orinda, California; for the Liquidity Facility Provider by Kathleen C. Johnson, Esq., Santa Barbara, California and for the 2008 Certificate Insurer by its General Counsel. It is anticipated that the 2008 Certificates will be available for delivery to The Depository Trust Company or its agent on or about May 30, 2008.

**Banc of America Securities LLC**

Dated: May 29, 2008

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**CITY OF MODESTO, CALIFORNIA**

1010 10th Street

P.O. Box 642

Modesto, California 95353

(209) 577-5369

TDD (209) 526-9211 Hearing and Speech Impaired Only

**CITY COUNCIL**

Jim Ridenour, Mayor

Garrad Marsh, Vice Mayor

Dave Lopez

Janice Keating

Will O'Bryant

Kristin Olsen

Brad Hawn

**CITY OFFICIALS**

James E. Niskanen, Interim City Manager

Susana Alcala Wood, City Attorney

Wayne Padilla, Finance Director/Treasurer

Nick Pinhey, Director of Public Works

---

**SPECIAL SERVICES**

**Special Counsel**

Sidley Austin LLP

San Francisco, California

**Trustee**

The Bank of New York Trust Company, N.A.

San Francisco, California

**Financial Advisor**

Public Financial Management, Inc.

San Francisco, California

**Disclosure Counsel**

Stradling Yocca Carlson & Rauth, a Professional Corporation

Newport Beach, California

All the information which the City of Modesto intends to present investors regarding the City, the Authority, and the 2008 Certificates is contained in this Official Statement. While the City maintains an internet website for various purposes, none of the information on that website is intended to assist investors in making any investment decision, or to provide any continuing information, with respect to the 2008 Certificates or any other obligations of the City. Moreover, none of the information on the website is incorporated herein by reference. No dealer, broker, salesperson or other person has been authorized by the City, the Authority, the 2008 Certificate Insurer or the Underwriter to give any information or to make any representations other than those contained in this Official Statement in connection with the offering made hereby and, if given or made, such other information or representations must not be relied upon as having been authorized by the City, the Authority, the 2008 Certificate Insurer or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the 2008 Certificates by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers of the 2008 Certificates. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as a representation of facts.

The information set forth herein has been obtained from sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness. The information and expression of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City or the 2008 Certificate Insurer since the date hereof. All summaries of documents contained herein are made subject to the provisions of such documents and do not purport to be complete statements of any or all such provisions.

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The Underwriter has provided the following sentence for inclusion in this Official Statement:

*The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.*

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The 2008 Certificate Insurer has provided the following sentence for inclusion in this Official Statement:

Assured Guaranty makes no representation regarding the 2008 Certificates or the advisability of investing in the 2008 Certificates. In addition, Assured Guaranty makes no representation regarding, nor does it accept any responsibility for, the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding Assured Guaranty supplied by Assured Guaranty and presented under the heading "CERTIFICATE INSURANCE" and Appendix E — "SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY."

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**CAUTIONARY INFORMATION REGARDING FORWARD-LOOKING STATEMENTS IN  
THIS OFFICIAL STATEMENT**

Certain statements included or incorporated by reference in this Official Statement constitute "Forward-Looking Statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used, such as "plan," "expect," "estimate," "budget" and other similar words and include, but are not limited to, statements that describe possible future connections to and revenues and expenses of the Water Utility System.

The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.

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THE 2008 CERTIFICATES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXEMPTION CONTAINED IN SUCH ACT. THE 2008 CERTIFICATES HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

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## *TABLE OF CONTENTS*

	<i>Page</i>
INTRODUCTION .....	1
General.....	1
The 2008 Certificates.....	1
Security for the 2008 Certificates .....	2
Certificate Insurance / Reserve Fund Insurance Policy .....	3
Liquidity Facility .....	4
Swap Agreement.....	4
The City .....	4
The Water Utility System .....	5
Tax Matters.....	5
No Continuing Disclosure .....	5
Disclosure of Identity of Purchasers.....	5
Changes to Preliminary Official Statement .....	5
REFINANCING PLAN .....	5
THE 2008 PROJECT .....	6
ESTIMATED SOURCES AND USES OF FUNDS .....	7
THE 2008 CERTIFICATES .....	7
General.....	7
Book-Entry-Only System .....	7
Interest Rate Provisions .....	8
Optional Tender .....	9
Mandatory Tender for Purchase Upon Change of Mode.....	9
Other Mandatory Tenders .....	11
Purchase Fund.....	11
Liquidity Facility .....	12
Delayed Remarketing Period.....	13
Prepayment .....	14
Purchase in Lieu of Prepayment .....	15
Parity Obligations .....	16
SECURITY FOR THE 2008 CERTIFICATES.....	16
General.....	16
2008 Payments.....	16
Pledge of Gross Revenues .....	18
Rate Covenant.....	18
Parity Reserve Fund.....	19
Flow of Funds .....	20
Existing and Future Parity Obligations.....	23
2008 Swap Agreement.....	25
CERTIFICATE INSURANCE .....	26
Certificate Insurance Policy.....	26
The Reserve Fund Insurance Policy .....	27
Assured Guaranty Corp. ....	27

**TABLE OF CONTENTS**  
(continued)

	<i>Page</i>
LIQUIDITY FACILITY .....	30
Initial Liquidity Facility.....	30
Bank of America, N.A.....	34
REMARKETING .....	35
THE WATER UTILITY SYSTEM .....	36
History of the Water Utility System .....	36
Existing Facilities .....	39
Sources of Water.....	39
Treatment and Delivery Agreement .....	40
Water Quality.....	43
DBCP Settlement Agreement.....	44
PCE Litigation .....	45
Employees.....	45
Retirement Programs .....	46
Insurance.....	47
Service Area and Customers.....	47
Water Charges and Billing.....	48
Delinquencies .....	52
Historical Operating Results.....	53
Capital Improvement Program .....	53
Summary of Projected Operating Results of the Water Utility System .....	54
Impact of Proposition 218 on Water Utility System Fees and Charges .....	55
Effect of Proposition 218 and of Possible General Limitations on Enforcement Remedies .....	57
Investment Policy .....	57
Financial Statements .....	58
RISK FACTORS .....	58
General.....	59
Earthquakes, Floods and Other Natural Disasters .....	59
Demand for Water .....	60
Water Supply .....	60
Water Utility System Expenses .....	60
Rate Process.....	60
Statutory and Regulatory Impact.....	60
Limitations on Remedies and Bankruptcy.....	61
Limited Obligations .....	61
THE AUTHORITY .....	62
APPROVAL OF LEGAL PROCEEDINGS.....	62
LITIGATION.....	62
TAX MATTERS.....	62
Information Reporting and Backup Withholding.....	63
State Tax Exemption.....	63

**TABLE OF CONTENTS**  
*(continued)*

	<i>Page</i>
Future Developments.....	64
RATINGS .....	64
FINANCIAL ADVISOR .....	64
CERTAIN RELATIONSHIPS .....	64
UNDERWRITING .....	65
MISCELLANEOUS .....	65
APPENDIX A – EXCERPTS FROM THE CITY’S FINANCIAL STATEMENTS .....	A-1
APPENDIX B – DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS....	B-1
APPENDIX C – PROPOSED FORM OF OPINION OF SPECIAL COUNSEL.....	C-1
APPENDIX D – INFORMATION CONCERNING DTC .....	D-1
APPENDIX E – SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY.....	E-1
APPENDIX F – CERTAIN INFORMATION ABOUT THE CITY .....	F-1

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**\$47,625,000**  
**CITY OF MODESTO, CALIFORNIA**  
**WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION**  
**2008 SERIES A**

**INTRODUCTION**

**General**

This Official Statement, including the cover page and all appendices attached hereto, provides certain information concerning the City of Modesto Refunding Water Revenue Certificates of Participation, 2008 Series A (the “2008 Certificates”), evidencing and representing the proportionate interests of the Owners thereof in certain payments to be made by the City of Modesto, California (the “City”). Descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and reference is made to each document for complete details of all terms and conditions thereof. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in APPENDIX B — “DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS.”

The 2008 Certificates are being executed and delivered primarily to refinance certain improvements (collectively, the “2008 Project”) to the City’s water utility system (the “Water Utility System”) as further described under the caption “THE 2008 PROJECT” below. Proceeds derived from the sale of the 2008 Certificates, along with other funds available for such purposes, will also be used to pay the costs of executing and delivering the 2008 Certificates and to make a cash deposit into, and to pay the premium for a reserve fund financial guaranty insurance policy (the “Parity Reserve Fund Insurance Policy”) that will be credited to, the debt service reserve fund for the Parity Obligations (as hereinafter defined) (the “Parity Reserve Fund”). See “REFINANCING PLAN” and “ESTIMATED SOURCES AND USES OF FUNDS.”

**The 2008 Certificates**

The 2008 Certificates represent the proportionate undivided interests of the registered owners thereof (the “Owners”) in installment payments (the “2008 Payments”) payable by the City under the Master Installment Purchase Contract, dated as of November 1, 1997 (the “Master Contract”), by and between the City and the Modesto Public Financing Authority, a California joint exercise of powers agency (the “Authority”), as supplemented by supplemental purchase contracts including the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 by and between the City and the Authority (the “2008 Contract” and, collectively with the Master Contract, the “Contract”). The 2008 Certificates are being executed and delivered pursuant to the Trust Agreement, dated as of May 1, 2008 (the “2008 Trust Agreement”), by and between the Authority and The Bank of New York Trust Company, N.A., as trustee (the “Trustee”). Pursuant to the 2008 Trust Agreement, the Authority has assigned to the Trustee for the benefit of the Owners of the 2008 Certificates all its rights under the Contract, including its right to receive 2008 Payments payable under the Contract and its right to enforce payment by the City of the 2008 Payments when due.

The 2008 Certificates will be dated the date on which they are executed and delivered and will mature on October 1, 2036 (the “Maturity Date”), subject to prepayment prior thereto. See “THE 2008 CERTIFICATES — Prepayment.” The 2008 Certificates will be initially executed and

delivered in the Weekly Mode, and interest with respect to the 2008 Certificates in the Weekly Mode will be evidenced at the Weekly Rate. In general, the Weekly Rate is the rate of interest per annum determined by Banc of America Securities LLC, as Remarketing Agent (the “Remarketing Agent”), on and as of the applicable Rate Determination Date to be the minimum rate of interest which would result in the sale of the 2008 Certificates at a price equal to 100% of the principal amount thereof. Such interest is payable on the first Business Day of each month. See “THE 2008 CERTIFICATES.” The 2008 Certificates are subject to conversion to a different interest rate mode pursuant to the 2008 Trust Agreement. *This Official Statement describes the 2008 Certificates only while they are in the Weekly Mode.*

While the 2008 Certificates are in the Weekly Mode, they are subject to optional and mandatory tender for purchase under the circumstances described herein. Funds for the payment of the purchase price of the 2008 Certificates that are so subject to optional tender or mandatory tender for purchase and that are not remarketed by the Remarketing Agent will be available (subject to certain conditions precedent and automatic termination events) under a Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the “Liquidity Facility”), between the Authority and Bank of America, N.A., as Liquidity Facility Provider (the “Liquidity Facility Provider”). The Liquidity Facility does not support, secure or guaranty the payments of the principal of, premium, if any, or interest with respect to the 2008 Certificates. For a description of the Standby Certificate Purchase Agreement and information concerning Bank of America, N.A., see “LIQUIDITY FACILITY.”

### **Security for the 2008 Certificates**

**General.** The 2008 Certificates represent the proportionate interests of the Owners in the 2008 Payments. The City is required to make the 2008 Payments pursuant to the provisions of the Contract. The 2008 Payments represent the purchase price of the 2008 Project, which the Authority is selling to the City.

**The Master Contract.** The Master Contract establishes the terms and conditions upon which certain obligations of the City will be incurred and secured. Pursuant to the Master Contract, all Gross Revenues (as defined in the Master Contract) of the Water Utility System are pledged to the payment of the 2008 Payments, all payments required to be made under all other Parity Obligations and Maintenance and Operations Costs; and amounts on deposit in the Parity Reserve Fund are pledged to the payment of the 1997 Payments (defined below), the 2008 Payments and any other obligations hereafter issued in connection with a Supplemental Contract. The City has previously incurred, and may in the future incur, obligations payable from Gross Revenues on a parity with the 2008 Payments (“Parity Obligations”) pursuant to the terms and conditions of the Master Contract. See “SECURITY FOR THE 2008 CERTIFICATES — Existing and Future Parity Obligations.” To provide additional security for the 2008 Certificates and Parity Obligations, the Master Contract contains a rate covenant which requires the City to fix, prescribe, and collect certain minimum rates, fees and charges for the water service, calculated in accordance with the Master Contract. See “SECURITY FOR THE 2008 CERTIFICATES — Rate Covenant.”

**The 1997 Contract.** The City has previously financed and refinanced certain improvements to its Water Utility System pursuant to a 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997, by and between the City and the Authority (the “1997 Contract”), under which the City is obligated to make certain payments (the “1997 Payments”) to the Authority as payment of the purchase price for those improvements. The 1997 Payments are payable from Gross Revenues on a parity with the 2008 Payments.

***The 2006 Contract.*** Subsequent to its execution of the 1997 Contract, in order to finance the cost of additional improvements to the Water Utility System (the “2006 Project”), the City entered into the 2006 Supplemental Installment Purchase Contract with the Authority (the “2006 Contract”), supplementing the Master Contract. Pursuant to the 2006 Contract, the City obligated itself to make certain payments (the “2006 Payments”) to the Authority; and pursuant to a related trust agreement the Authority assigned to The Bank of New York Trust Company, N.A., as trustee (the “2006 Trustee”), its right to receive the 2006 payments. The Authority and the 2006 Trustee executed and delivered certificates of participation in the 2006 Payments (the “2006 Certificates”), and proceeds from the sale of the 2006 Certificates are being used to pay the costs of constructing the 2006 Project. In connection with the 2008 Contract, the City will reconvey the 2006 Project to the Authority for sale back to the City as the 2008 Project; and proceeds from the sale of the 2008 Certificates, along with other funds available for such purpose, will be applied to prepay the 2006 Payments. As a result of the foregoing, the City’s obligations with respect to the 2006 Contract will be extinguished, and the 2006 Certificates will be defeased, concurrently with the execution and delivery of the 2008 Certificates, provided, however, that certain amendments to the Master Contract contained in the 2006 Contract will remain in full force and effect.

***The 2008 Contract.*** The 2008 Contract is a Parity Obligation executed and delivered under the provisions of the Master Contract. In consideration of the Authority’s agreement to finance the 2008 Project pursuant to the provisions of the 2008 Contract, the City agrees to pay the 2008 Payments to the Authority, solely from Gross Revenues on parity with all other Parity Obligations and Maintenance and Operation Costs, as provided in the 2008 Contract. The obligation of the City to make the 2008 Payments from Gross Revenues is absolute and unconditional; and, until such time as the 2008 Payments have been paid in full (or provision for the payment thereof shall have been made pursuant to the Master Contract), the City will not discontinue or suspend any such payments required to be made by it under the 2008 Contract when due whether or not the Water Utility System or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part. See “SECURITY FOR THE 2008 CERTIFICATES — 2008 Payments.”

THE OBLIGATION OF THE CITY TO PAY THE 2008 PAYMENTS IS A SPECIAL OBLIGATION OF THE CITY PAYABLE SOLELY FROM GROSS REVENUES OF THE WATER UTILITY SYSTEM AND DOES NOT CONSTITUTE A DEBT OF THE CITY OR OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF IN CONTRAVENTION OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY OR THE STATE OF CALIFORNIA, OR ANY POLITICAL SUBDIVISION, THEREOF IS PLEDGED TO THE PAYMENT OF THE 2008 PAYMENTS.

#### **Certificate Insurance / Reserve Fund Insurance Policy**

Assured Guaranty Corp. (“Assured Guaranty” or the “2008 Certificate Insurer”) has issued a commitment to issue, simultaneously with the delivery of the 2008 Certificates, a municipal bond insurance policy (the “2008 Certificate Insurance Policy”) relating to the 2008 Certificates, effective as of the date of delivery of the 2008 Certificates. By the terms of the 2008 Certificate Insurance Policy, Assured Guaranty agrees to pay the principal and interest represented by the 2008 Certificates which come due for payment but which are unpaid, to the extent that the Trustee has not received sufficient funds from the City with which to make such payment. See “CERTIFICATE

INSURANCE” and APPENDIX E — “SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY.”

Assured Guaranty will also issue the Parity Reserve Fund Insurance Policy (see “CERTIFICATE INSURANCE — The Reserve Fund Insurance Policy”); and, in connection therewith, the City and the Trustee will enter into an agreement with Assured Guaranty, dated as of May 1, 2008 (the “Reimbursement Agreement”). The City’s obligations under the Reimbursement Agreement will be Parity Obligations.

### **Liquidity Facility**

While the 2008 Certificates are in the Weekly Mode, they are subject to optional tender and mandatory tender for purchase. Funds for the payment of the purchase price of 2008 Certificates that are so tendered for purchase and that are not remarketed by the Remarketing Agent will be available (subject to certain conditions precedent and automatic termination events) under the Liquidity Facility. The Liquidity Facility does not support, secure or guaranty the payments of the principal of, premium, if any, or interest with respect to the 2008 Certificates. See “LIQUIDITY FACILITY.”

### **Swap Agreement**

In connection with the execution and delivery of the 2006 Certificates, the City entered into an interest rate swap agreement in the form of an ISDA Master Agreement (Local Currency – Single Jurisdiction), the U.S. Municipal Counterparty Schedule thereto, a Credit Support Annex and a Confirmation each dated as of and entered into on September 27, 2006 (collectively, the “2006 Swap Agreement”) with Bank of America, N.A. (the “Swap Provider”). In connection with the execution and delivery of the 2008 Certificates, the City and the Swap Provider will amend the 2006 Swap Agreement in various respects, including increasing the notional amount thereof, revising schedule pursuant to which the notional amount is to be reduced and providing for certain payments thereunder to be insured by Assured Guaranty (as so amended, the “2008 Swap Agreement”). The 2008 Swap Agreement is scheduled to expire on the Maturity Date of the 2008 Certificates; and the notional amount of the 2008 Swap Agreement is scheduled to be reduced on the same dates and in the same amounts as the principal evidenced by the 2008 Certificates is scheduled to be reduced. Pursuant to the 2008 Swap Agreement, the City will be required to make periodic payments to the Swap Provider calculated on the basis of a fixed rate of interest on an initial notional amount equal to the principal amount represented by the 2008 Certificates. In return, the Swap Provider will be required to make periodic payments to the City calculated on the basis of a variable rate of interest equal to a percentage of LIBOR on the same notional amount. The amounts payable by each party pursuant to the 2008 Swap Agreement are netted against the payments to be received by such party thereunder. See “SECURITY FOR THE 2008 CERTIFICATES — 2008 Swap Agreement.”

Bank of America, N.A. (the Swap Provider and the Liquidity Facility Provider) and Banc of America Securities LLC, (the Underwriter and Remarketing Agent), are affiliates, both being subsidiaries of Bank of America Corporation.

### **The City**

The City was incorporated in 1884, is the county seat of Stanislaus County, had an estimated population of over 209,000 as of January 1, 2008, and covers approximately 36 square miles. The City operates under a council-manager form of government pursuant to a charter adopted in 1963. It

is located in Central California, approximately 93 miles east of San Francisco. See APPENDIX F — “CERTAIN INFORMATION ABOUT THE CITY.”

### **The Water Utility System**

The Water Utility System provides potable water service to residential, commercial and industrial consumers located within the incorporated area of the City and in neighboring areas of Stanislaus County. The City owns, operates and maintains the Water Utility System, which is the sole retail provider of water service in the City. See “THE WATER UTILITY SYSTEM.”

### **Tax Matters**

For description of the tax status of interest with respect to the 2008 Certificates, see “TAX MATTERS” herein and see the complete copy of the proposed form of opinion of Special Counsel set forth in APPENDIX C — “PROPOSED FORM OF OPINION OF SPECIAL COUNSEL.”

### **No Continuing Disclosure**

While in the Weekly Mode, the 2008 Certificates are exempt from the continuing disclosure requirements of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended.

### **Disclosure of Identity of Purchasers**

Any person who purchases a beneficial interest in the 2008 Certificates in connection with the initial offering thereof agrees that the underwriters of the 2008 Certificates may disclose such person’s identity to the City and Authority unless such person advises his or her sales representative otherwise.

### **Changes to Preliminary Official Statement**

In addition to the usual changes associated with finalizing a preliminary official statement, this final Official Statement includes a new section titled “CERTIFICATE INSURANCE — The Reserve Fund Insurance Policy,” revisions to the discussion of events of default and remedies under the Liquidity Facility (see “LIQUIDITY FACILITY — Initial Liquidity Facility”) and revisions to the table showing the projected operating results of the Water Utility System to reflect debt service with respect to the 2008 Certificates (see “THE WATER UTILITY SYSTEM — Summary of Projected Operating Results of the Water Utility System”).

## **REFINANCING PLAN**

Proceeds from the sale of the 2008 Certificates, along with other funds available for such purpose, in an aggregate amount equal to the outstanding principal amount of the 2006 Certificates and the interest payable with respect thereto on May 30, 2008, will be deposited with the 2006 Trustee concurrently with the execution of the 2008 Certificates. The 2006 Trustee has previously given a conditional notice of full prepayment of the 2006 Certificates to the registered owners thereof. Said notice states that the 2006 Certificates will be prepaid in full on May 30, 2008, subject to receipt by the 2006 Trustee of funds sufficient to pay the prepayment price of the 2006 Certificates on said date. Thus, upon execution and delivery of the 2008 Certificates and the deposit of proceeds from the sale thereof in the amount described above with the 2006 Trustee, the 2006 Certificates will no longer be outstanding.

## THE 2008 PROJECT

The 2008 Project consists of the City's conveyance to the Authority of the improvements that comprise the 2006 Project and the Authority's reconveyance thereof to the City in order to effect the refinancing of the 2006 Project. The 2006 Project consists of improvements required to be made by the City in connection with the Modesto Irrigation District's expansion of the Modesto Regional Water Treatment Plant (the "Water Treatment Plant"), including the construction of several new downstream water facilities and various water distribution system improvements to insure the reliability of water supply to both existing and future customers. The 2006 Project includes the acquisition of land and rights of way as well as design and construction costs related to the new facilities and improvements. The facilities include the acquisition, construction and installation of three storage tanks and connecting transmission facilities, construction and improvement of transmission/distribution mains and associated pump stations, and installation of motor-operated control valves controlling the flow of treated surface water from the Water Treatment Plant to the City system. The 2006 Project facilities and improvements are intended to help replace less reliable groundwater production capacity, improve the City's ability to maintain desired system operational pressures during high-demand periods and meet other operational criteria. These facilities are also intended to improve system distribution capabilities to future customers.

The Water Treatment Plant was constructed and is owned and operated by the Modesto Irrigation District ("MID"). Pursuant to an agreement with the City (the "Treatment and Delivery Agreement"), MID has agreed to an expansion of the Water Treatment Plant, doubling its rated capacity from approximately 30 million gallons per day to approximately 60 million gallons per day. (The Water Treatment Plant has been designed to accommodate a possible further expansion subject to a future agreement between the City and MID.) On June 26, 2007, the Modesto Irrigation District Financing Authority issued bonds in a principal amount of \$93,190,000 (the "MIDFA 2007 Bonds") in order to provide financing for the Water Treatment Plant expansion described above. The ultimate source of funds expected to be used to pay debt service on the MIDFA 2007 Bonds consists of payments to be made by the City to MID pursuant to the Treatment and Delivery Agreement. See "THE WATER UTILITY SYSTEM — Treatment and Delivery Agreement."

The 2006 Project is expected to be completed in the third quarter of 2009, the expansion of the Water Treatment Plant is expected to be completed in the fourth quarter of 2009 and the expanded plant is expected to be fully operational early in 2010.

## ESTIMATED SOURCES AND USES OF FUNDS

The table below sets forth the estimated sources and uses of the proceeds of the 2008 Certificates and certain other funds:

Sources:	
Principal Amount of the 2008 Certificates	\$47,625,000.00
Funds Held for 2006 Certificates	1,957,071.79
Less: Underwriter's Discount	( <u>153,920.63</u> )
Total	<u>\$49,428,151.16</u>
Uses:	
Transfer to 2006 Trustee <sup>(1)</sup>	\$46,286,841.26
Parity Reserve Fund <sup>(2)</sup>	1,834,552.07
Costs of Issuance <sup>(3)</sup>	1,196,042.80
Capitalized Interest	<u>110,715.03</u>
Total	<u>\$49,428,151.16</u>

<sup>(1)</sup> Equal to the principal amount of the 2006 Certificates and the interest payable with respect thereto on May 30, 2008, the date designated for the prepayment of the 2006 Certificates.

<sup>(2)</sup> The Reserve Fund Requirement, which is described herein under the caption "SECURITY FOR THE 2008 CERTIFICATES — Parity Reserve Fund," will be satisfied in connection with the execution and delivery of the 2008 Certificates by (a) the retention in the Parity Reserve Fund of cash currently held therein in connection with the 2006 Certificates in the amount of \$1,834,515.50, (b) a cash deposit of \$36.57 and (c) the delivery to the Trustee of the Parity Reserve Fund Insurance Policy, with a policy limit of \$2,082,512.74. See "CERTIFICATE INSURANCE — The Reserve Fund Insurance Policy."

<sup>(3)</sup> Includes the premium for the 2008 Certificate Insurance Policy and the Parity Reserve Fund Insurance Policy, fees and expenses of Special Counsel, Disclosure Counsel, Financial Advisor, and Trustee, and printing and other miscellaneous expenses.

## THE 2008 CERTIFICATES

### General

The 2008 Certificates represent the proportionate interests of the Owners in the 2008 Payments. The 2008 Certificates will be dated the date on which they are executed and delivered and will mature on the Maturity Date, subject to prepayment prior thereto as described below under "Prepayment." The 2008 Certificates will be initially executed and delivered in the Weekly Mode, and interest with respect to the 2008 Certificates in the Weekly Mode will be evidenced at the Weekly Rate. See "Interest Rate Provisions" below.

Upon delivery, the 2008 Certificates will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the 2008 Certificates. Ownership interests in the 2008 Certificates may be purchased in book entry form only. See "Book-Entry-Only System" below. While the 2008 Certificates are in the Weekly Mode such ownership interests may be purchased in denominations of \$100,000 and integral multiples of \$5,000 in excess thereof.

### Book-Entry-Only System

The 2008 Certificates will be executed and delivered in book-entry form only. Purchasers of the 2008 Certificates will not receive certificates representing their ownership interests in the 2008 Certificates purchased but will receive credit balances on the books of their respective nominees. All

payments with respect to the 2008 Certificates are to be made by the Trustee directly to DTC. DTC is expected to credit such payments to the respective accounts of its Direct Participants which, in turn, are expected to make payment thereof to the purchasers of the 2008 Certificates.

As long as Cede & Co. is the registered owner of the 2008 Certificates, references herein to the Owners of the 2008 Certificates shall refer to Cede & Co. and not to the beneficial owners of the 2008 Certificates (the “Beneficial Owners”). *Neither the Authority nor the City gives any assurance that DTC, its Participants or others will distribute payments with respect to the 2008 Certificates or notices concerning the 2008 Certificates to the Beneficial Owners thereof or that DTC will otherwise serve and act in the manner described in this Official Statement.* See APPENDIX D — “INFORMATION CONCERNING DTC” for a further description of DTC and its book-entry system. The information presented therein is based solely on information provided by DTC.

The Authority may decide to discontinue the use of book-entry transfers through DTC (or a successor Securities Depository). In that event, the 2008 Certificates will be printed and delivered to the Beneficial Owners and will be governed by the provisions of the 2008 Trust Agreement with respect to the payment of principal and interest and rights of exchange and transfer.

### **Interest Rate Provisions**

***Establishment of the Weekly Rate.*** The 2008 Certificates will be executed and delivered in the Weekly Mode. The interest rate for the 2008 Certificates while they are in the Weekly Mode will be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date (each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday) as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of the 2008 Certificates at a price equal to 100% of the principal amount thereof. While the 2008 Certificates are in the Weekly Mode, the Remarketing Agent is obligated to establish the Weekly Rate by 4:00 p.m. New York City time on each Rate Determination Date; and the Weekly Rate shall be in effect during the applicable Weekly Rate Period (generally, the period commencing on Thursday of each week to and including Wednesday of the following week).

***Notification of the Weekly Rate.*** The Remarketing Agent is required to make the Weekly Rate available no later than 5:00 p.m. New York City time on the Business Day following the Rate Determination Date by telephone or Electronic means to the Authority, each other Notice Party and any Beneficial Owner requesting such rate.

***Alternate Rate.*** When the 2008 Certificates are in the Weekly Mode, in the event (i) the Remarketing Agent fails or is unable to determine the interest rate for the 2008 Certificates, (ii) the method by which the Remarketing Agent determines the interest rate with respect to the 2008 Certificates shall be held to be unenforceable by a court of law of competent jurisdiction, or (iii) the Remarketing Agent suspends its remarketing effort in accordance with the provisions of the Remarketing Agreement (as hereinafter defined), then the 2008 Certificates shall evidence interest during each subsequent Interest Period for the 2008 Certificates at the Alternate Rate in effect on the first day of such Weekly Rate Period. The Alternate Rate for the 2008 Certificates in the Weekly Mode as of any Rate Determination Date is a rate per annum equal to (a) the SIFMA Municipal Swap Index (the “SIFMA Rate”) most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Rate is no longer published, the S&P Weekly High Grade Index (formerly the J.J. Kenny Index), or (c) if neither the SIFMA Rate nor the S&P

Weekly High Grade Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association (“SIFMA”) to determine the SIFMA Rate just prior to when the SIFMA stopped publishing the SIFMA Rate. If there is no Remarketing Agent for the 2008 Certificates, if the Remarketing Agent fails to make any such determination or if the Remarketing Agent has suspended its remarketing efforts in accordance with the Remarketing Agreement, then the Trustee shall make the determinations required by this definition, or if the Trustee shall decline to make such determination, a financial advisor, investment banker or other qualified party shall make such determination at the expense of the Authority. Such provisions will continue to apply until such time as the Remarketing Agent (or the Authority, if applicable) resumes making such determinations. In the case of clause (ii) above, the Remarketing Agent (or the Authority, if applicable) shall resume making such determination at such time as there is delivered to the Remarketing Agent or the Authority, as applicable, an opinion of Special Counsel to the effect that there are no longer any legal prohibitions against the Remarketing Agent or Authority, as applicable, making such determinations.

### **Optional Tender**

Subject to the availability of sufficient funds from either the remarketing of such 2008 Certificates or the Liquidity Facility, while the 2008 Certificates are in the Weekly Mode, any 2008 Certificate or portion thereof in a principal amount equal to an Authorized Denomination is required to be purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by 5:00 p.m. New York City time on the Business Day seven days prior to the applicable Purchase Date. See, “Purchase Fund,” “Delayed Remarketing Period,” “Liquidity Facility” and “LIQUIDITY FACILITY — Initial Liquidity Facility.” A Tender Notice is a notice delivered by Electronic means or in writing that states: (i) the principal amount of the 2008 Certificates to be purchased pursuant to the optional tender provisions of the 2008 Trust Agreement; (ii) the Purchase Date on which such 2008 Certificates are to be purchased; (iii) applicable payment instructions with respect to such 2008 Certificates being tendered for purchase; and (iv) an irrevocable demand for such purchase. For so long as the 2008 Certificates are registered in the name of Cede & Co., as nominee for DTC, the tender option rights of Owners of 2008 Certificates may be exercised only by a Direct Participant of DTC acting, directly or indirectly, on behalf of a Beneficial Owner of 2008 Certificates by giving notice of its election to tender 2008 Certificates or portions thereof at the time and in the manner described above. Beneficial Owners will not have any rights to tender 2008 Certificates directly to the Trustee.

If funds sufficient to pay the Purchase Price of any Certificate are held by the Trustee on any Purchase Date, such 2008 Certificate shall be deemed to have been purchased and shall be purchased according to the terms of the Trust Agreement, for all purposes of the Trust Agreement, irrespective of whether or not such 2008 Certificate shall have been delivered to the Trustee; and neither the former Owner of such 2008 Certificate nor any other person shall have any claim thereon, under the Trust Agreement or otherwise, for any amount other than the Purchase Price thereof.

### **Mandatory Tender for Purchase Upon Change of Mode**

***Changes in Mode.*** At the option of the Authority, the 2008 Certificates in the Weekly Mode may be changed to another Mode (other than a Fixed Rate Mode) as set forth below, provided that all the 2008 Certificates shall be converted.

Unless otherwise specified in the 2008 Trust Agreement, notice of the proposed change in Mode must be given by the Trustee to the Owners of the 2008 Certificates not less than the 15th day next preceding the applicable Mode Change Date. Such notice must state the Mode to which the conversion will be made and the proposed Mode Change Date and, if applicable, shall be combined with the notice of mandatory purchase required to be delivered by the Trustee pursuant to the 2008 Trust Agreement. The new Mode shall commence on the Mode Change Date and the interest rate(s), together, in the case of a change to the Flexible Mode, with the Interest Period or Interest Period(s), as applicable, shall be determined by the Remarketing Agent (or the Authority in the case of the Interest Period for the 2008 Certificates being converted to a Term Rate Mode) in the manner provided in the 2008 Trust Agreement.

In the case of a change from the Weekly Mode, the Mode Change Date can be any Business Day. The 2008 Certificates shall be subject to mandatory tender for purchase on such Mode Change Date as described below: and, except as is otherwise described herein, the 2008 Certificates shall be purchased on the Mode Change Date at a Purchase Price equal to 100% of the principal amount thereof; provided, however, that if the 2008 Certificates are to be purchased on an Interest Payment Date other than the last Interest Payment Date applicable to the 2008 Certificates, and if the 2008 Certificates would otherwise be subject to optional prepayment on such Mode Change Date at a prepayment price of more than 100% of the principal amount thereof, then the 2008 Certificates shall be purchased at a Purchase Price equal to such prepayment price.

***Conditions Precedent.*** It is a condition precedent to a change in Mode that certain items shall have been delivered to the Authority, Trustee, the 2008 Certificate Insurer, and the Remarketing Agent on or prior to the Mode Change Date. Those items include (a) in the case of a change from the Weekly Mode to any Mode other than the Daily Mode, a Favorable Opinion of Special Counsel dated the Mode Change Date and (b) a notice from the Rating Agencies of the rating(s) to be assigned to the 2008 Certificates on such Mode Change Date. In addition, the Authority must also have obtained and delivered to the Trustee the written consent of the 2008 Certificate Insurer to the change in Mode.

***Failure to Satisfy Conditions.*** In the event that the Authority has not withdrawn any election by it to change a Mode as described below and the conditions referred to above have not been satisfied by the applicable Mode Change Date, then the New Mode shall not take effect (although any mandatory purchase shall be made on such date if notice has been sent to the Owners stating that the 2008 Certificates would be subject to mandatory purchase on such date). In the case of a failed change in Mode from the Weekly Mode, the 2008 Certificates shall remain in the Weekly Mode with interest rates established in accordance with the provisions described above under “Interest Rate Provisions” on and as of the failed Mode Change Date.

***Rescission of Election to Change Mode.*** The Authority may rescind any election by it to change a Mode prior to the Mode Change Date by giving written notice thereof to the Notice Parties prior to such Mode Change Date. If the Trustee receives notice of such rescission prior to the time the Trustee has given notice to the Owners of the 2008 Certificates, then such notice of change in Mode shall be of no force and effect. If the Trustee receives notice from the Authority of rescission of a Mode change after the Trustee has given notice thereof to the Owners of the 2008 Certificates, then if the proposed Mode Change Date would have been a Mandatory Purchase Date, such date shall continue to be a Mandatory Purchase Date. If the proposed change in Mode was from the Weekly Mode, the 2008 Certificates shall remain in the Weekly Mode with interest rates established

in accordance with the provisions described above under “Interest Rate Provisions” on and as of the proposed Mode Change Date.

***Mandatory Tender for Purchase on Change of Mode.*** A change from the Weekly Mode to any other Mode will result in the mandatory purchase of the 2008 Certificates on the Mode Change Date. The Trustee is required to give notice of each such mandatory purchase by mail to the Owners of the 2008 Certificates subject to mandatory purchase no less than 15 days prior to the applicable Mandatory Purchase Date, which is the Mode Change Date. Such notice is required to state the Mandatory Purchase Date, set forth the Purchase Price applicable on such Mandatory Purchase Date, and identify the 2008 Certificates to be purchased. Such notice must also state that interest on the 2008 Certificates subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2008 Certificate shall not affect the validity of the mandatory purchase of any other 2008 Certificate with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Owner.

### **Other Mandatory Tenders**

The 2008 Certificates are subject to mandatory tender for purchase on each Mandatory Tender Date, In addition to Mode Change Dates, Mandatory Purchase Dates applicable to 2008 Certificates in the Weekly Mode are: (i) any Substitution Date (the date on which an Alternate Liquidity Facility is substituted for the Liquidity Facility then in effect); (ii) the fifth Business Day prior to an Expiration Date (the stated expiration date of a Liquidity Facility, as it may be extended from time to time as provided in such Liquidity Facility, or any earlier date on which such Liquidity Facility shall terminate at the direction of the Authority, expire or be cancelled, other than the date on which a Liquidity Facility shall terminate as a result of an Automatic Termination Event or an event of default under the Reimbursement Agreement entered into in connection with such Liquidity Facility); (iii) the date specified by the Trustee following the occurrence of an event of default with respect to the Liquidity Facility which requires or gives the Liquidity Facility Provider the option to terminate the Liquidity Facility upon notice and requires that all Outstanding 2008 Certificates secured by such Liquidity Facility be tendered for purchase under the applicable Reimbursement Agreement, which date shall be a Business Day not less than 20 days after the Trustee’s receipt of notice of such event of default from the applicable Liquidity Facility Provider and in no event later than the Business Day preceding the termination date specified in the notice of event of default delivered to the Trustee by such Liquidity Facility Provider; and (iv) any Business Day specified by the Authority in a notice delivered to the Trustee, which Mandatory Purchase Date shall be not less than twenty (20) days after the Trustee’s receipt of such notice from the Authority.

The Trustee is required to give notice of each such mandatory purchase at the same time and in the same manner as is described above under “Mandatory Tender for Purchase upon Change of Mode - *Mandatory Tender for Purchase on Change of Mode.*”

### **Purchase Fund**

The Trust Agreement requires the Trustee to establish and maintain a separate fund to be designated as the “2008 Purchase Fund” (the “2008 Purchase Fund”) and separate accounts therein to be designated as the “Remarketing Proceeds Account,” the “Liquidity Facility Account” and the “Authority Account.” The 2008 Purchase Fund shall be held in trust solely for the benefit of the Owners of tendered 2008 Certificates.

Upon receipt of the proceeds of a remarketing of any 2008 Certificate on the date such 2008 Certificate is to be purchased, the Trustee is required to deposit such remarketing proceeds in the Remarketing Proceeds Account to be applied to the payment of the Purchase Price of such 2008 Certificate. Upon receipt of the proceeds of a draw on a Liquidity Facility, the Trustee is required to deposit such Liquidity Facility proceeds in the Liquidity Facility Account to be applied to the payment of the Purchase Price of the 2008 Certificates to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in a Liquidity Facility Account and not needed for the payment of the Purchase Price of the 2008 Certificates shall be immediately returned to the applicable Liquidity Facility Provider. Upon receipt of funds from the Authority provided at its sole discretion for such purpose, the Trustee is required to deposit such funds in the Authority Account to be applied to the payment of the Purchase Price of the 2008 Certificates. Any amounts deposited in an Authority Account and not needed for the payment of the Purchase Price of the 2008 Certificates shall be immediately returned to the Authority. Amounts held in the Remarketing Proceeds Account, the Liquidity Facility Account and the Authority Account are not permitted to be commingled with any other funds held by the Trustee and must be held uninvested.

Each of the Remarketing Proceeds Account and the Liquidity Facility Account shall meet the requirements of an Eligible Account.

### **Liquidity Facility**

***Requirement.*** While the 2008 Certificates are in the Weekly Mode, the Authority is required to provide a Liquidity Facility. Each such Liquidity Facility (and any Alternate Liquidity Facility provided in replacement thereof) must (i) be in an amount equal to the Required Stated Amount, (ii) be provided by a Liquidity Facility Provider and (iii) provide for the purchase of the 2008 Certificates upon their optional or mandatory tender in accordance with the provisions of the Trust Agreement. The Authority is not permitted to voluntarily terminate such Liquidity Facility or any Alternate Liquidity Facility without providing at least 30 days written notice to the Trustee and each of the other Notice Parties.

***Draws.*** If a Liquidity Facility is in effect with respect to the 2008 Certificates, on each date on which a 2008 Certificate is to be purchased, the Trustee, by demand given by Electronic means before 12:30 p.m. New York City time, is required to draw on the applicable Liquidity Facility in accordance with the terms thereof so as to receive thereunder by 2:30 p.m. New York City time on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such 2008 Certificates on such date, to enable the Trustee to pay the Purchase Price in connection therewith. The proceeds of such draw shall be paid to the Trustee, who shall deposit said proceeds in the Liquidity Facility Account.

***Alternate Liquidity Facility.*** The Authority may provide an Alternate Liquidity Facility on any Business Day not later than the fifth Business Day prior to the Expiration Date of the Liquidity Facility then in effect for the 2008 Certificates. Any such Alternate Liquidity Facility must be approved by the 2008 Certificate Insurer. The Authority must give at least 30 days' written notice to the Trustee and each of the Notice Parties of its intent to furnish an Alternate Liquidity Facility, which notice shall specify the nature of such Liquidity Facility, the identity of the Liquidity Facility Provider and the proposed Substitution Date. The Trustee must then give notice of each Mandatory Purchase Date resulting from the proposed delivery of an Alternate Liquidity Facility in accordance with the provisions set forth in the Trust Agreement.

On or before the Substitution Date, there must be delivered to the Trustee: (i) the Alternate Liquidity Facility in substitution for the Liquidity Facility then in effect, (ii) a Favorable Opinion of Special Counsel and (iii) a written Opinion of Counsel for the provider of Alternate Liquidity Facility to the effect that such Alternate Liquidity Facility is a legal, valid, and binding obligation of the provider thereof and covering such other matters as the Authority shall require. Upon the satisfaction of such conditions, the Trustee must accept such Alternate Liquidity Facility and surrender the Liquidity Facility then in effect to the provider thereof on the Substitution Date; provided that if there are insufficient remarketing proceeds to pay the Purchase Price of all 2008 Certificates subject to mandatory purchase on such Substitution Date, the Trustee may not surrender the Liquidity Facility then in effect until the Trustee shall have drawn upon the existing Liquidity Facility to pay the Purchase Price for the 2008 Certificates subject to mandatory purchase on such Substitution Date. If any condition precedent to the substitution of an Alternate Liquidity Facility is not satisfied, the substitution shall not occur, but the affected 2008 Certificates shall remain subject to mandatory purchase on the proposed Substitution Date.

### **Delayed Remarketing Period**

If sufficient funds are not available to pay the Purchase Price of all tendered 2008 Certificates (“Tendered Certificates”) to be purchased on any Purchase Date: (i) no purchase of such Tendered Certificates shall be consummated on such Purchase Date; (ii) all such Tendered Certificates shall be returned to the Owners thereof; (iii) all remarketing proceeds shall be returned to the Remarketing Agent for return to the persons providing such moneys; and (iv) such insufficiency and the failure to pay the Purchase Price on any Payment Date shall *not* constitute an Event of Default under the Trust Agreement. All such Tendered Certificates shall evidence interest at the Maximum Rate during the period of time from and including the applicable Purchase Date to (but not including) the date that all such Tendered Certificates are successfully remarketed (the “Delayed Remarketing Period”).

The Authority may direct the conversion of such Tendered Certificates to a different Mode during a Delayed Remarketing Period in accordance with the provisions of the Trust Agreement, but the Authority is not required to comply with the notice requirements otherwise applicable to a change of Mode.

During a Delayed Remarketing Period, the Remarketing Agent shall continue to use its best efforts to remarket such Tendered Certificates. Once the Remarketing Agent has advised the Trustee that it has a good faith belief that it is able to remarket all of such Tendered Certificates, the Trustee shall give written notice by mail to the Owners of such Tendered Certificates not later than five Business Days prior to the proposed Purchase Date, which notice shall state: (i) that such Tendered Certificates will be subject to mandatory tender for purchase on the proposed Purchase Date; (ii) the proposed Purchase Date; (iii) the Mode applicable to such Tendered Certificates from and after the proposed Purchase Date; (iv) the procedures for such mandatory tender for purchase; (v) the Purchase Price applicable to such Tendered Certificates; and (vi) the consequences of a failed remarketing.

The Trustee may, upon direction of the Authority, apply amounts on deposit in the 2008 Prepayment Subaccount of the 2008 Principal Account to the prepayment of Tendered Certificates, as a whole or in part on any Business Day during such Delayed Remarketing Period, at a prepayment price equal to the principal amount thereof, together with interest accrued thereon to the date fixed for prepayment, without premium. The Trustee shall give five (5) Business Days’ notice of such prepayment to the Owners of the 2008 Certificates to be prepaid.

Interest on Tendered Certificates shall be paid to the Owners thereof (i) on the first Business Day of each calendar month occurring during a Delayed Remarketing Period and (ii) on the day after the last day of such Delayed Remarketing Period.

## Prepayment

**Optional Prepayment.** Each 2008 Certificate in the Weekly Mode is subject to prepayment at the option of the Authority, in whole or in part, in Authorized Denominations on any Business Day, at a prepayment price equal to 100% of the principal amount thereof, plus, accrued interest, if any, to the Prepayment Date, without premium.

**Mandatory Sinking Fund Prepayment.** Except in the case of 2008 Certificates that have been converted to Serial Certificates upon a change to the Fixed Rate Mode, the 2008 Certificates are subject to mandatory prepayment from Sinking Fund Payments prior to the Maturity Date, in part by lot, on October 1 of each year on and after October 1, 2008, in accordance with the schedule set forth below upon notice hereinafter described, from and in the amount of the principal installment of the 2008 Payments due and payable on such dates, at a prepayment price equal to the sum of the principal amount evidenced and represented thereby plus accrued and unpaid interest evidenced and represented thereby to the Prepayment Date, without a prepayment premium. In addition, if any 2008 Certificates have been optionally prepaid, the amounts of such Sinking Fund Payments shall be reduced as directed by the Authority, or if not so directed, proportionality in increments of Authorized Denominations, by the principal amount evidenced and represented by all such 2008 Certificates so optionally prepaid.

<i>Mandatory Sinking Fund Payment Date (October 1)</i>	<i>Sinking Fund Payment</i>	<i>Mandatory Sinking Fund Payment Date (October 1)</i>	<i>Sinking Fund Payment</i>
2008	\$290,000	2023	\$2,300,000
2009	285,000	2024	2,410,000
2010	285,000	2025	2,515,000
2011	285,000	2026	2,595,000
2012	310,000	2027	2,705,000
2013	310,000	2028	2,810,000
2014	340,000	2029	2,945,000
2015	340,000	2030	3,055,000
2016	365,000	2031	3,185,000
2017	365,000	2032	3,295,000
2018	395,000	2033	3,430,000
2019	395,000	2034	3,570,000
2020	395,000	2035	3,705,000
2021	425,000	2036 (maturity)	3,870,000
2022	450,000		

Notwithstanding the foregoing, no 2008 Certificate (other than a Liquidity Provider Certificate) shall be optionally prepaid while any Liquidity Provider Certificate is Outstanding unless all Outstanding Liquidity Provider Certificates are prepaid or purchased by the Trustee and cancelled concurrently with such prepayment or purchase.

If for any reason, the Liquidity Provider Certificates remain in book-entry but have not been assigned a separate CUSIP number, the Trustee shall apply the amounts in the 2008 Sinking Fund Subaccount set aside for prepayment to the purchase from the Liquidity Facility provider of Liquidity Provider Certificates in an aggregate principal amount not in excess of the principal amount intended to be prepaid at a purchase price equal to the prepayment price specified above. The Liquidity Provider Certificates so purchased shall be cancelled by the Trustee, and the principal amount thereof shall be credited against the principal amount of the 2008 Certificates otherwise required to be prepaid.

***Notice of Prepayment.*** When the prepayment of 2008 Certificates is authorized as described above, the Trustee is required to give notice thereof. Such notice must state the date of such notice, the prepayment price, the place of prepayment (including the name and appropriate address of the Trustee), the CUSIP number (if any) of the 2008 Certificates to be prepaid, and, if less than all of the 2008 Certificates are to be prepaid, the distinctive certificate numbers thereof to be prepaid and, in the case of 2008 Certificates to be prepaid in part only, the respective portions of the principal amount evidenced and represented thereby to be prepaid. Each such notice shall also state that on said date there will become due and payable on each of said 2008 Certificates the prepayment price thereof and, in the case of a 2008 Certificate to be prepaid in part only, the specified portion of the principal amount evidenced and represented thereby to be prepaid, together with accrued and unpaid interest evidenced and represented thereby to the prepayment date, and that from and after such prepayment date interest evidenced and represented thereby shall cease to accrue; and such notice shall require that said 2008 Certificates be then surrendered at the address of the Trustee specified in the prepayment notice.

Such notice must be mailed by the Trustee, at least 30 but not more 60 days before the prepayment date to the respective Owners of the 2008 Certificates designated for prepayment at their addresses appearing on the registration books of the Trustee. Such notice is also required to be provided to Securities Depositories and Information Services. Failure to receive such notice shall not invalidate any of the proceedings taken in connection with such prepayment.

Any prepayment may be cancelled if the notice of such prepayment has not been mailed to the respective Owners of the 2008 Certificates or if such notice expressly conditioned the prepayment upon the occurrence of one or more events. Notice of any such cancellation shall be given in the same manner as the notice of prepayment was given at least three Business Days prior to the date scheduled for prepayment.

***Effect of Prepayment.*** If notice of prepayment has been duly given as described above and money for the payment of the prepayment price of the 2008 Certificates called for prepayment together with any accrued interest to the date fixed for prepayment is held by the Trustee, then on the prepayment date designated in such notice, the 2008 Certificates so called for prepayment will become due and payable on the date fixed for prepayment at the prepayment price specified in such notice; and from and after the date so designated, interest evidenced and represented by such 2008 Certificates so called for prepayment shall cease to accrue, and the Owners of such 2008 Certificates shall have no rights in respect thereof except to receive payment of the prepayment price thereof.

### **Purchase in Lieu of Prepayment**

Subject to the provisions of the 2008 Trust Agreement, the Authority has the option to purchase any 2008 Certificate on any date on which it would be subject to optional prepayment at a

purchase price equal to the then applicable prepayment price plus accrued interest thereon to the date of purchase.

### **Parity Obligations**

The City has previously incurred obligations payable from Gross Revenues of its Water Utility System on a parity with the 2008 Payments; and, under the terms of the Master Contract, the City may incur additional such obligations in the future. In addition to the 1997 Payments and its obligation to make the scheduled payments required pursuant to the 2008 Swap Agreement, its obligation to make termination payments under the 2008 Swap Agreement (but only if such payments are insured under the Swap Policy) and its obligations under the Reimbursement Agreement and the Liquidity Facility, the City currently has outstanding unpaid Parity Obligations with MID and the State of California Department of Water Resources (“CDWR”). See “SECURITY FOR THE 2008 CERTIFICATES — Existing and Future Parity Obligations.”

## **SECURITY FOR THE 2008 CERTIFICATES**

### **General**

Each 2008 Certificate represents a proportionate interest in the 2008 Payments to be made by the City under the 2008 Contract. Pursuant to the 2008 Trust Agreement, the Authority will assign substantially all of its right, title and interest in the 2008 Contract to the Trustee for the benefit of the Owners of the 2008 Certificates. The rights so assigned include the Authority’s right to receive the 2008 Payments and its right to exercise any remedies provided in the 2008 Contract in the event of a default by the City thereunder.

Pursuant to the 2008 Contract, the City will purchase the 2008 Project from the Authority at the purchase price specified in the 2008 Contract, which is equal to the aggregate principal amount evidenced by the 2008 Certificates. The City is obligated to make such purchase by paying the 2008 Payments specified in the 2008 Contract including the interest on such payments.

### **2008 Payments**

Pursuant to the 2008 Trust Agreement, the Authority will transfer, assign and set over to the Trustee all of the 2008 Payments and any and all rights and privileges it has under the 2008 Contract with respect to the 2008 Certificates, including, without limitation, the right to collect and receive directly all of the 2008 Payments and the right to hold and enforce any security interest.

The 2008 Payments under the 2008 Contract represent the purchase price of the 2008 Project, which the Authority is selling to the City pursuant to the 2008 Contract for the purpose of refinancing the 2006 Project. The obligation of the City to pay the 2008 Payments from Gross Revenues is absolute and unconditional; and, until such time as the 2008 Payments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to the Master Contract), the City will not discontinue or suspend any 2008 Payments required to be paid by it under the 2008 Contract when due, whether or not the Water Utility System or any part thereof (including the 2008 Project) is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part; and such payments are not subject to reduction whether by offset, abatement or otherwise and are not conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever. Notwithstanding anything contained in the Contract, however,

the City is not required to advance any moneys derived from any source of income other than the Gross Revenues for the payment of the 2008 Payments or for the performance of any agreements or covenants required to be performed by it contained in the Contract.

As more fully described below, under the Contract, Gross Revenues of the Water Utility System are pledged as security for the payment of the 1997 Payments, the 2008 Payments, any other Parity Obligations and the Maintenance and Operation Costs, as defined below.

“Water Utility System” is defined under the Master Contract to mean (i) all property rights, contractual rights and facilities of the City relating to water, including all facilities, properties, structures or works for the treatment, conservation, storage, transmission and distribution of water now owned by the City and (ii) all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

“Gross Revenues” is defined under the Master Contract to mean all gross income and revenue received or receivable by the City from the ownership or operation of the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges (including all Connection Fees, contributions in aid of construction, and charges and standby water availability charges legally available for debt service) received by the City for the Water Service and the other services and facilities of the Water Utility System and all net proceeds of insurance covering business interruption loss relating to the Water Utility System and all other income and revenue howsoever derived by the City from the ownership or operation of the Water Utility System or arising from the Water Utility System, and including all Payment Agreement Receipts, and including all income from the deposit or investment of any money in the Revenue Fund or, to the extent deposited in the Revenue Fund, in the Parity Reserve Fund, but excluding in all cases any proceeds of taxes and any refundable deposits made to establish credit and advances.

“Maintenance and Operation Costs” is defined under the Master Contract to mean the costs paid or incurred by the City for maintaining and operating the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including, but not limited to, (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water Utility System in good repair and working order, (b) all costs of water purchased by the City including all costs under the Treatment and Delivery Agreement by and among the City, the Del Este Water Company and MID (which has since been amended and restated) which do not constitute debt service thereunder, (c) all administrative costs of the City that are charged directly or apportioned to the operation of the Water Utility System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, payments into pension funds, and (d) all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Master Contract or of any resolution authorizing the execution of any Parity Obligation or of such Parity Obligation, such as compensation, reimbursement and indemnification of the trustee or remarketing agent for any such Parity Obligation, letter of credit fees for any such Parity Obligations, and fees and expenses of Independent Certified Public Accountants and Independent Consultants, but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, premiums and discounts, (2) interest expense, (3) amounts paid from funds of the City other than Gross Revenues, and (4) in-lieu transfers or recoupment of contributed capital to the City’s general fund.

## **Pledge of Gross Revenues**

Pursuant to the Contract, all Gross Revenues of the Water Utility System are irrevocably pledged to the payment of the 1997 Payments, the 2008 Payments, any other Parity Obligations and the Maintenance and Operation Costs; and the Gross Revenues of the Water Utility System may not be used for any other purpose while any of the 1997 Payments or the 2008 Payments remain unpaid; provided, however, that out of Gross Revenues there may be apportioned such sums for such purposes as are expressly permitted by the Contract. Such pledge constitutes a first pledge of and charge and lien upon the Gross Revenues of the Water Utility System for the payment of the amounts due with respect to the Contract, other Parity Obligations and the Maintenance and Operation Costs in accordance with the terms of the Contract.

## **Rate Covenant**

Pursuant to the Master Contract, the City covenants that it will at all times fix, prescribe and collect rates, fees and charges for the Water Service during each Fiscal Year which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield Adjusted Annual Net Revenues for such Fiscal Year equal to at least 125% of Annual Debt Service to be paid during such Fiscal Year (the “Rate Covenant”).

“Adjusted Annual Net Revenues” is defined under the Master Contract to mean, for any Fiscal Year or any designated 12-month period in question, the Adjusted Annual Gross Revenues during such Fiscal Year or 12-month period less the Maintenance and Operation Costs during such Fiscal Year or 12-month period.

“Adjusted Annual Gross Revenues” is defined under the Master Contract to mean, for any Fiscal Year or any designated 12-month period in question, the Gross Revenues during such Fiscal Year or 12-month period, plus deposits to the City of Modesto Water Utility System Revenue Fund (the “Revenue Fund”) from amounts on deposit in the Rate Stabilization Fund, but only as and to the extent specified in the Master Contract, minus (y) amounts transferred from the Revenue Fund to the Rate Stabilization Fund in accordance with the Master Contract and, (z) for purposes of determining compliance with the rate covenant described above only, earnings from the investments in the Parity Reserve Fund that are deposited in the Revenue Fund in such Fiscal Year or 12-month period.

“Adjusted Annual Debt Service” is defined under the Master Contract to mean, for any Fiscal Year or any designated 12-month period in question, the Annual Debt Service for such Fiscal Year or 12-month period minus the sum of (i) for purposes of the rate covenant described above only, the earnings from the investments in the Parity Reserve Fund that are deposited in the Revenue Fund in such Fiscal Year or 12-month period, and (ii) the amount of the Annual Debt Service paid from the proceeds of Parity Obligations or interest earned thereon (other from the Parity Reserve Fund), all as set forth in a Certificate of the City.

“Annual Debt Service” is generally defined under the Master Contract to mean, for any Fiscal Year or any designated 12-month period in question, the payments required to be made with respect to all Outstanding Parity Obligations in such Fiscal Year or 12-month period; provided, that for purposes of determining compliance with the rate covenant described above, the Reserve Fund Requirement and conditions for the execution of Parity Obligations, certain additional provisions are applicable as described in APPENDIX B — “DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS.”

The City's ability to comply with the Rate Covenant may be limited by provisions of the California Constitution. See "THE WATER UTILITY SYSTEM — Impact of Proposition 218 on Water Utility System Fees and Charges." The opinion of Sidley Austin LLP, Special Counsel, with respect to the 2008 Certificates will state that the enforceability of the Contract is subject to the limitations on the imposition by the City of certain fees and charges relating to the Water Utility System under Articles XIII C and XIII D of the California Constitution. See APPENDIX C — "PROPOSED FORM OF OPINION OF SPECIAL COUNSEL." The City's ability to comply with the Rate Covenant may also be adversely affected by other factors. See "RISK FACTORS."

### **Parity Reserve Fund**

The Parity Reserve Fund was initially established pursuant to a trust agreement, dated as of November 1, 1997 (the "1997 Trust Agreement"), which provided for the execution and delivery of the City's Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project) (the "1997 Certificates"). The 1997 Certificates represent the proportionate, undivided interests in the 1997 Payments pursuant to the 1997 Contract. All amounts on deposit in the Parity Reserve Fund are available to be transferred to pay principal and interest evidenced and represented by both the 1997 Certificates and the 2008 Certificates and any other obligations in connection with a future supplement to the Contract (collectively, the "Parity Certificates") as described in greater detail below.

In connection with the execution and delivery of the 1997 Certificates, the City caused to be delivered to the then Trustee to be held in the Parity Reserve Fund in satisfaction of the Reserve Fund Requirement a municipal bond debt service reserve fund policy (the "1997 Certificate Reserve Policy") issued by Financial Guaranty Insurance Company, doing business in California as FGIC Insurance Company ("FGIC"). However, as a result of recent reductions in the ratings assigned to obligations insured by FGIC, the 1997 Certificate Reserve Policy must be replaced with cash or a Reserve Funding Instrument (as defined below). Concurrently with the execution and delivery of the 2008 Certificates, the Trustee will credit the Parity Reserve Fund Insurance Policy to the Parity Reserve Fund; and, as a result of the foregoing, the balance then on deposit in the Parity Reserve Fund will be equal to the Reserve Fund Requirement. See "CERTIFICATE INSURANCE — The Reserve Fund Insurance Policy" for a description of the Parity Reserve Fund Insurance Policy.

"Reserve Fund Requirement" is defined under the Master Contract to mean, as of any date of determination and excluding any Parity Obligations which are not Supplemental Contracts and the debt service thereon, the least of (a) 10% of the initial offering price to the public of the Parity Obligations as determined under the Code, or (b) the Maximum Annual Debt Service, or (c) 125% of the Average Annual Debt Service, all as computed and determined by the City and specified in writing to the Trustee; provided, that such requirement (or any portion thereof) may be provided by one or more policies of municipal bond insurance or surety bonds issued by a municipal bond insurer or by a letter of credit issued by a bank or other institution if the obligations insured by such insurer or issued by such bank or other institution, as the case may be, have ratings at the time of issuance of such policy or surety bond or letter of credit equal to "Aa" or higher assigned by Moody's (if Moody's is then rating any of the Parity Obligations) and "AA" or higher assigned by S&P (if S&P is then rating any of the Parity Obligations) and that maintain at all times ratings at least equal to the lowest ratings (without giving effect to municipal bond insurance or other credit enhancement) on any of the Parity Obligations provided by Moody's (if Moody's is then rating any of the Parity Obligations) and by S&P (if S&P is then rating any of the Parity Obligations) (all such instruments collectively, "Reserve Funding Instruments"). If at any time, obligations insured by any such

municipal bond insurer issuing a policy of municipal bond insurance or surety bond or a bank or other institution issuing a letter of credit as permitted by the definition of Reserve Fund Requirement shall no longer maintain such ratings as required in accordance with the immediately preceding sentence, the City shall provide or cause to be provided cash or a substitute municipal bond insurance policy or surety bond or a letter of credit meeting such requirements.

Pursuant to the 2008 Trust Agreement, the Trustee is to (i) withdraw and use all cash, if any, on deposit in the Parity Reserve Fund prior to using and withdrawing any amounts derived from payments under any Reserve Funding Instruments and (ii) draw on all Reserve Funding Instruments on a pro rata basis, based on the draw limit of each Reserve Funding Instrument. Amounts received by the Trustee from the City pursuant to the Master Contract as a replenishment of amounts withdrawn from the Parity Reserve Fund shall be applied first on a pro rata basis to reimburse draws on Reserve Funding Instruments and then to replenish cash withdrawn from the Parity Reserve Fund.

Moneys on deposit in the Parity Reserve Fund will be transferred by the Trustee to the debt service fund established pursuant to the 1997 Trust Agreement and/or to the 2008 Debt Service Fund established pursuant to the 2008 Trust Agreement to pay principal and interest evidenced and represented by the 1997 Certificates and by the 2008 Certificates, respectively, on any date on which interest is payable with respect thereto in the event amounts on deposit in the applicable debt service fund are insufficient for such purposes. The Trustee will also, from such amounts on deposit in the Parity Reserve Fund, transfer or cause to be transferred to any applicable debt service fund established under any other trust agreement under which any obligations are issued in connection with a Supplemental Contract, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without discrimination or preference, that sum or sums, if any, equal to the amount required to be deposited therein pursuant to such trust agreement under which any obligations are issued in connection with a Supplemental Contract. Following the valuation of investments in the Parity Reserve Fund on or before each October 1, all moneys on deposit in the Parity Reserve Fund in excess of the Reserve Fund Requirement will be transferred by the Trustee to the City for deposit in the Revenue Fund.

## **Flow of Funds**

***Contract Provisions.*** The City agrees and covenants in the Contract that all Gross Revenues it receives will be deposited when and as received in the Revenue Fund, which the City established under the Master Contract and which the City agrees and covenants to maintain separate and apart from other moneys of the City so long as any Parity Obligations remain unpaid, and all money on deposit in the Revenue Fund is to be applied and used as follows. The City will pay at the following times in the following order of priority:

(1) *Payment of Maintenance and Operation Costs and Parity Obligation Payment Fund Deposits.* The City will, from the money in the Revenue Fund, without preference or priority, and in the event of any insufficiency of such moneys, ratably, without preference or priority (i) pay charges for Maintenance and Operation Costs of the Water Utility System (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not then immediately required) as such charges are due and payable, and (ii) deposit in the City of Modesto Water Utility System Parity Obligation Payment Fund established under the Master Contract, on the last Business Day of each month (1) an amount equal to the interest which has accrued or will

accrue under all Parity Obligations during the next succeeding month calculated as if such interest has accrued or will accrue on a daily basis during such period, and (2) an amount equal to the principal which has accrued or will accrue (as a result of maturity, mandatory sinking fund payments or mandatory prepayment or otherwise) under all Parity Obligations during the next succeeding month calculated as if such principal has accrued or will accrue on a daily basis during such period, plus (3) the net payments due or which will be due on all Parity Payment Agreements calculated as if such net payments accrued or will accrue on a daily basis during such period, except that no such deposit need be made if the City then holds money in the Parity Obligation Payment Fund at least equal to the amount of interest and principal due or becoming due and payable under all Parity Obligations on the next succeeding date on which interest or principal becomes due and payable under any Parity Obligation plus the net payments due on all Parity Payment Agreements on such next succeeding due date therefor. Moneys on deposit in the Parity Obligation Payment Fund will be transferred by the City to make and satisfy the payments due on the next applicable date on which interest or principal becomes due and payable under any Parity Obligation or any net payment becomes due and payable by the City under any Parity Payment Agreement at least one Business Day prior to such next applicable due date.

(2) *Parity Reserve Fund Deposits.* On or before the last Business Day of each month, the City will, from the remaining money on deposit in the Revenue Fund after deposits and transfers pursuant to paragraph (1) above, transfer to the Trustee for deposit in the Parity Reserve Fund that sum, if any, necessary to restore the Parity Reserve Fund to an amount equal to the Reserve Fund Requirement. The City will also, from such remaining moneys in the Revenue Fund, transfer or cause to be transferred to the applicable reserve fund or account for any Parity Obligations for which a separate reserve has been funded, without preference or priority between transfers made in accordance with this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, the sum or sums, if any, equal to the amount required to be deposited therein pursuant to such Parity Obligations.

After making the foregoing deposits and transfers, the City may apply any remaining money in the Revenue Fund for any lawful purpose of the City, including for the payment of any Subordinate Obligations in accordance with the instruments authorizing such Subordinate Obligations.

Pursuant to the Master Contract, the City has established the Rate Stabilization Fund, which has a balance of \$3,000,000 on deposit therein. The City may deposit in the Rate Stabilization Fund any Gross Revenues, after providing for the payment of Parity Obligations and Maintenance and Operation Costs, and any other money received and available to be used therefor, provided that deposits from such Gross Revenues for each Fiscal Year may be made until (but not after) 180 days after the end of such Fiscal Year. The City may withdraw amounts from the Rate Stabilization Fund only for inclusion in Adjusted Annual Net Revenues, such withdrawal to be made until (but not after) 180 days after the end of such Fiscal Year. All interest or other earnings upon deposits in the Rate Stabilization Fund will be accounted for as Gross Revenues. Notwithstanding the foregoing, no Gross Revenues will be deposited in the Rate Stabilization Fund to the extent that such amount was included by the City in Adjusted Annual Net Revenues for purposes of determining compliance with the rate covenant set forth in the Master Contract or the conditions for the execution of Parity Obligations contained in the Master Contract and deduction of the amounts to be deposited in the Rate Stabilization Fund would have caused noncompliance with such rate covenant or conditions.

The City's ability to set rates, fees and charges for the Water Service at levels which would permit the City to make deposits into the Rate Stabilization Fund may be limited by amendments to the California Constitution. See "THE WATER UTILITY SYSTEM — Impact of Proposition 218 on Water Utility System Fees and Charges." See also "THE WATER UTILITY SYSTEM — Summary of Projected Operating Results of the Water Utility System" for currently anticipated deposits into and withdrawals from the Rate Stabilization Fund.

The 2008 Contract establishes within the Parity Obligation Payment Fund the 2008 Supplemental Contract Payment Account. On or before the third Business Day immediately preceding each 2008 Payment Date or the date on which any net scheduled payment or insured termination payment is due under the 2008 Swap Agreement, the City shall, from the money in the Parity Obligation Payment Fund, deposit in the 2008 Supplemental Contract Payment Account (i) a sum equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Supplemental Contract on the next succeeding 2008 Payment Date and (ii) the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Swap Agreement, except that no such deposit need be made if the amount then on deposit in the 2008 Supplemental Contract Payment Account is at least equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Contract on the next succeeding 2008 Payment Date plus the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Swap Agreement on such next succeeding due date therefor. Moneys on deposit in the 2008 Supplemental Contract Payment Account shall (i) be transferred by the City to the Trustee on the Business Day immediately preceding each 2008 Payment Date to make and satisfy the 2008 Payment due on such 2008 Payment Date and (ii) be transferred by the City to the Trustee on the due date therefor to satisfy any net scheduled payment and any insured termination payment, if applicable, due under the 2008 Swap Agreement, all in accordance with the Master Contract and the 2008 Trust Agreement.

***2008 Trust Agreement Provisions.*** Pursuant to the 2008 Trust Agreement, the Trustee is required to deposit the 2008 Payments in a separate fund established by it and designated as the 2008 Debt Service Fund. The 2008 Debt Service Fund will contain two accounts: the 2008 Interest Account and the 2008 Principal Account (with a 2008 Prepayment Subaccount and a 2008 Sinking Fund Subaccount therein).

On the Business Day immediately preceding each Interest Payment Date commencing May 30, 2008, the Trustee is required to set aside from the 2008 Debt Service Fund and deposit in the 2008 Interest Account an amount equal to the amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on each such Interest Payment Date. No deposit is required to be made in the 2008 Interest Account if the amount contained therein (exclusive of amounts transferred for the payment of amounts due under the 2008 Swap Agreement) is at least equal to the aggregate amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on the applicable Interest Payment Date. The Trustee is also required to deposit in the 2008 Interest Account any receipts relating to the 2008 Swap Agreement which the City has directed under the 2008 Swap Agreement to be transferred to the Trustee for deposit in the 2008 Interest Account and any amounts transferred to Trustee pursuant to the 2008 Contract for the payment of payments due under the 2008 Swap Agreement.

Except as otherwise provided in the 2008 Trust Agreement, all money in the 2008 Interest Account is required to be used and withdrawn by the Trustee solely for the purpose of paying the interest with respect to the 2008 Certificates as it shall become due and payable (including accrued

interest evidenced and represented by any 2008 Certificates purchased or prepaid prior to their respective Certificate Payment Date) and the net scheduled payments due to the Swap Provider under the 2008 Swap Agreement. The Trustee shall be under no obligation to calculate the amount of Payment Agreement Payments due under the 2008 Interest Rate Swap Agreement and shall be entitled to rely conclusively on the information received by it with respect to the amount of the Payment Agreement Payments due and owing by the City. On the Business Day immediately preceding each October 1, commencing on October 1, 2008, the Trustee is required to set aside from the 2008 Debt Service Fund and deposit in the 2008 Principal Subaccount (i) an amount equal to the principal amount evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1 (at the time of the execution and delivery of the 2008 Certificates, none of the 2008 Certificates will be Serial Certificates) and (ii) in the 2008 Sinking Fund Subaccount the amount of all Sinking Fund Payments required to be made on such October 1. Amounts to be applied to the optional prepayment of the principal component of the 2008 Certificates are to be deposited in the 2008 Prepayment Subaccount. No deposit need be made in the 2008 Principal Account if the amount contained therein is at least equal to the aggregate amount of the principal evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1 and the amount contained in the 2008 Sinking Fund Subaccount is at least equal to the aggregate amount of all Sinking Fund Payments required to be made on such October 1.

All money in the 2008 Principal Account is required to be used and withdrawn by the Trustee solely for the purpose of paying the principal evidenced and represented by the Serial Certificates as they shall become due and payable, whether at their respective Certificate Payment Dates or on prior prepayment, and all money in the 2008 Sinking Fund Subaccount is required to be used and withdrawn by the Trustee only to purchase or to prepay or pay Term Certificates, and with respect to the 2008 Sinking Fund Subaccount, on each Sinking Fund Payment Date, the Trustee is required to apply the Sinking Fund Payment required on that date to the prepayment (or payment at the Certificate Payment Date, as the case may be) of the Term Certificates upon the notice and in the manner provided in the 2008 Trust Agreement, provided that at any time prior to giving notice of such prepayment, the Trustee may, upon the Written Request of the Authority and receipt of sufficient moneys therefor, purchase for cancellation Term Certificates in accordance with the 2008 Trust Agreement.

### **Existing and Future Parity Obligations**

Upon the execution and delivery of the 2008 Certificates, the obligation of the City to pay the 2008 Payments will be secured on a parity lien basis with certain existing Parity Obligations. In the Master Contract (as clarified in the 2008 Contract), "Parity Obligations" is specifically defined as the payment obligations under the Treatment and Delivery Agreement which constitute debt service, the payment obligations under the CDWR Loan Agreement, and all Supplemental Contracts and all other obligations hereafter incurred by the City the payment of which constitutes a charge and lien on the Gross Revenues equal to and on a parity with the charge and lien upon the Gross Revenues for the payment of the Payments, other than (i) such portion of the payment obligations (including certain payments due upon an early termination thereof) under any Parity Payment Agreement to the extent such obligations are expressly subordinate to Parity Obligations pursuant to the terms of such Parity Payment Agreement and (ii) Parity Bank Agreements; provided that no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City. Under the Master Contract "CDWR Loan" means the loan to the City from the State of California Department of Water Resources in the principal amount of \$3,607,343.72 which \$1,754,299 was outstanding as

of April 1, 2008; and “Treatment and Delivery Agreement” means the Treatment and Delivery Agreement by and among the City of Modesto, the Del Este Water Company and MID. The Treatment and Delivery Agreement has since been amended and restated and is now called “Amended and Restated Treatment and Delivery Agreement Between Modesto Irrigation District and City of Modesto.” Under the Treatment and Delivery Agreement, the City has agreed to pay all debt service on bonds issued by MID for the construction of the Water Treatment Plant (including, but not limited to, the 2007 MID Bonds), a raw water charge, project operation, administrative services and maintenance costs, insurance on the plant and the cost of electrical energy provided to the plant. The outstanding principal amount of bonds issued for the Water Treatment Plant as of April 1, 2008 was \$163,880,000. See “THE WATER UTILITY SYSTEM — Treatment and Delivery Agreement” for a description of the Treatment and Delivery Agreement and “THE WATER UTILITY SYSTEM — Summary of Projected Operating Results of the Water Utility System” for additional information concerning existing Parity Obligations. See also Appendix B — “DEFINITIONS AND SUMMARY OF PRINCIPAL DOCUMENTS.” In addition to the Parity Obligations specifically defined as such in the Master Contract, the 2008 Swap Agreement (to the extent described above) and the 1997 Contract constitute Parity Obligations. The principal amount of the 1997 Payments currently outstanding is \$18,855,000. The Reimbursement Agreement and the Liquidity Facility constitute Parity Bank Agreements under the Contract; and Parity Bank Agreements are Parity Obligations if any amounts have been drawn thereunder which have not been reimbursed by the City.

In addition to the existing Parity Obligations, the City may at any time execute additional Parity Obligations, but subject to the specific conditions set forth in the Master Contract, including the conditions that there be on file with the Trustee either:

(1) A Certificate of the City demonstrating that during any 12 consecutive calendar months out of the immediately preceding 18 calendar month period, the Adjusted Annual Net Revenues were at least equal to 125% of the Maximum Annual Debt Service for all existing Parity Obligations plus the Parity Obligations proposed to be executed; provided, that for the purpose of providing such Certificate, the City may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from each new connection to the Water Utility System that was made prior to the execution of such Parity Obligations but which, during all or any part of said 12 month period, was not in existence, in an amount equal to the estimated additional Gross Revenues that would have been derived from each such connection if it had been made prior to the beginning of said 12 month period, and

(ii) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges fixed and prescribed for Water Service which became effective prior to the execution of such Parity Obligations but which, during all or any part of said 12 month period, was not in effect, in an amount equal to the estimated additional Gross Revenues that would have been derived from such increase in rates, fees and charges if it had been in effect prior to the beginning of said 12 month period; or

(2) A Consultant’s Report showing that the Adjusted Annual Net Revenues for the Fiscal Year next following the end of the period during which interest on the Parity Obligations proposed to be executed is to be capitalized or, if no interest is capitalized, the

Fiscal Year in which the Parity Obligations proposed to be executed are executed, will be at least equal to 125% of the Maximum Annual Debt Service; provided, that for the purpose of providing the Consultant's Report, the Independent Consultant may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges prescribed for Water Service in effect and being charged, or rates, fees and charges for Water Service that are expected to be charged in accordance with a program of specific rates, fees, charges, rate levels or increases in overall Gross Revenue approved by a resolution of the City Council; and

(ii) An allowance for Gross Revenues from customers of the Water Utility System anticipated to be served by the facilities or improvements financed in substantial part by the Parity Obligations proposed to be executed together with any additional Parity Obligations expected to be executed prior to the Fiscal Year of determination.

Notwithstanding the foregoing, the Master Contract specifies that there shall be no limitations on the ability of the City to execute any Parity Obligation at any time to refund any outstanding Parity Obligation.

### **2008 Swap Agreement**

In connection with the execution and delivery of the 2006 Certificates, the City entered into an interest rate swap agreement in the form of an ISDA Master Agreement (Local Currency – Single Jurisdiction), the U.S. Municipal Counterparty Schedule thereto, a Credit Support Annex and a Confirmation each dated as of and entered into on September 27, 2006 (collectively, the “2006 Swap Agreement”) with Bank of America, N.A. (the “Swap Provider”). In connection with the execution and delivery of the 2008 Certificates, the City and the Swap Provider will amend and restate the 2006 Swap Agreement (as so amended and restated, the “2008 Swap Agreement”). The 2008 Swap Agreement is scheduled to expire on the Maturity Date of the 2008 Certificates; and the notional amount of the 2008 Swap Agreement is scheduled to be reduced on the same dates and in the same amounts as the principal evidenced by the 2008 Certificates is scheduled to be reduced. Pursuant to the 2008 Swap Agreement, the City will be required to make periodic payments to the Swap Provider calculated on the basis of a fixed rate of interest on an initial notional amount equal to the principal amount represented by the 2008 Certificates. In return, the Swap Provider will be required to make periodic payments to the City calculated on the basis of a variable rate of interest equal to a percentage of LIBOR on the same notional amount. The amounts payable by each party pursuant to the 2008 Swap Agreement are netted against the payments to be received by such party thereunder.

Certain of the amounts that may be payable by the City to the Swap Provider will be insured pursuant to a policy of interest rate swap insurance to be issued by Assured Guaranty (the “Swap Policy”).

The City's obligations under the 2008 Swap Agreement to make scheduled payments and certain termination payments (but only if such termination payments are insured pursuant to the Swap Policy) are Parity Obligations. No arrangements made in respect of the 2008 Swap Agreement will alter the City's obligation to make the 2008 Payments.

Both the City and the Swap Provider have the right to terminate the 2008 Swap Agreement prior to its stated termination date under certain conditions. Any such termination could result in an obligation on the part of the City or the Swap Provider to make termination payments to the other party, and the amount of such termination payments could be substantial. Any obligation on the part of the City to make such a termination payment (other than a termination payment that is insured under the terms of the Swap Policy) will not be a Parity Obligation and will be subordinate to the City's liabilities with respect to Parity Obligations.

Neither the Trustee nor the Owners will have any rights under the 2008 Swap Agreement or against the Swap Provider.

## CERTIFICATE INSURANCE

*The following information has been provided by Assured Guaranty Corp. It has not been verified by the Authority or the City. The following information is not complete, and reference is made to Appendix E for a specimen of the financial guaranty insurance policy (the "Policy") of Assured Guaranty Corp. ("Assured Guaranty" or the "Insurer").*

### **Certificate Insurance Policy**

Assured Guaranty has made a commitment to issue the Policy relating to the 2008 Certificates, effective as of the date of issuance of such 2008 Certificates. Under the terms of the Policy, Assured Guaranty will unconditionally and irrevocably guarantee to pay that portion of principal of and interest with respect to the 2008 Certificates that becomes Due for Payment but shall be unpaid by reason of Nonpayment (the "Insured Payments"). Insured Payments shall not include any additional amounts owing by the Issuer solely as a result of the failure by the Trustee or the Paying Agent to pay such amount when due and payable, including without limitation any such additional amounts as may be attributable to penalties or to interest accruing at a default rate, to amounts payable in respect of indemnification, or to any other additional amounts payable by the Trustee or the Paying Agent by reason of such failure. The Policy is non-cancelable for any reason, including without limitation the non-payment of premium.

"Due for Payment" means, when referring to the principal of the 2008 Certificates, the stated maturity date thereof, or the date on which such 2008 Certificates shall have been duly called for mandatory sinking fund redemption, and does not refer to any earlier date on which payment is due by reason of a call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless Assured Guaranty in its sole discretion elects to make any principal payment, in whole or in part, on such earlier date) and, when referring to interest on such 2008 Certificates, means the stated dates for payment of interest.

"Nonpayment" means the failure of the Issuer to have provided sufficient funds to the Trustee or the Paying Agent for payment in full of all principal and interest Due for Payment on the 2008 Certificates. It is further understood that the term Nonpayment in respect of a 2008 Certificate also includes any amount previously distributed to the Holder (as such term is defined in the Policy) of such 2008 Certificate in respect of any Insured Payment by or on behalf of the Issuer, which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder. Nonpayment does not

include nonpayment of principal or interest caused by the failure of the Trustee or the Paying Agent to pay such amount when due and payable.

Assured Guaranty will pay each portion of an Insured Payment that is Due for Payment and unpaid by reason of Nonpayment, on the later to occur of (i) the date such principal or interest becomes Due for Payment, or (ii) the business day next following the day on which Assured Guaranty shall have received a completed notice of Nonpayment therefor in accordance with the terms of the Policy.

Assured Guaranty shall be fully subrogated to the rights of the Holders of the Bonds to receive payments in respect of the Insured Payments to the extent of any payment by Assured Guaranty under the Policy.

The Policy is not covered by any insurance or guaranty fund established under New York, California, Connecticut or Florida insurance law.

### **The Reserve Fund Insurance Policy**

Assured Guaranty has made a commitment to issue a financial guaranty insurance policy for the reserve fund with respect to the 2008 Certificates (the "Reserve Fund Insurance Policy"), effective as of the date of issuance of such 2008 Certificates. Under the terms of the Reserve Fund Insurance, Assured Guaranty will unconditionally and irrevocably guarantee to pay that portion of the scheduled principal and interest on the 2008 Certificates that becomes due for payment but shall be unpaid by reason of nonpayment by the Issuer (the "Insured Payments").

Assured Guaranty will pay each portion of an Insured Payment that is due for payment and unpaid by reason of nonpayment by the Issuer to the Trustee or Paying Agent, as beneficiary of the Reserve Fund Insurance Policy on behalf of the holders of the 2008 Certificates on the later to occur of (i) the date such scheduled principal or interest becomes due for payment or (ii) the business day next following the day on which Assured Guaranty receives a demand for payment therefor in accordance with the terms of the Reserve Fund Insurance Policy.

No payment shall be made under the Reserve Fund Insurance Policy in excess of \$2,082,512.74 (the "Reserve Fund Insurance Policy Limit"). Pursuant to the terms of the Reserve Fund Insurance Policy, the amount available at any particular time to be paid to the Trustee or Paying Agent shall automatically be reduced to the extent of any payment made by Assured Guaranty under the Reserve Fund Insurance Policy, provided, that, to the extent of the reimbursement of such payment to Assured Guaranty, the amount available under the Reserve Fund Insurance Policy shall be reinstated in full or in part, in an amount not to exceed the Reserve Fund Insurance Policy Limit.

The Reserve Fund Insurance Policy does not insure against nonpayment caused by the insolvency or negligence of the Trustee or Paying Agent.

The Reserve Fund Insurance Policy is not covered by any insurance or guaranty fund established under New York, California, Connecticut or Florida insurance law.

### **Assured Guaranty Corp.**

Assured Guaranty Corp. ("Assured Guaranty") is a Maryland-domiciled insurance company regulated by the Maryland Insurance Administration and licensed to conduct financial guaranty

insurance business in all fifty states of the United States, the District of Columbia and Puerto Rico. Assured Guaranty commenced operations in 1988. Assured Guaranty is a wholly owned, indirect subsidiary of Assured Guaranty Ltd. (“AGL”), a Bermuda-based holding company whose shares are publicly traded and are listed on the New York Stock Exchange under the symbol “AGO.” AGL, through its operating subsidiaries, provides credit enhancement products to the U.S. and global public finance, structured finance and mortgage markets. Neither AGL nor any of its shareholders is obligated to pay any debts of Assured Guaranty or any claims under any insurance policy issued by Assured Guaranty.

Assured Guaranty is subject to insurance laws and regulations in Maryland and in New York (and in other jurisdictions in which it is licensed) that, among other things, (i) limit Assured Guaranty’s business to financial guaranty insurance and related lines, (ii) prescribe minimum solvency requirements, including capital and surplus requirements, (iii) limit classes and concentrations of investments, (iv) regulate the amount of both the aggregate and individual risks that may be insured, (v) limit the payment of dividends by Assured Guaranty, (vi) require the maintenance of contingency reserves, and (vii) govern changes in control and transactions among affiliates. Certain state laws to which Assured Guaranty is subject also require the approval of policy rates and forms.

Assured Guaranty’s financial strength is rated “AAA” by Standard Poor’s, a division of The McGraw-Hill Companies, Inc. (“S&P”), “AAA” by Fitch, Inc. (“Fitch”) and “Aaa” by Moody’s Investors Service, Inc. (“Moody’s”). Each rating of Assured Guaranty should be evaluated independently. An explanation of the significance of the above ratings may be obtained from the applicable rating agency. The above ratings are not recommendations to buy, sell or hold any security, and such ratings are subject to revision or withdrawal at any time by the rating agencies. Any downward revision or withdrawal of any of the above ratings may have an adverse effect on the market price of any security guaranteed by Assured Guaranty. Assured Guaranty does not guaranty the market price of the securities it guarantees, nor does it guaranty that the ratings on such securities will not be revised or withdrawn.

***Capitalization of Assured Guaranty Corp.*** As of March 31, 2008, Assured Guaranty had total admitted assets of \$1,518,398,730 (unaudited), total liabilities of \$1,138,285,708 (unaudited), total surplus of \$380,113,022 (unaudited) and total statutory capital (surplus plus contingency reserves) of \$1,001,533,924 (unaudited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. As of December 31, 2007, Assured Guaranty had total admitted assets of \$1,361,538,502 (unaudited), total liabilities of \$961,967,238 (unaudited), total surplus of \$399,571,264 (unaudited) and total statutory capital (surplus plus contingency reserves) of \$982,045,695 (unaudited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. As of December 31, 2006, Assured Guaranty had total admitted assets of \$1,248,270,663 (audited), total liabilities of \$962,316,898 (audited), total surplus of \$285,953,765 (audited) and total statutory capital (surplus plus contingency reserves) of \$916,827,559 (audited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. The Maryland Insurance Administration recognizes only statutory accounting practices for determining and reporting the financial condition and results of operations of an insurance company, for determining its solvency under the Maryland Insurance Code, and for determining whether its financial condition warrants the payment of a dividend to its stockholders. No consideration is given by the Maryland Insurance Administration to financial statements prepared in accordance with

accounting principles generally accepted in the United States (“GAAP”) in making such determinations.

***Incorporation of Certain Documents by Reference.*** The portions of the following documents relating to Assured Guaranty are hereby incorporated by reference into this Official Statement and shall be deemed to be a part hereof:

- The Annual Report on Form 10-K of AGL for the fiscal year ended December 31, 2007 (which was filed by AGL with the Securities and Exchange Commission (the “SEC”) on February 29, 2008);
- The Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2008 (which was filed by AGL with the SEC on May 9, 2008); and
- The Current Reports on Form 8-K filed by AGL with the SEC, as they relate to Assured Guaranty.

All consolidated financial statements of Assured Guaranty and all other information relating to Assured Guaranty included in documents filed by AGL with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, subsequent to the date of this Official Statement and prior to the termination of the offering of the 2008 Certificates shall be deemed to be incorporated by reference into this Official Statement and to be a part hereof from the respective dates of filing such consolidated financial statements.

Any statement contained in a document incorporated herein by reference or contained herein under the heading “CERTIFICATE INSURANCE — Assured Guaranty Corp.” shall be modified or superseded for purposes of this Official Statement to the extent that a statement contained herein or in any subsequently filed document which is incorporated by reference herein also modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Official Statement.

Copies of the consolidated financial statements of Assured Guaranty incorporated by reference herein and of the statutory financial statements filed by Assured Guaranty with the Maryland Insurance Administration are available upon request by contacting Assured Guaranty at 1325 Avenue of the Americas, New York, New York 10019 or by calling Assured Guaranty at (212) 974-0100. In addition, the information regarding Assured Guaranty that is incorporated by reference in this Official Statement that has been filed by AGL with the SEC is available to the public over the Internet at the SEC’s web site at <http://www.sec.gov> and at AGL’s web site at <http://www.assuredguaranty.com>, from the SEC’s Public Reference Room at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, and at the office of the New York Stock Exchange at 20 Broad Street, New York, New York 10005.

Assured Guaranty makes no representation regarding the 2008 Certificates or the advisability of investing in the 2008 Certificates. In addition, Assured Guaranty has not independently verified, makes no representation regarding, and does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding Assured Guaranty supplied by Assured Guaranty and presented under the heading “CERTIFICATE INSURANCE.”

## LIQUIDITY FACILITY

*The following information has been provided by Bank of America, N.A. It has not been verified by the Authority or the City, and neither the Authority nor the City guarantees its accuracy or completeness.*

### Initial Liquidity Facility

**General.** The purchase price of 2008 Certificates tendered or deemed tendered for purchase and not remarketed is payable from amounts made available under a Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the “Liquidity Facility”), by and among the Authority, the District and the Liquidity Facility Provider. Certain provisions of the Liquidity Facility are summarized below, but such summary is qualified in its entirety by reference to the Liquidity Facility.

Subject to the terms and conditions of the Liquidity Facility, the Liquidity Facility Provider is to provide funds for the payment of the purchase price on each purchase of 2008 Certificates up to \$47,625,000 in principal amount (the “Available Principal Commitment”) and \$548,014 (an amount equal to 35 days’ interest on the Available Principal Commitment at an assumed rate of 12% computed on the basis of a 365-day year for the actual number of days elapsed) accrued interest on 2008 Certificates subject to the Weekly Rate tendered or deemed tendered for purchase in the event that remarketing proceeds are not sufficient to pay the Purchase Price (as defined in the Liquidity Facility) of such 2008 Certificates. *The Liquidity Facility will not provide for the payment of principal of and interest on any 2008 Certificates other than with respect to the purchase price of the 2008 Certificates tendered or deemed tendered and not remarketed.*

The Liquidity Facility will expire on its Stated Expiration Date, which will be May 29, 2011 unless otherwise extended or terminated earlier pursuant to its terms. **Under certain circumstances as described below, the obligations of the Liquidity Facility Provider to purchase 2008 Certificates will be automatically suspended or terminated without prior notice or demand; and the Trustee will be unable to require the purchase of 2008 Certificates under the Liquidity Facility.**

**Events of Default.** The following events are defined as “Events of Default” under the Liquidity Facility:

(a) any principal or interest due on the 2008 Certificates is not paid by the Authority when due and such principal or interest is not paid by the Certificate Insurer when, as and in the amounts required to be paid pursuant to the terms of the Certificate Insurance Policy; or

(b) a Certificate Insurer Event of Insolvency shall have occurred and the rating of the City’s Water Enterprise Fund by any two of the three rating agencies is withdrawn or drops below (i) in the case of Fitch, a rating of “AAA” (or its equivalent); (ii) in the case of Moody’s, a rating of “Aaa” (or its equivalent); and (iii) in the case of S&P, a rating of “AAA” (or its equivalent) (such event is referred to herein as a “City Rating Event”); or

(c) (i) any material provision of the Certificate Insurance Policy at any time for any reason ceases to be valid and binding on the Certificate Insurer in accordance with the terms of the Certificate Insurance Policy or is declared, announced or ruled to be null and void by a court or other governmental agency of appropriate jurisdiction; or (ii) a senior authorized officer of the Certificate Insurer denies that it has any or further liability or obligation under the Certificate Insurance Policy and in either case, a City Rating Event has occurred and is continuing; or

(d) the Certificate Insurer shall default in any payment or payments of amounts payable by it under any insurance policy or policies (other than the Certificate Insurance Policy) when due and such default shall continue for a period of thirty (30) days; (it being understood by the Liquidity Facility Provider that default, for the purposes of this paragraph, shall not mean a situation whereby the Certificate Insurer contests in good faith its liability under any such policy or policies in light of the claim or claims made thereunder), and in any case a City Rating Event has occurred and is continuing; or

(e) any material representation or warranty made by the Authority or the City under or in connection with the Liquidity Facility shall prove to be untrue in any material respect on the date as of which it was made; or

(f) any Other Event of Insolvency shall have occurred; or

(g) nonpayment of any fees due to the Liquidity Facility Provider under the Liquidity Facility, if such failure to pay when due shall continue for ten (10) Business Days after the City, the Authority and the Certificate Insurer has received written notice thereof from the Liquidity Facility Provider; or

(h) the breach by the Authority or the City of certain terms or provisions of provisions of the Liquidity; or

(i) the Authority shall default in the performance or observance of any other material covenant or agreement contained (or incorporated by reference) in the Liquidity Facility such default shall continue unremedied for a period of thirty (30) days after the Authority has received written notice thereof from the Liquidity Facility Provider; or

(j) the City shall default in the performance or observance of any other material covenant or agreement contained (or incorporated by reference) in the Liquidity Facility and such default shall continue unremedied for a period of thirty (30) days after the City has received written notice thereof from the Liquidity Facility Provider; or

(k) the Trust Agreement or the 2008 Contract shall terminate or cease to be of full force and effect, other than as a result of any prepayment in full of the 2008 Certificates or provision for such prepayment in full in accordance with the Trust Agreement and discharge of all payment obligations under the 2008 Contract; or

(l) the occurrence of any “event of default” as defined in the Trust Agreement which is not otherwise described in this list of “Events of Default,” other than the failure of the Liquidity Facility Provider to provide funds for the purchase of 2008 Certificates when required by the terms and conditions of the Liquidity Facility; or

(m) the Trustee ceases to have an effective security interest in the Trust Estate prior to any lien, pledge, assignment or security interest of any creditors of the City or the Authority; or

(n) for an uninterrupted period of ninety (90) days there is not in effect both of the following in respect of the 2008 Certificates: (i) in the case of Moody’s, a rating of “Baa3” (or its equivalent) or higher; and (ii) in the case of S&P, a rating of “BBB-” (or its equivalent) or higher; or

(o) the City shall default in any payment of principal of or premium, if any, or interest on any of its Debts in excess of \$5,000,000 and such default shall continue beyond the expiration of the applicable grace period, if any, or the City shall fail to perform any other agreement, term or condition contained in any agreement under which any obligation for the payment of \$5,000,000 or more is created or secured, which shall permit or result in the declaring due and payable of such obligation prior to the date on which it would otherwise have become due and payable; or

(p) a final judgment or order for the payment of money for an uninsured claim in excess of \$5,000,000 shall have been rendered against the City and such judgment or order shall not have been satisfied, stayed or bonded pending appeal within a period of thirty (30) days from the date on which it was first so rendered; or

(q) any amendment, replacement or other modification of the Certificate Insurance Policy or substitution of the Certificate Insurer occurs without the prior written consent of the Liquidity Facility Provider.

***Remedies.*** In the case of an Event of Default described in paragraphs (a), (b) or (c)(i) above (each, a “Termination Event”), the Available Commitment and **the obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall immediately terminate without notice or demand, and thereafter the Liquidity Facility Provider shall be under no obligation to purchase 2008 Certificates.**

Upon the occurrence and during the continuance of an Event of Default described in clauses (g) or (n) hereof, the Liquidity Facility Provider may terminate the Available Commitment by giving written notice (a “Notice of Termination”) to the City, the Trustee, the Remarketing Agent and the Certificate Insurer, specifying the date on which at 3:00 p.m. California time the Available Commitment shall terminate (the “Termination Date”), which shall be not less than thirty (30) days from the date of receipt of such notice by the Trustee, and after the Termination Date the Liquidity Facility Provider shall be under no further obligation to purchase 2008 Certificates under the Liquidity Facility other than 2008 Certificates which are the subject of the Notice of Liquidity Facility Provider Purchase delivered by the Trustee hereof and received by the Liquidity Facility Provider on or prior to the Termination Date.

In the case of (i) the occurrence of an Event of Default of the type described in clause (ii) of paragraph (c) above or (ii) the commencement of an involuntary case or other involuntary proceeding seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution with respect to the Certificate Insurer or its debts or claims under any bankruptcy, insolvency or other similar law, or seeking the appointment of a trustee, receiver, liquidator, custodian, assignee, sequestrator or other similar official for the Certificate Insurer or any substantial part of its property (an “Involuntary Insolvency Event”) together with the occurrence and continuance of a City Rating Event, **the Liquidity Facility Provider’s obligation to purchase 2008 Certificates under the Liquidity Facility shall immediately be suspended without further action on the part of any Person.** The obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall be suspended until either (x) the Liquidity Facility Provider delivers a written notice to the Trustee rescinding the automatic suspension of its obligation to purchase 2008 Certificates under the Liquidity Facility (a “Rescission Notice”) or, (y) (1) in the case of a suspension event of the type described in clause (ii) of paragraph (c) above, a final non-appealable order of a court having jurisdiction in the premises shall be entered declaring that all material contested provisions of the Certificate Insurance Policy are upheld in their entirety or (2) in the case of an Involuntary Insolvency Event, a court having jurisdiction in the premises shall dismiss or stay such involuntary case, proceeding or appointment within 60 days. In the event a final non-appealable order is entered declaring any material provision of the Certificate Insurance Policy to be null and void, or declaring that the Certificate Insurer does not have any further liability or obligation under the Certificate Insurance Policy or in the event an Involuntary Insolvency Event is not dismissed or stayed within 60 days by a court having jurisdiction in the premises, then, so long as a City Rating Event is continuing, the obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall immediately terminate without any further action by any Person. In the event a final non-appealable order is entered declaring that all material contested provisions of the Certificate Insurance Policy are upheld in their entirety or in the event a court having jurisdiction in the premises shall dismiss or stay any Involuntary Insolvency Event within 60 days, the obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall be automatically reinstated and the terms of the Liquidity Facility will continue in full force and effect (unless the Liquidity Facility Provider Purchase Period shall have otherwise expired or terminated) as if there had been no such suspension. Notwithstanding the foregoing, if the Liquidity Facility Provider has not delivered a Rescission Notice to the Trustee and if, upon the earlier of (a) the last day of the Liquidity Facility Provider Purchase Period or (b) (i) in the case of the occurrence of an Event of Default of the type described in clause (ii) of paragraph (c) above, the date which is three years after the effective date of suspension of the obligation of the Liquidity Facility Provider to purchase 2008 Certificates, litigation is still pending and a judgment regarding the validity of the Certificate Insurance Policy has not been obtained or (ii) in the case of the occurrence of an Involuntary Insolvency Event and the continuance of a City Rating Event, the date which is 60 days after the commencement of the involuntary case, proceeding or appointment, such involuntary case, proceeding or appointment has not been dismissed or stayed, then the Available Commitment and the obligation of the Liquidity Facility Provider to purchase 2008 Certificates shall at such time terminate without notice or demand and thereafter the Liquidity Facility Provider shall be under no further obligation to purchase 2008 Certificates.

In addition to the rights and remedies described above, in the case of any Event of Default, upon the election of the Liquidity Facility Provider: (i) all amounts payable under the Liquidity Facility (other than payments of principal and interest on Liquidity Facility Provider Certificates) shall upon notice to the City become immediately due and payable without presentment, demand, protest or further notice of any kind and (ii) the Liquidity Facility Provider shall have all the rights and remedies available to it under the Liquidity Facility, the Related Documents or otherwise

pursuant to law or equity other than acceleration of the 2008 Certificates or termination of its obligation to purchase 2008 Certificates.

### **Bank of America, N.A.**

Bank of America, N.A. (the “Bank”) is a national banking association organized under the laws of the United States, with its principal executive offices located in Charlotte, North Carolina. The Bank is a wholly-owned indirect subsidiary of Bank of America Corporation (the “Corporation”) and is engaged in a general consumer banking, commercial banking and trust business, offering a wide range of commercial, corporate, international, financial market, retail and fiduciary banking services. As of December 31, 2007, the Bank had consolidated assets of \$1,312,794,218,000, consolidated deposits of \$793,571,969,000 and stockholder’s equity of \$108,480,218,000 based on regulatory accounting principles.

The Corporation is a bank holding company and a financial holding company, with its principal executive offices located in Charlotte, North Carolina. Additional information regarding the Corporation is set forth in its Annual Report on Form 10-K for the fiscal year ended December 31, 2006, together with any subsequent documents it filed with the Securities and Exchange Commission (the “SEC”) pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

Additional information regarding the foregoing is available from the filings made by the Corporation with the SEC, which filings can be inspected and copied at the public reference facilities maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549, United States, at prescribed rates. In addition, the SEC maintains a website at <http://www.sec.gov>, which contains reports, proxy statements and other information regarding registrants that file such information electronically with the SEC.

The information concerning the Corporation and the Bank contained herein is furnished solely to provide limited introductory information and does not purport to be comprehensive. Such information is qualified in its entirety by the detailed information appearing in the documents and financial statements referenced herein.

The Liquidity Facility has been issued by the Bank. Moody’s Investors Service, Inc. (“Moody’s”) currently rates the Bank’s long-term debt as “Aaa” and short-term debt as “P-1.” The outlook is stable. Standard & Poor’s rates the Bank’s long-term debt as “AA+” and its short-term debt as “A-1+.” The outlook is stable. Fitch Ratings, Inc. (“Fitch”) rates long-term debt of the Bank as “AA” and short-term debt as “F1+.” The outlook is negative. Further information with respect to such ratings may be obtained from Moody’s, Standard & Poor’s and Fitch, respectively. No assurances can be given that the current ratings of the Bank’s instruments will be maintained.

The Bank will provide copies of the most recent Bank of America Corporation Annual Report on Form 10-K, any subsequent reports on Form 10-Q, and any required reports on Form 8-K (in each case as filed with the SEC pursuant to the Exchange Act), and the publicly available portions of the most recent quarterly Call Report of the Bank delivered to the Comptroller of the Currency, without charge, to each person to whom this document is delivered, on the written request of such person. Written requests should be directed to: Bank of America Corporate Communications, 100 North Tryon Street, 18th Floor, Charlotte, North Carolina 28255, Attention: Corporate Communications

PAYMENTS OF THE PURCHASE PRICE OF THE 2008 CERTIFICATES WILL BE MADE FROM DRAWINGS UNDER THE LIQUIDITY FACILITY IF REMARKETING PROCEEDS ARE NOT AVAILABLE. ALTHOUGH THE LIQUIDITY FACILITY IS A BINDING OBLIGATION OF THE BANK, THE 2008 CERTIFICATES ARE NOT DEPOSITS OR OBLIGATIONS OF THE CORPORATION OR ANY OF ITS AFFILIATED BANKS AND ARE NOT GUARANTEED BY ANY OF THESE ENTITIES. THE 2008 CERTIFICATES ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY AND ARE SUBJECT TO CERTAIN INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED.

The delivery hereof shall not create any implication that there has been no change in the affairs of the Corporation or the Bank since the date hereof, or that the information contained or referred to herein.

## REMARKETING

***Remarketing Agreement.*** The Authority has entered into a Remarketing and Interest Services Agreement, dated as of May 1, 2008 (the “Remarketing Agreement”), with Banc of America Securities LLC as the Remarketing Agent. Under the Remarketing Agreement and subject to the limitations set forth therein, the Remarketing Agent has agreed to use its best efforts to offer for sale all 2008 Certificates tendered in accordance with the provisions of the Indenture.

The Remarketing Agent’s responsibilities include determining the interest rate from time to time and remarketing 2008 Certificates that are tendered by the owners thereof either pursuant to an optional or mandatory tender (subject, in each case, to the terms of the Remarketing Agreement), all as further described in this Official Statement. The Remarketing Agent is appointed by the Authority and is paid by the Authority for its services. As a result, the interests of the Remarketing Agent may differ from those of existing owners and potential purchasers of 2008 Certificates.

***The Remarketing Agent Routinely Purchases 2008 Certificates for its Own Account.*** The Remarketing Agent acts as remarketing agent for a variety of variable rate demand obligations and, in its sole discretion, routinely purchases such obligations for its own account. The Remarketing Agent is permitted, but not obligated, to purchase tendered 2008 Certificates for its own account and, in its sole discretion, routinely acquires such tendered 2008 Certificates in order to achieve a successful remarketing of the 2008 Certificates (i.e., because there otherwise are not enough buyers to purchase the 2008 Certificates) or for other reasons. However, the Remarketing Agent is not obligated to purchase 2008 Certificates, and may cease doing so at any time without notice. The Remarketing Agent may also make a market in the 2008 Certificates by routinely purchasing and selling 2008 Certificates other than in connection with an optional or mandatory tender and remarketing. Such purchases and sales may be at or below par. However, the Remarketing Agent is not required to make a market in the 2008 Certificates. The Remarketing Agent may also sell any 2008 Certificates it has purchased to one or more affiliated investment vehicles for collective ownership or enter into derivative arrangements with affiliates or others in order to reduce its exposure to the 2008 Certificates. The purchase of 2008 Certificates by the Remarketing Agent may cause the interest rate to be lower than it would be if the Remarketing Agent did not purchase 2008 Certificates and may create the appearance that there is greater third party demand for the 2008 Certificates in the market than is actually the case. The practices described above also may result in fewer 2008 Certificates being tendered in a remarketing.

***2008 Certificates May be Offered at Different Prices on Any Date Including a Rate Determination Date.*** Pursuant to the Remarketing Agreement, the Remarketing Agent is required to determine the applicable rate of interest that, in its judgment, is the lowest rate that would permit the sale of the 2008 Certificates bearing interest at the applicable interest rate at par plus accrued interest, if any, on and as of the applicable Rate Determination Date. The interest rate will reflect, among other factors, the level of market demand for the 2008 Certificates (including whether the Remarketing Agent is willing to purchase 2008 Certificates for its own account). The purchase of the 2008 Certificates by the Remarketing Agent may cause the interest rate to be lower than it would be if the Remarketing Agent did not purchase 2008 Certificates. There may or may not be 2008 Certificates tendered and remarketed on a rate determination date, the Remarketing Agent may or may not be able to remarket any 2008 Certificates tendered for purchase on such date at par and the Remarketing Agent may sell 2008 Certificates at varying prices to different investors on such date or any other date. The Remarketing Agent is not obligated to advise purchasers in a remarketing if it does not have third party buyers for all of the 2008 Certificates at the remarketing price. The Remarketing Agent, in its sole discretion, may offer 2008 Certificates on any date, including the Rate Determination Date, at a discount to par to some investors.

***The Ability to Sell the 2008 Certificates other than Through Tender Process May Be Limited.*** The Remarketing Agent may buy and sell 2008 Certificates other than through the tender process. However, it is not obligated to do so and may cease doing so at any time without notice and may require owners that wish to tender their 2008 Certificates to do so through the Tender Agent with appropriate notice. Thus, investors who purchase the 2008 Certificates, whether in a remarketing or otherwise, should not assume that they will be able to sell their 2008 Certificates other than by tendering the 2008 Certificates in accordance with the tender process.

***Under Certain Circumstances, the Remarketing Agent May Be Removed, Resign or Cease Remarketing the 2008 Certificates, Without a Successor Being Named.*** Under certain circumstances the Remarketing Agent may be removed or have the ability to resign or cease its remarketing efforts, without a successor having been named, subject to the terms of the Remarketing Agreement. In the event there is no Remarketing Agent, the Trustee is required to apply to a court of competent jurisdiction for appointment of a successor Remarketing Agent.

## **THE WATER UTILITY SYSTEM**

### **History of the Water Utility System**

The origin of the City's municipal water system dates back to 1876 when a privately-owned utility, later known as the Modesto Water Company, was established to provide water service to the village of Modesto. In 1895, the City purchased the Modesto Water Company, and in subsequent years it purchased other local water systems that have been incorporated in the present Water Utility System.

In April 1992, the City entered into the original Treatment and Delivery Agreement with MID and the Del Este Water Company ("Del Este"), providing for a supply of treated water for the City and Del Este from the Water Treatment Plant, which was constructed and is owned and operated by MID. See "— Sources of Water" below. In July 1995, the City purchased substantially all of the assets and assumed substantially all of the liabilities of Del Este, the last private water company within City limits. The acquisition included Del Este's other water service areas including the communities of Salida, Waterford, Empire, Hickman, Grayson, and parts of Turlock, Ceres and Del

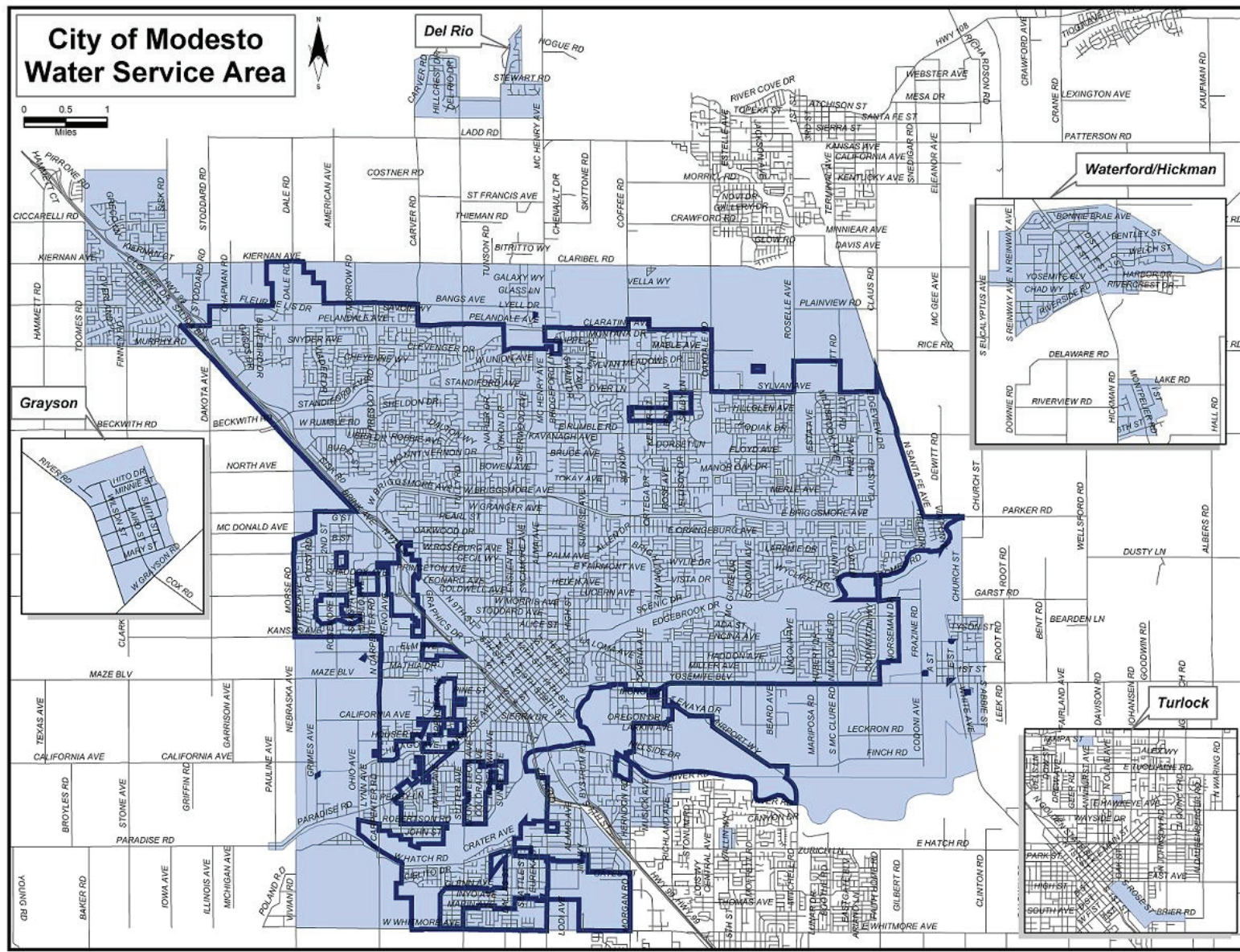
Rio Estates. As a consequence of the varying operating conditions among these communities, the City initially operated the Water Utility System in three separate zones. However, the three zones were essentially merged into a single zone for rate purposes when the City Council adopted a new rate structure that went into effect on January 1, 2005.

The original Treatment and Delivery Agreement provided the terms and conditions under which the City agreed to provide payments for, and MID agreed to finance, construct, own and operate, the Water Treatment Plant. Pursuant to the terms of the original Treatment and Delivery Agreement, the City was entitled to receive 30 million gallons per day of treated water from the Phase One Water Treatment Plant. The original Treatment and Delivery Agreement was amended and restated in 2005 to provide for the funding and construction of Phase Two of the Water Treatment Plant. Upon completion of Phase Two, the City will be entitled to receive 60 million gallons per day of treated water for use within the portion of the City's service area that is within MID's authorized service area. See "— Treatment and Delivery Agreement" below.

In general terms, the City's total water service area consists of one large contiguous area and several outlying, non-contiguous service areas. The contiguous water area includes all of the property currently within the corporate boundaries of the City as well as the property located within its sphere of influence and properties located within the communities of Ceres, Empire and Salida. There are five outlying non-contiguous water service areas. They are the communities of Del Rio, Grayson, Hickman and Waterford, as well as portions of the City of Turlock.

A map showing the City's water service area appears on page 38.

# City of Modesto Water Service Area



Del Rio

Waterford/Hickman

Grayson

Turlock

## Existing Facilities

The principal facilities of the existing Water Utility System consist of 125 domestic wells (111 of which are currently active), over 900 miles of mains, seven storage tanks, the MID's Water Treatment Plant and a terminal storage area serving surface water and/or groundwater to its customers through nearly 77,000 water connections.

MID surface water is treated at the Water Treatment Plant and conveyed to the City via transmission mains for direct use in the contiguous portion of the City's water service area. The City's facilities are designed to deliver both surface water and groundwater. The Water Treatment Plant does not provide surface water to the outlying portions of the City's water service areas including those portions that are outside of MID's authorized service boundaries.

Groundwater is pumped directly from the wells into the distribution system, which consists of 900 miles of water mains and pipelines. Most of the larger water mains are 10- and 12-inch diameter pipelines which have been installed by the City. The installation of smaller pipelines in subdivisions is typically the responsibility of the subdivider. Seven ground level tanks and booster pump stations provide storage capacities ranging from 500,000 to 1,300,000 gallons each.

The following table sets forth statistical information relating to the Water Utility System during the periods shown.

### WATER UTILITY SYSTEM STATISTICS Calendar Years

	2003	2004	2005	2006	2007
Number of Service Accounts	72,907	73,916	74,779	76,227	76,661
Total Water Production (MG) <sup>(1)</sup>	27,000	26,580	25,720	25,605	25,857
Capacity (MGD) <sup>(2)</sup>	166	166	166	166	166
Peak Daily Distribution (MGD)	133.6	124.9	129.8	131.4	115.4
Average Daily Distribution (MGD)	73.7	72.4	70.4	70.2	70.9

<sup>(1)</sup> "MG" means million gallons.

<sup>(2)</sup> "MGD" means million gallons per day. The actual capacity of the Water Utility System during each of the years shown varied slightly from the 166 MGD figure depending upon the number and capacity of the wells going in and out of service in each of said years.

Source: City of Modesto.

During the five year period covered by the table the City's population grew by nearly 3% while the aggregate volume of water sold declined by approximately 4%. Thus, on a per capita basis, consumption of water in the City's service area has been reduced over the course of this period. This reduction has been the result of many variables including water conservation efforts, weather, system repairs, more efficient water consumption by customers and the availability of alternative water sources (onsite private wells).

## Sources of Water

The City's primary sources of water supply are surface water provided by MID under the Treatment and Delivery Agreement (described below) and its local groundwater sources. During the 1990's, MID, the City, and Del Este partnered to develop a new municipal water supply. This was implemented by the original Treatment and Delivery Agreement, under which the 30 MGD Water

Treatment Plant and delivery system came on line in January 1995. The Water Treatment Plant serves as the baseline supply, and seasonal demands are served by the groundwater wells. In general the Water Treatment Plant currently supplies approximately 60% of the City's water requirement during the winter and approximately 35% thereof during the summer season. Groundwater supplies the remainder.

MID issued the Notice to Proceed on July 16, 2007 to Western Summit Constructors, Inc. for the construction of the Modesto Regional Water Treatment Project – Phase 2 expansion. This project will bring the nominal plant capacity up to 60 million gallons per day (60 MGD) with a peak capacity of 72 MGD. The original contract amount was \$57,333,902 and contract change orders have totaled \$47,813.00 to date. Currently the project is 20% complete and the completion date is October 23, 2009. Performance testing will follow that date and the plant is expected to be fully operational in early 2010.

The following table sets forth the total water production for the Water Utility System during the last five calendar years.

**WATER UTILITY SYSTEM  
Service Area Total Production (Billion Gallons)**

<i>Year Ending December 31</i>	<i>Groundwater</i>	<i>Surface Water</i>	<i>Total</i>
2003	15.49	11.51	27.00
2004	15.15	11.43	26.58
2005	15.13	10.59	25.72
2006	14.74	10.92	25.66
2007	13.94	11.92	25.86

Source: City of Modesto.

Outside of the City corporate limits there are no regulations controlling the number of water wells that are drilled or the quantity of water pumped from such wells. Prior to the availability of surface water from the Water Treatment Plant, the groundwater withdrawal had been increasing and water levels had been declining since the early 1950's. As a result thereof, the groundwater resources of the Water Utility System were subject to long-term overdraft, i.e., the depletion of the water table was greater than the replenishment, of an average of 3,000 acre-feet per year. With the introduction of surface water from the Water Treatment Plant, this long-term overdraft was halted, and the City's dependency upon groundwater was reduced. The City expects that the expansion of the Water Treatment Plant and the installation of the various capital projects associated therewith, including the 2006 Project, will further reduce its reliance on groundwater supplies.

**Treatment and Delivery Agreement**

In April 1992, MID entered into the original Treatment and Delivery Agreement with the City and Del Este. Pursuant to the Treatment and Delivery Agreement, MID agreed to finance, construct, own and operate the Water Treatment Plant and certain related facilities, and the City agreed to pay the costs of acquisition, construction and operation of the Water Treatment Plant. Pursuant to the Treatment and Delivery Agreement, the City was initially allocated a 70% share of

the Water Treatment Plant, and was likewise responsible for 70% of its costs; Del Este was allocated a 30% share and was likewise responsible for 30% of its cost.

The Modesto Irrigation District Financing Authority (“MIDFA”) issued its Series 1992A Water Notes in the aggregate principal amount of \$39,990,000 to provide construction financing for Del Este’s 30% of the estimated acquisition and construction costs of the Water Treatment Plant. MIDFA also issued its Series 1992A Water Bonds and Series 1992B Water Bonds in the aggregate principal amount of \$77,385,000 in order to finance the City’s 70% share of the estimated acquisition and construction costs of the Water Treatment Plant. In 1995, MIDFA issued its Series 1995C Water Bonds in an aggregate principal amount of \$24,235,000 to repay the Series 1992A Water Notes; and in 1998, MIDFA issued its Series 1998D Water Bonds in an aggregate principal amount of \$94,715,000 to defease all of the outstanding Series 1992B Water Bonds and Series 1995C Water Bonds. (MIDFA’s Series 1998D Water Bonds are referred to as the “Domestic Water Bonds.”) On June 26, 2007, MIDFA issued the MIDFA 2007 Bonds in order to provide financing for the Water Treatment Plant Expansion described above. The ultimate source of funds expected to be used to pay debt service on the MIDFA 2007 Bonds consists of payments to be made by the City to MID pursuant to the Treatment and Delivery Agreement. See “THE WATER UTILITY SYSTEM — Treatment and Delivery Agreement.”

In July 1995, the City purchased substantially all of the assets and liabilities of Del Este and in accordance with the provisions of the original Treatment and Delivery Agreement assumed all interests, rights and obligations of Del Este under the original Treatment and Delivery Agreement. Accordingly, Del Este had no further obligation to make payments under the Treatment and Delivery Agreement or otherwise with respect to the Domestic Water Bonds.

Construction of the Water Treatment Plant began in October 1992, and the Water Treatment Plant was placed into operation in May 1995. It is located directly south of the Modesto Reservoir on an approximately 30-acre site, about 15 miles east of the City. Treated water is pumped from a five million gallon treated water storage reservoir through approximately 14 miles of transmission pipeline to two five million gallon terminal-storage reservoirs. The water is then distributed to distribution mains in the City water system.

Raw water delivered for treatment under the original Treatment and Delivery Agreement was provided under MID’s pre-1914 water rights, which are not subject to the permitting authority of the State Water Board. The rights available to MID to treat and deliver water to the City through the Water Treatment Plant consist of (i) various water rights owned by MID, including the pre-1914 water right and (ii) water available to it under a license held by MID and Turlock Irrigation District (License 11058) which authorizes the two districts to store up to 1,046,800 acre-feet of water in New Don Pedro Reservoir between November 1 and the succeeding July 31 for irrigation and recreational use. MID petitioned for and received an order from the State Water Resources Control Board (WR Order 2005-0022-DWR) which amended License 11058 and authorized a long-term transfer of up to 67,200 acre-feet of water per year to the City and which added municipal and industrial uses to the uses of water permitted under the transfer. This long-term transfer is effective through December 31, 2054. During the period of the long-term transfer, MID is required to comply with all of the terms and conditions required by the Federal Energy Regulatory Commission for the New Don Pedro Project. In addition, pursuant to California Water Code Sections 100 and 275 as well as the common law public trust doctrine, all rights and privileges under the long-term transfer order, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to

protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion.

The original Treatment and Delivery Agreement provided that the City would receive 30 million gallons per day of treated water. The terms of the original Treatment and Delivery Agreement were subsequently amended and restated to provide for an expansion of the Water Treatment Plant upon the completion of which the City will be entitled to receive 60 million gallons per day of treated water on an average annual basis.

In accordance with the Treatment and Delivery Agreement, MID owns, operates, and maintains the Water Treatment Plant for the purposes of treatment and delivery of water to the City. MID may not assign its maintenance and operation responsibility for the Water Treatment Plant without the consent of the City. The City is granted a permanent beneficial interest in the Water Treatment Plant output, which may not be transferred or assigned without the consent of MID.

The City has agreed to pay all costs and expenses of all phases of the Water Treatment Plant, including (i) payments of Debt Service in connection with the financing of the Water Treatment Plant (a Parity Obligation), (ii) raw water charges for raw water furnished to the Water Treatment Plant by MID, (iii) payments of operation, maintenance, repair, replacement and modification costs attributable to the operation of the Water Treatment Plant, (iv) costs of administrative services of MID attributable to the operation of the Water Treatment Plant and the administration of the Treatment and Delivery Agreement, (v) costs of insurance required to be maintained by MID pursuant to the Treatment and Delivery Agreement (as described below), (vi) cost of electric energy provided to the Water Treatment Plant by MID, and (vii) other payments or costs (and deductions from payments or costs from the reserve and contingency fund and the certain reserve funds relating to the Domestic Water Bonds) and other amounts as specified by the Treatment and Delivery Agreement.

Some of the key provisions of the Treatment and Delivery Agreement, as amended and restated, are:

The City will continue to receive raw water at the same unit cost as MID's agricultural users.

The City will reimburse MID for all capital and operating costs associated with the treatment of the water.

Reductions in water deliveries required as a result of a drought will be borne proportionately by the City and MID's agricultural customers.

MID's commitments to its agricultural customers and to the City must be met before MID may transfer any water for delivery outside of its boundaries.

The Policy Committee, which advises the Board of Directors of MID and City Council of the City on matters related to the project, consists of two members of the City Council and two members of the MID Board.

***Delivery of Treated Water.*** Under the terms of the Treatment and Delivery Agreement, MID is generally required to make available to the City 33,602.1 acre-feet of treated water per year, or

30 million gallons per day. Upon completion of the expansion of the Water Treatment Plant those amounts will be increased to 67,204.2 acre-feet per year and 60 million gallons per day. However, in a drought situation, MID may reduce its deliveries of water to the City, but only if and to the extent that MID reduces its deliveries to its own agricultural customers proportionally. Moreover, MID's commitments to the City and to its own agricultural customers must be met before any water is transferred for delivery outside of MID's boundaries (other than transfers to and from MID and Turlock Irrigation District that are made in the ordinary course of operations). The City may exchange groundwater for use by MID's irrigation system for treated water in the event of a reduced allocation. The City will bear all costs, including the costs of additional capital facilities, if any are necessary, associated with delivering the groundwater supply to MID's irrigation system. MID may not sell any treated water from the Water Treatment Plant without first offering such water to the City. Treated water delivered by MID to the City must be utilized by the City within MID's irrigation service area. MID will consult with the City regularly with respect to the scheduling of delivery of treated water from the Water Treatment Plant. MID shall be excused from its obligation to deliver treated water in the event that MID is rendered unable, wholly or in part, by force majeure to carry out its obligations under the Treatment and Delivery Agreement. Upon the occurrence of any event of force majeure which impacts MID's ability to deliver treated water, the provisions of the Treatment and Delivery Agreement shall be determinative as to whether the City is excused from its obligation to pay debt service and fixed costs pursuant to the Treatment and Delivery Agreement.

Pursuant to the Treatment and Delivery Agreement two advisory committees are formed for the purposes of the Water Treatment Plant, the Policy Committee and the Technical Committee. Each of these Committees include representatives from MID and the City.

The Board of Directors of MID has the authority to make final decisions with respect to the Water Treatment Plant, subject to the rights of the City to review and advise MID with respect to certain budgetary matters as provided in the Treatment and Delivery Agreement.

***Conservation Program.*** The City has an ongoing water conservation program which includes limitations on watering hours and certain water uses. In the event of drought, the City will likely expand its water conservation program to include additional water use restrictions, such as imposing limitations on the landscaping of new developments.

## **Water Quality**

Land use in the vicinity of the City is a mixture of rural, residential, agricultural, commercial and industrial uses. Potential sanitary hazards include the percolation of agricultural chemicals and fertilizers in adjacent fields and underground storage of fuels in single contained tanks. All wells are adequately located away from sewer lines and sewage disposal facilities. Above-ground on-site fuel storage tanks are or will be provided with a containment system.

Historically, the overall well system has not required major treatment facilities to deliver potable water supplies to date. However, over the past ten years, the number of natural and man-made contaminants which the City is required to monitor has increased from 22 to 96 and there have been significant changes in the maximum contaminant levels permitted under regulations adopted by federal and State regulatory agencies. As a result, concerns over water quality have necessitated the closure of wells with poor water quality and has led to the requirement for treatment of several groundwater wells. The City has commenced litigation to protect, and/or to recover damages to, its groundwater supplies. See “— DBCP Settlement Agreement” and “— PCE Litigation” below.

The operation of the wells is performed automatically in response to system pressure and reservoir water level. All wells are monitored in accordance with State water quality monitoring regulations. Samples are collected for general physical, general mineral, inorganic chemical, radioactivity and organic chemical analysis. Additional monitoring is conducted for bacteriological and general mineral analysis on a routine basis. Bacteriological quality of the groundwater sources is generally good. Follow-up samples on positive total coliform test results are generally negative.

In addition to water wells as a domestic supply source, the City manages approximately 9,500 rock wells for the drainage of stormwater. Stormwater runoff occurs when rainfall intensity exceeds the infiltration rate of the soil. Suspended solids, heavy metals, and oil and grease are the major types of pollutants conveyed by runoff water to drainage facilities. The pollutant loading in runoff typically increases with increased urbanization. About 70 percent of the City service area employs rock wells which vary in depth from 25 to 50 feet. As a precaution to any risk of pollutants from stormwater and other wastewater entering the rock wells and percolating into the usable groundwater aquifer, the City seals its water wells at appropriate depths in relation to rock wells. After 40 years of operation of rock wells, no pollutants attributable to urban drainage have been detected in the drinking water supply. Recent studies of the federal Environmental Protection Agency conclude that properly operated rock wells provide significant treatment and removal of pollutants from percolating water.

### **DBCP Settlement Agreement**

In January 1997, the City came to a settlement in litigation with certain defendants who are the manufacturers and distributors of dibromochloropropane (“DBCP”), which was impacting the drinking water quality throughout the combined City and former Del Este water systems. The settlement agreement (the “Settlement Agreement”) compensated the City for past expenses related to complying with drinking water standards and providing well-head treatment. The Settlement Agreement and the damage recovery covers the City’s entire current and projected service area over the 40 years following the execution of the Settlement Agreement. The Settlement Agreement provides a formula by which the majority of future capital and operating expenses for DBCP mitigation will be compensated by the defendants. The Settlement Agreement includes cost escalation indexes and requires that these payments be used in the area where the damage occurs, as a protection for the defendants against possible Del Este ratepayer actions. The Settlement Agreement puts a variety of operating obligations on the City to ensure that the contamination is managed economically and in compliance with applicable regulations.

The annual proceeds from Settlement Agreement are included in the Historical Operating Results and the Projected Operating Results of the Water Utility System described below. For operating costs, the City receives a specified amount for each well which is receiving well head treatment for DBCP, escalated annually by the Producer Price Index (“PPI”). For each additional or new well requiring GAC equipment, 90% of the capital costs, escalated by the PPI, will be compensated. The actual amount will depend on the type of GAC unit needed for the specific well. The process for compensation provides that the City file an annual claim with the trustee for operation and maintenance and capital costs for the preceding year. The defendants are required to maintain a certain balance in the trustee account, the amount of which declines over the 40 year life of the Settlement Agreement. The City is responsible for any difference between actual operating and capital expense and the stipulated compensation formula. Any shortfall would then be covered by the City through appropriate action, including without limitation a rate adjustment to assure compliance with the covenants in the Settlement Agreement.

Water supplied by the City has and continues to meet all federal and State requirements for quality standards. The City has in place a program to monitor and evaluate proposed regulatory water quality standards. The City anticipates that it will be able to meet increasingly stringent water standards.

### **PCE Litigation**

The City of Modesto Redevelopment Agency brought an action in 1998 against numerous defendants, alleging causes of action for strict liability, negligence, negligence per se, continuing trespass, private and public nuisance, private and public nuisance per se, response costs and declaratory relief under the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Safety Code Section 25300 *et seq.*), ultrahazardous activity, and cost recovery under the Polanco Redevelopment Act (Health & Safety Code Section 33459 *et seq.*) (San Francisco County Superior Court Case No. 999345). Simultaneously with the filing of that action, the City, along with the City of Modesto Sewer District No. 1, brought another action against a nearly identical group of defendants seeking damages for solvent contamination under many of the same legal theories; but this action did not include a Polanco Redevelopment Act cause of action (San Francisco County Superior Court Case No. 999643). The defendants included chlorinated solvent manufacturers, distributors of solvents and dry cleaning equipment, chlorinated solvent equipment manufacturers, and dry cleaning retailers.

The complaints alleged that two cleaning solvents, perchloroethylene (“PERC” or “PCE”) and trichloroethylene, cause risks to health and the environment, that dry cleaners customarily dumped solvent wastewater into the public sewer systems, and that dry cleaners experienced a habitual problem of chlorinated solvents leaking into the environment. According to the complaints, the defendants who manufactured and supplied solvents and equipment instructed dry cleaners that chlorinated solvents could be discharged into sewers and/or failed to issue recalls or warnings regarding the equipment and solvents.

The plaintiffs tried five “bellweather” suits before a jury from February to June of 2006, and won a verdict for compensatory damages of \$3.1 million and a verdict for punitive damages of \$175 million, later lowered to \$12 million. In October of 2007, the plaintiffs reached an agreement with one of the defendants, Vulcan Materials Company (“Vulcan”), pursuant to which Vulcan agreed to pay the plaintiffs \$20 million to settle the actions pending against Vulcan. The City’s water system and its sewer system were each credited with half of net amount of the settlement after payment of litigation fees and expenses and certain other costs (approximately \$6.5 million each), but the money may be expended only for projects that will remediate PCE.

The plaintiffs expect to proceed to trial against the remaining defendants in July.

### **Employees**

The Public Works Director has primary responsibility for the management of the Water Utility System, as well as for the sewer system, streets and storm drains. The Water Utility System currently has 82 full-time employees. Employees are represented by the Modesto City Employees Association (MCEA) whose current Memorandum of Understanding expired in July 2007 and by the Modesto Confidential and Management Association whose current Memorandum of Understanding expires on June 23, 2008. The City and MCEA are participating in mediation procedures in hopes

of reaching a negotiated agreement by the end of the current fiscal year. The City has never experienced a labor strike.

## **Retirement Programs**

All permanent full-time employees of the City are covered under the Public Employees' Retirement System (PERS) of the State of California, a defined benefit plan. Pension costs are funded by monthly contributions from the City. Required contributions by the City during fiscal year 2006-07 were \$12,214,853 of which \$569,648 was allocated to the Water Utility System. The City's net assets available for benefits as of June 30, 2005 (the latest data available) were \$47,334,409 less than pension benefit obligations.

As of June 30, 2007, most employee contributions (7.5% out of a total 9% for fire and police and 6.6% out of a total 7% for miscellaneous employees, including Water Utility System employees) are paid by the City on behalf of the employees. The City is also required to contribute all remaining amounts necessary to fund the benefits for its members, using the actuarial basis recommended by the PERS actuaries and actuarial consultants and adopted by the Board of Administration. The current rate is 9.256% of annual covered payroll for miscellaneous employees and 23.692% for safety employees.

In addition to the defined benefit plan described above, the City also maintains a program providing "other post-employment benefits" ("OPEB") for its employees. The City has created an internal service fund to track the OPEB liability, annual expenses and revenues and has been disclosing its liability for OPEB in its Comprehensive Annual Financial Statements for over ten years.

As of December 1, 2006 the Entry Age Actuarial Accrued Liability was \$89,305,020. The City has been funding the current cost of annual benefits and a portion of the long-term cost in each of the years that the liability has been disclosed in its financial statements.

In June 2004, the Governmental Accounting Standards Board ("GASB") issued Statement No. 45 ("GASB 45"), which addresses how state and local governments should account for and report their costs and obligations related to post-employment health care and other non-pension benefits ("OPEB"). GASB 45 generally requires that employers account for and report the annual cost of OPEB and the outstanding obligations and commitments related to OPEB in essentially the same manner as they currently do for pensions. Annual OPEB costs for most employers will be based on actuarially determined amounts that, if paid on an ongoing basis, generally would provide sufficient resources to pay benefits as they come due. The provisions of GASB 45 may be applied prospectively and do not require governments to fund their OPEB plans. An employer may establish its OPEB liability at zero as of the beginning of the initial year of implementation. However, the unfunded actuarial liability is required to be amortized over future periods on the income statement. GASB 45 also established disclosure requirements for information about the plans in which an employer participates, the funding policy followed, the actuarial valuation process and assumptions, and for certain employers, the extent to which the plan has been funded over time. These disclosure requirements are effective for the City's Fiscal Year ending June 30, 2008. GASB 45 may result in an increase in the annual expense recognized by the City for post retirement health care benefits. The City has retained the services of an actuary to determine the extent of the City's OPEB liability. The City has reported its OPEB liability for over 10 years in its Comprehensive Annual Financial Report (CAFR). Further, the City has been funding both the current and a portion of the long-term

liability for much of this time. Discussions are being held to determine whether the City will utilize an irrevocable trust to hold plan assets.

**Insurance**

The City is exposed to various risks of loss including those related to torts as well as the theft of, damage to and destruction of its assets. The City maintains an Insurance Internal Service Fund to account for and finance its risks of loss. Under this program, the City is self-insured for the following risks up to the maximum amount per claim as follows: workers’ compensation - \$750,000, liability - \$1,000,000 and dental care - \$1,200. The City purchases commercial insurance for property loss, airport liability and claims in excess of the preceding self-insured coverage amounts. For liability claims, the City is one of twelve members of the Authority for California Cities Excess Liability risk pool. This pool covers City claims between \$1 million and \$4 million. Commercial insurance covers claims over \$4 million up to an additional \$30 million per claim.

The City currently maintains insurance against damage to the Water Utility System. Coverage thereunder is currently \$10,000,000, but damage resulting from earthquakes is not covered.

**Service Area and Customers**

The water service area of the Water Utility System is within the metropolitan area of the City, located in the central portion of Stanislaus County, consisting of approximately 36 square miles as well as the communities of Salida, Waterford, Empire, Hickman, Grayson, and portions of Turlock, Ceres and Del Rio Estates.

The following tables set forth the revenues for the periods indicated and the ten largest water customers of the Water Utility System in terms of total water sales and total billings for the fiscal year ended June 30, 2007. During calendar year 2007, the Water Utility System delivered approximately 25.9 billion gallons of water to an average of approximately 77,000 customers. Residential accounts (single family as well as multi-family accounts) represent approximately 64.36% of the City’s water consumption and water sales revenues. Commercial, industrial and municipal accounts represent approximately 35.64% of the City’s water consumption and water sales revenues. The City’s ten largest customers represented approximately 8.31% of total water revenues in fiscal year 2006-07.

**WATER UTILITY SYSTEM  
Sale of Water**

	<i>Fiscal Year Ended June 30</i>				
	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>
Revenues (\$000)					
Residential (Flat Rates)	\$ 16,682	\$ 16,849	\$ 19,117	\$ 26,591	\$ 30,716
Commercial, Industrial and Municipal (Metered)	<u>10,075</u>	<u>10,524</u>	<u>10,847</u>	<u>14,516</u>	<u>17,007</u>
Total	\$ 26,757	\$ 27,323	\$ 29,964	\$ 41,107	\$ 47,723

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Source: City of Modesto.

**WATER UTILITY SYSTEM  
Ten Largest Customers  
(Fiscal Year ended June 30, 2007)**

<i>Customer</i>	<i>Business Type</i>	<i>Usage (ccf)<sup>(1)</sup></i>	<i>% of Total Usage</i>	<i>Water Sales Revenues</i>	<i>% of Total Water Sales Revenue</i>
Signature Fruit Co.	Cannery	541,261	1.58%	\$ 648,435	1.36%
Modesto City Schools	Education	458,038	1.34	635,965	1.33
Grover Landscaping (Parks)	Landscape Maintenance	392,111	1.14	580,507	1.22
Stanislaus Foods	Cannery	377,600	1.10	460,575	0.97
Foster Farms	Dairy Processor	338,786	0.99	398,235	0.83
Stanislaus County	Government	200,874	0.59	284,742	0.60
Modesto Irrigation District	Power Company	206,179	0.60	263,276	0.55
Stanislaus Housing Authority	Housing Authority	176,057	0.51	261,904	0.55
City of Modesto	Government	159,911	0.47	239,405	0.50
Sylvan Union School District	Education	<u>141,445</u>	<u>0.41</u>	<u>191,940</u>	<u>0.40</u>
Top Ten Total		2,992,262	8.73%	\$ 3,964,984	8.31%
Total Flat/Metered Revenues				\$47,723,020	

<sup>(1)</sup> "ccf" means hundred cubic feet  
Source: City of Modesto.

**Water Charges and Billing**

**Water Service Rates.** Water rates are fixed by the City Council and are not subject to regulation by the California Public Utility Commission or any other State or federal agency. Customer service charges for single family residential accounts were historically generally based on a flat monthly service charge, which varied only based on the size of the lot and in which of three zones the lot was located. However, under a new rate structure which went into effect on January 1, 2005, a uniform rate for each applicable lot size has been established for all three zones. See "Rate Setting Process" below for a discussion of the process followed by the City in implementing the new rate structure.

Historically, the City has not metered water use by its single family residential customers; however, since 1992 all new construction has been equipped with a meter; and those single family residential properties that are equipped with water meters that are read for billing purposes are charged the metered water rate. Pursuant to State legislation, the City will be required to install meters and to read and bill for water service based on metered rates by 2025. The City Council has adopted a metering plan schedule pursuant to which those requirements would be satisfied by 2019; and, in connection therewith, the City Council recently approved contracts with Automatic Meter Reading in order to provide the most cost efficient and manner of implementing its plan.

Multifamily residential units are currently metered. Each commercial account pays a monthly service charge and a volume charge per hundred cubic feet of water delivered. All regular customers are liable for service charges unless service is permanently discontinued. In addition, all new regular water service connections, increases in meter sizes, and the connection of additional dwelling units to existing services require the payment of a connection fee.

As noted above, the City Council established a new rate structure that went into effect on January 1, 2005. The new rate structure established a single service area, combining all three prior water zones into a single zone. The new rates include a uniform volume-based charge reflecting the volume of water consumed. Residential metered and flat rates are designed so that monthly bills for these types of customers will be comparable were water consumption is estimated to be comparable. Residential flat rates are standardized by lot size (previously, the size ranges varied between water zones) based upon the number of parcels in each range and patterns of water use.

In addition to the rate increases described above, the rate structure adopted by the City Council also provided for uniform increases of 20% effective July 1, 2005, 15% effective July 1, 2006, 5% effective July 1, 2007 and 5% effective July 1, 2008. On each July 1, commencing July 1, 2009 rates are expected to be adjusted to reflect increases in the Consumer Price Index.

The table below sets forth the adopted single family residential flat rates approved through fiscal year 2008-09.

**CITY WATER UTILITY SYSTEM**  
**Monthly Single Family Residential Flat Water Rates<sup>(1)</sup>**

<i>Lot Size</i>	<i>Effective January 1, 2005</i>	<i>Effective July 1, 2005</i>	<i>Effective July 1, 2006</i>	<i>Effective July 1, 2007</i>	<i>Effective July 1, 2008</i>
0-5,000 sq. ft. lot	\$24.47	\$29.36	\$33.77	\$35.45	\$37.23
5,001-7,000 sq. ft. lot	27.81	33.37	38.38	40.30	42.31
7,001-11,000 sq. ft. lot	33.00	39.60	45.54	47.82	50.21
11,001-17,000 sq. ft. lot	35.03	42.04	48.34	50.76	53.30
Over 17,000 sq. ft. lot	41.19	49.42	56.84	59.68	62.66

<sup>(1)</sup> Single family residential properties with water meters that are read for billing purposes, are charged the metered water rate.  
Source: City of Modesto.

The following table sets forth adopted monthly service charge and volume charge for commercial accounts through fiscal year 2008-09.

**CITY WATER UTILITY SYSTEM  
Water Rates and Charges  
Commercial Accounts**

	<i>Effective January 1, 2005</i>	<i>Effective July 1, 2005</i>	<i>Effective July 1, 2006</i>	<i>Effective July 1, 2007</i>	<i>Effective July 1, 2008</i>
<b>Volume-based Rate (\$/hcf)</b>	\$ 0.84	\$ 1.01	\$ 1.16	\$ 1.22	\$ 1.28
<b>Fixed Monthly Meter Charge (in addition to volume-based charges)</b>					
5/8" – 3/4" meter	\$ 9.01	\$ 10.82	\$ 12.44	\$ 13.06	\$ 13.71
1" meter	12.78	15.34	17.64	18.52	19.45
1-1/2" meter	22.13	26.55	30.53	32.06	33.66
2" meter	33.38	40.06	46.06	48.37	50.79
3" meter	63.43	76.12	87.53	91.91	96.51
4" meter	97.19	116.63	134.13	140.83	147.88
6" meter	190.95	229.14	263.51	276.68	290.51
8" meter	303.49	364.19	418.82	439.76	461.75
10" meter	434.84	521.80	600.07	630.08	661.58
12" meter	809.95	971.95	1,117.74	1,173.62	1,232.31

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Source: City of Modesto.

The following table sets forth connection fees for all users except multi-family units by meter size for fiscal year 2007-08.

**CITY WATER UTILITY SYSTEM  
Connection Fees for All Users  
Except Multi-Family Units  
(Fiscal Year 2007-08)**

<i>Meter Size</i>	<i>Connection Fees</i>
5/8"	\$2,162
1"	5,404
1-1/2"	10,808
2"	17,291
3"	34,582
4"	54,035
6"	108,069
8"	172,910
10"	248,558
12" or larger	464,694

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Source: City of Modesto.

**Comparison of Rates and Charges.** The following table lists certain water suppliers in the Modesto region and their average monthly residential water service charges.

**WATER UTILITY SYSTEM  
Comparison of  
Average Monthly Water Rates  
Flat Rate (1" Service)  
As of July 1, 2007**

<i>City</i>	<i>Flat Rate Typical Home</i>
Modesto	\$47.82
Tracy	No Flat Rates
Stockton	No Flat Rates
Turlock	\$30 - \$40
Merced	30.43
Sacramento	25.97
Atwater	15.65
Ceres	15.30

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Source: City of Modesto.

The City’s water rates reflect the steps the City has taken to assure a long-term water supply by entering into the regional water management partnership with MID. The rates of the other nearby cities reflect the particular circumstances of each city’s water system, such as the degree to which it relies on ground water or surface water. The rates also reflect their specific circumstances with regard to the cost of current and prospective water supplies.

**Rate Setting Process.** In connection with its consideration of the new water rate structure which took effect on January 1, 2005, the City Council followed a process which it believes satisfies the requirements of Article XIID of the California Constitution. See “Impact of Proposition 218 on Water Utility System Fees and Charges” below. Specifically, by October 8, 2004, nearly 75,000 notices of the proposed increase in water rates had been mailed to the owners of record of the parcels within the City’s water service area. The notices advised property owners of their right to file written protests to the proposed increase and of a public hearing, set for November 23, 2004, at which such protests would be considered. The number of protests received prior to the completion of the November 23, 2004 public hearing was 8,856, far less than the majority required in order to prevent the implementation of the proposed rate increase. Following the completion of the public hearing, the City Council proceeded to adopt the rate increase as described above. See “Water Charges and Billing” above.

**Rate Study.** Prior to adopting the new water rate structure which took effect on January 1, 2005, the City Council engaged an outside consultant to prepare a water rate study that was ultimately presented to the City Council. In early 2005, the City’s staff noted differences between the amount of revenue actually realized from the initial water rate increases adopted by the City Council and the revenue projections contained in the rate study. In light of those differences, the Water Utility System budgets for fiscal years 2005-06 and 2006-07 use revenue estimates based on actual levels of income received from Water Utility System rates and charges and not on projections included in the rate study. Similarly, the projected operating results of the Water Utility System set

forth below under the caption “Summary of Projected Operating Results of the Water Utility System” are also based on the actual amount of income that is being received by the Water Utility System and not on the forecast thereof shown in the rate study.

The errors in the revenue forecast have been traced to one table in the rate study which contains a series of errors unrelated to the formulas underlying the current water rate structure, and the City believes that there is nothing at this time indicating that the rate structure itself is flawed. The City staff has established a revised revenue forecast for each fiscal year for use in establishing the annual budget. Billed revenues are tracking closely with this revised revenue forecast.

***Challenges to Rates.*** The 2005-2006 Stanislaus County Civil Grand Jury received complaints from Del Rio, an outlying community that receives its water from the City’s Water Utility System Modesto. Del Rio is a wealthy area which includes homes on large lots that had previously received flat rate water. Part of the City’s new rate structure (see “— Water Charges and Billing – Water Service Rates” above) required metering rates for Del Rio, which had the effect of accentuating the accompanying rate hikes. However, the Civil Grand Jury found no evidence to support Del Rio’s contention that the City’s Proposition 218 notice informing the public of the new rate schedule was inadequate. Del Rio also charged that the City’s water rate policy violated a Proposition 218 requirement that a parcel be charged only its proportional costs. The Civil Grand Jury concluded there is no difference in the rate structure between Del Rio and the rest of the City’s water customers that are billed a metered rate; and the Civil Grand Jury made no recommendation regarding the proportionality issues. Del Rio further charged that there was a misuse of funds by using water collections for purposes other than water. While it did make study recommendations, the Civil Grand Jury ultimately determined that the City is accounting for water costs and revenues separately from non-water related accounts. Del Rio’s last charge was that unfairness in the rate process led to Del Rio paying more than other water customers. The Civil Grand Jury could not substantiate this charge, but rather made study recommendations regarding actual customer costs between metered and flat rates, and a further recommendation that conversion from flat to metered rates occur as quickly as possible. The City is continuing its city-wide meter installation program that was begun several years ago with the intent of having every service location on a metered billing by the year 2019.

## **Delinquencies**

The City’s municipal water department has historically accounted for water system revenues on a full accrual basis. The City has developed procedures for handling delinquent accounts, There has not generally been a significant delinquency problem. The threatened suspension of water delivery is normally sufficient incentive to induce customers to make payment on their billings. In addition, the City customers may have tax liens placed on their property when water bills are delinquent. Uncollectible accounts have historically been less than 1% of revenues and remain at that level. The City staff is monitoring delinquencies closely during this period of high foreclosures. Liens are being filed against many delinquent properties to provide greater leverage in the recovery and collection process.

## Historical Operating Results

The following table summarizes operating revenues, operating expenses and net income of the Water Utility System for the five fiscal years 2002-03 through 2006-07, The information for each of the fiscal years shown was prepared by the City on the basis of its audited financial statements.

### WATER UTILITY SYSTEM Historical Debt Service Coverage

	<i>Fiscal Year 2003</i>	<i>Fiscal Year 2004</i>	<i>Fiscal Year 2005</i>	<i>Fiscal Year 2006</i>	<i>Fiscal Year 2007<sup>(1)</sup></i>
GROSS OPERATING REVENUES					
Charges for services	\$27,986,082	\$ 31,353,046	\$31,315,920	\$42,670,821	\$49,289,417
DBCP Settlement	214,803	210,834	2,960,781	1,259,010	0
Connection charges	1,169,995	1,159,296	1,371,958	1,728,973	2,023,224
Interest and Rental Income	964,817	316,688	279,616	532,794	2,279,905
Draw from (Deposit to) Rate Stab. Fund	<u>153,200</u>	<u>0</u>	<u>0</u>	<u>(153,200)</u>	<u>15,616</u>
GROSS OPERATING REVENUES	\$30,488,897	\$33,039,864	\$35,928,275	\$46,038,398	\$53,608,162
OPERATING EXPENSES:					
Total operating expenses <sup>(2)</sup>	\$27,815,253	\$26,757,108	\$29,227,465	\$25,884,448	\$32,466,468
Less: Depreciation	(1,884,768)	(2,173,845)	(2,305,953)	N/A	(2,396,440)
T&DA debt service component paid to MID <sup>(3)</sup>	(6,713,244)	(6,700,881)	(6,705,344)	(6,690,994)	(6,687,444)
Property taxes	77,676	89,921	82,673	84,556	85,487
Plus: Operating Transfers	<u>0</u>	<u>0</u>	<u>218,902</u>	<u>95,385</u>	<u>65,000</u>
TOTAL OPERATING EXPENSES	\$19,294,917	\$17,972,303	\$20,517,743	\$19,373,395	\$23,533,071
NET OPERATING REVENUES	\$11,193,980	\$15,067,561	\$15,410,532	\$26,665,003	\$30,075,091
TOTAL DEBT SERVICE:					
Revenue obligations:					
1997 Certificates of Participation	\$ 1,774,093	\$ 1,780,288	\$ 1,784,908	\$ 1,790,658	\$ 1,794,120
2006 Certificates of Participation	0	0	0	0	1,082,432
Treatment & Delivery Agreement	6,713,244	6,700,881	6,705,344	6,690,994	6,687,444
CDWR Loan	<u>264,656</u>	<u>264,656</u>	<u>264,654</u>	<u>264,454</u>	<u>264,719</u>
TOTAL DEBT SERVICE	\$ 8,751,993	\$ 8,745,825	\$ 8,754,906	\$ 8,746,106	\$ 9,828,715
DEBT SERVICE COVERAGE					
(Net Operating Revenues/Total Debt Service)	1.27	1.72	1.76	3.05	3.06

<sup>(1)</sup> Reflects estimated, unaudited amounts.

<sup>(2)</sup> Includes Treatment and Delivery Agreement debt service component paid to MID.

<sup>(3)</sup> Based on debt service paid pursuant to the Treatment and Delivery Agreement.

Source: City of Modesto.

## Capital Improvement Program

The capital improvement program of the City for the Water Utility System for fiscal years 2007-08 through 2014-15 includes budgeted or planned programs and projects expected to be funded by the City from annual revenues and additional parity obligations. Currently underway is a project to construct 2.5 miles of 24 inch transmission mains and installation of 15 pressure reducing valves at the interfaces with the MID transmission main. Other improvements planned include: construction of a 4 million gallon (MG) storage tank; booster pumps and associated transmission mains in the area west of the City; a 6 MG Storage tank in the north area and a 4 MG tank in the industrial area to the south along with associated booster pumps and transmission mains for those tanks; additional pressure reducing valves and additional transmission mains. These projects are expected to be under

construction during fiscal years 2009-10 and 2010-11. Total capital expenditures for fiscal year 2007-2008 are estimated to be approximately \$26 million.

The City's capital improvement program is a 10-year plan revised annually. Consequently, projects planned for future years may be cancelled, and new projects not presently anticipated may be undertaken. To the extent that total funds required exceed cash available, the City expects that the projects will either be funded by bond proceeds or deferred or terminated.

### **Summary of Projected Operating Results of the Water Utility System**

The City has prepared the following table of projections of operating results of the Water Utility System for the fiscal years ending June 30, 2008 through 2011. The projected amounts set forth below are based on certain assumptions made by the City. To the extent that actual future conditions vary from those assumed in preparing the projections, the actual results will vary from those set forth herein.

**WATER UTILITY SYSTEM  
Projected Operating Results**

	<i>Fiscal Year 2008</i>	<i>Fiscal Year 2009</i>	<i>Fiscal Year 2010</i>	<i>Fiscal Year 2011</i>	<i>Fiscal Year 2012</i>
<b>GROSS OPERATING REVENUES</b>					
Charges for services <sup>(1)</sup>	\$51,378,353	\$53,926,734	\$55,005,269	\$56,105,374	\$57,227,482
DBCP Settlement	-	-	-	-	-
Connection charges	1,747,487	1,497,500	1,747,500	1,747,500	1,747,500
Interest and Rental Income	2,270,948	523,780	539,500	539,500	539,500
Transfers In	-	-	-	-	-
Miscellaneous Revenue	381,275	390,462	315,000	315,000	315,000
Draw from (Deposit to) Rate Stab. Fund	-	-	-	-	-
<b>GROSS OPERATING REVENUES</b>	<u>\$55,778,063</u>	<u>\$56,338,476</u>	<u>\$57,607,269</u>	<u>\$58,707,374</u>	<u>\$59,829,482</u>
<b>OPERATING EXPENSES:</b>					
Total operating expenses <sup>(2)</sup>	\$32,725,156	\$32,915,103	\$35,323,695	\$41,999,985	\$43,291,609
Less: Depreciation	-	-	-	-	-
T&DA debt service component paid to MID	(6,696,543)	(6,693,931)	(6,703,419)	(10,748,405)	(10,794,040)
Less: Litigation Costs	(600,000)	(600,000)	-	-	-
Property taxes	91,084	96,460	-	-	-
Plus: Operating Transfers	<u>99,634</u>	<u>65,000</u>	<u>65,000</u>	<u>65,000</u>	<u>65,000</u>
<b>TOTAL OPERATING EXPENSES</b>	<u>\$25,619,331</u>	<u>\$25,782,632</u>	<u>\$28,685,277</u>	<u>\$31,316,580</u>	<u>\$32,562,569</u>
<b>NET OPERATING REVENUES</b>	<b>\$30,158,732</b>	<b>\$30,555,844</b>	<b>\$28,921,992</b>	<b>\$27,390,794</b>	<b>\$27,266,913</b>
<b>TOTAL DEBT SERVICE:</b>					
Revenue obligations:					
1997 Certificates of Participation	\$ 1,791,930	\$ 1,792,258	\$ 1,794,688	\$ 1,794,013	\$ 1,795,513
Treatment & Delivery Agreement	6,696,543	6,693,931	6,703,419	10,748,405	10,794,040
CDWR Loan	265,000	265,000	265,000	265,000	265,000
2006 Certificates	1,393,332	-	-	-	-
2008 Certificates <sup>(3)</sup>	-	<u>1,962,419</u>	<u>2,077,699</u>	<u>2,066,472</u>	<u>2,055,817</u>
<b>TOTAL DEBT SERVICE</b>	<u>\$10,146,805</u>	<u>\$10,713,607</u>	<u>\$10,840,805</u>	<u>\$14,873,889</u>	<u>\$14,910,370</u>
<b>DEBT SERVICE COVERAGE</b>					
With Connection Fees	2.97	2.85	2.67	1.84	1.83
Without Connection Fees	2.80	2.71	2.51	1.72	1.71

<sup>(1)</sup> Estimated based on approved increase in rates of 5% on July 1, 2008 and of 2%, based on the CPI factor, on each subsequent July 1.

<sup>(2)</sup> Includes estimated Treatment and Delivery Agreement debt service component payable to MID.

<sup>(3)</sup> Assumes an interest rate equal to the fixed rate of interest used in calculating the scheduled payments to be made by the City pursuant to the 2008 Swap Agreement. Includes certain estimated ongoing expenses.

Source: City of Modesto.

**Impact of Proposition 218 on Water Utility System Fees and Charges**

**General.** An initiative measure entitled the “Right to Vote on Taxes Act” (the “Initiative”) was approved by the voters of the State of California at the November 5, 1996 general election. The Initiative added Article XIIC and Article XIID to the California Constitution. According to the “Title and Summary” of the Initiative prepared by the California Attorney General, the Initiative limits “the authority of local governments to impose taxes and property-related assessments, fees and charges.”

**Article XIID.** Article XIID defines the terms “fee” and “charge” to mean “any levy other than an ad valorem tax, a special tax or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property-related

service.” A “property-related service” is defined as “a public service having a direct relationship to property ownership.” Article XIID further provides that reliance by an agency on any parcel map (including an assessor’s parcel map) may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership.

Article XIID requires that any agency imposing or increasing any property-related fee or charge must provide written notice thereof to the record owner of each identified parcel upon which such fee or charge is to be imposed and must conduct a public hearing with respect thereto. The proposed fee or charge may not be imposed or increased if a majority of owners of the identified parcels file written protests against it. As a result, if and to the extent that a fee or charge imposed by a local government for water service is ultimately determined to be a “fee” or “charge” as defined in Article XIID, the local government’s ability to increase such fee or charge may be limited by a majority protest.

In *Richmond et al. v. Shasta Community Services District*, 32 Cal. 4th 409 (2004) the California Supreme Court ruled that water connection fees are not property related fees or charges subject to Article XIID while at the same time stating in *dicta* that fees for ongoing water service through an existing connection were property related fees and charges. On July 24, 2008, in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal. 4th 205 (2008), in what is technically *dicta*, the California Supreme Court cited its decision in *Richmond, supra* in support of its conclusion that a public water agency’s charges for ongoing water delivery are fees and charges within the meaning of Article XIID. Despite the fact that the statement is *dicta*, it does represent the unanimous view of the California Supreme Court. The City believes that it has complied with the requirements of Article XIID, as said article has been construed by the California Supreme Court, in establishing its current rate structure for the Water Service.

In addition, Article XIID includes a number of limitations applicable to pre-existing fees and charges including provisions to the effect that (i) revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service, (ii) such revenues shall not be used for any purpose other than that for which the fee or charge was imposed, (iii) the amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel and (iv) no such fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Property-related fees or charges based on potential or future use of a service are not permitted. It is unclear whether, under the foregoing standards, fees and charges may be established at levels that permit deposits to a rate stabilization fund or maintenance of uncommitted cash reserves.

**Article XIIC.** Article XIIC provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIIC does not define the terms “local tax,” “assessment,” “fee” or “charge.” However, in *dicta* in its decision in *Bighorn-Desert View Water Agency, supra*, the California Supreme Court concluded that a public water agency’s charges for ongoing water delivery (which, as noted above, it had concluded were fees and charges within the meaning of Article XIID) are also fees within the meaning of Article XIIC and are therefore subject to initiative measures. However, the Court did note that, in doing so:

... [W]e are not holding that the authorized initiative power is free of all limitations. In particular, we are not determining whether the electorate's initiative power is subject to the statutory provision [applicable to Bighorn-Desert View Water Agency] requiring that water service charges be set at a level that "will pay the operating expenses of the agency, ... provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due." ... That issue is not currently before us.

Again, while the court's conclusion set forth above is *dicta*, it does represent the unanimous view of the justices.

While the City does not believe that Article XIIC grants to the voters within the City the power to repeal or reduce rates and charges for the Water Service in a manner which would impair its ability to meet its contractual obligations, there can be no assurance as to the availability of particular remedies adequate to protect the Beneficial Owners of the 2008 Certificates. Remedies available to Beneficial Owners of the 2008 Certificates in the event of a default by the City are dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time-consuming to obtain.

#### **Effect of Proposition 218 and of Possible General Limitations on Enforcement Remedies**

The ability of the City to comply with its covenants under the Contract and to generate Gross Revenues sufficient to pay the 1997 Payments, the 2008 Payments and any other Parity Obligations may be adversely affected by actions and events outside of the control of the City and by actions taken (or not taken) under Article XIIC or Article XIID by voters, property owners, taxpayers or payers of assessments, fees and charges. Furthermore, any remedies available to the Owners and Beneficial Owners of the 2008 Certificates upon the occurrence of an Event of Default under the 2008 Trust Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain. In addition to the possible limitations on the ability of the City to comply with its covenants under the Contract, the rights and obligations of the City and the Authority under the 2008 Trust Agreement and the Contract may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against cities in the State of California,

Based on the foregoing, in the event the City fails to comply with its covenants under the Contract, including its covenants to generate sufficient Gross Revenues to pay the 1997 Payments, the 2008 Payments and any other Parity Obligations, there can be no assurance that available remedies will be adequate to fully protect the interests of the Owners or Beneficial Owners of the 2008 Certificates.

#### **Investment Policy**

The cash attributable to the Water Utility System must be invested in accordance with the City's Investment Policy, adopted by the City Council during 1984 and most recently revised during

2008. In accordance with Sections 53601 and following of the California Government Code, idle cash management and investment transactions are the responsibility of the City Finance Director/Treasurer and permitted investments include the following:

- Securities of the U.S. Government, or its agencies,
- Certificates of deposit (or time deposits) and negotiable certificates of deposit placed with commercial banks,
- Banker's acceptances,
- Commercial paper of "prime" quality,
- Local Agency Investment Fund (State Pool) and California Asset Management Program Demand Deposits, and
- Repurchase agreements.

Criteria for selecting investments and the order of priority are:

- Safety of Principal - Preservation of principal and interest,
- Liquidity - Ability to readily convert investment to cash at any moment in time, and
- Yield - Potential dollar earnings on an investment.

The City's cash management system is designed to accurately monitor and forecast expenditures and revenues, thus enabling the City to invest funds to the fullest extent possible. The City attempts to obtain the highest yield when selecting an investment, provided the criteria for safety and liquidity are met.

### **Financial Statements**

The City's annual financial report is audited in accordance with generally accepted auditing standards, and contains opinions that the financial statements present fairly, in all material respects, the financial position of the City. The reports include certain notes to the financial statements. Such notes constitute an integral part of the audited financial statements. The annual financial reports of the City have received the Government Finance Officers Association Certificate of Achievement for each of the past 22 years.

The basic financial statements of the City as of June 30, 2007, which are incorporated by reference in and portions of which are included in Appendix A to this Official Statement, have been audited by Maze & Associates (the "Auditor"), independent certified public accountants, as set forth in their report. In connection with the incorporation of the financial statements and the report of the Auditor thereon in Appendix A to this Official Statement, the City did not request the Auditor to, and the Auditor has not undertaken to, update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement; and no opinion is expressed by the Auditor with respect to any event subsequent to the date of its report. The Auditor has not been engaged to perform, and has not performed, since the date of its report included herein any procedures on the financial statements addressed in that report.

### **RISK FACTORS**

Some of the factors which could impair the ability of the City to pay the 2008 Payments as they become due under the 2008 Contract are summarized below. This discussion is not meant to be an exhaustive list of the risks associated with the purchase of the 2008 Certificates and does not

necessarily reflect the relative importance of the various factors discussed. Potential investors are advised to consider the following factors, along with all other information in this Official Statement, in evaluating the 2008 Certificates. There can be no assurance that other risk factors will not become material in the future.

## **General**

The payment of principal and interest on the 2008 Certificates is secured solely by a pledge of the Gross Revenues of the Water Utility System and money on deposit in certain funds under the 2008 Trust Agreement. Under the terms of the Master Contract, Gross Revenues are to be deposited in the Revenue Fund and used by the City, ratably, without preference or priority, to (i) pay charges for Maintenance and Operation Costs of the Water Utility System (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not immediately required) as such charges are due and payable and (ii) deposit in the Parity Obligation Payment Fund the amount described in the Master Contract (in general terms, debt service which has accrued or will accrue during the next succeeding month on all Parity Obligations and net payments due or which will be due on all Parity Payment Agreements). See “SECURITY FOR THE 2008 CERTIFICATES — Flow of Funds.” The realization of revenues sufficient in amount to meet both of said obligations is subject to, among other things, the capabilities of management of the City, the ability of the City to provide water service to its users, and the ability of the City to establish and maintain water fees and charges sufficient to provide the required debt service coverage as well as pay for Maintenance and Operation Costs.

If Gross Revenues are insufficient to meet both of the requirements described above, the amounts available to pay Maintenance and Operation Costs will be reduced ratably along with the money to be deposited in the Parity Obligation Payment Fund. This could result in an inability on the part of the City to pay Maintenance and Operation Costs as the same become due which, in turn, could adversely affect the ability of the City to operate the Water Utility System thereby further reducing Gross Revenues.

Among other matters, drought, general and local economic conditions and changes in law and government regulations (including initiatives and moratoriums on growth) could adversely affect the amount of Gross Revenues realized by the City.

## **Earthquakes, Floods and Other Natural Disasters**

Earthquakes, floods or other natural disasters could interrupt operation of the Water Utility System and cause increased costs thereby impairing the ability of the City to realize Gross Revenues. The Master Contract requires the City to “procure and maintain such insurance relating to the Water Utility System which it shall deem advisable or necessary to protect its interests and the interests of the Authority, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with water systems similar to the Water Utility System.” Such insurance is permitted to be maintained under a program of self-insurance so long as such program is maintained in the amounts and manner as is, in the opinion of an accredited actuary, actuarially sound. While City currently maintains insurance against damages to its Water Utility System in amounts up to \$10,000,000, damages resulting from earthquakes are not covered. MID does not currently maintain insurance for damages to the Water Treatment Plant resulting from either floods or earthquakes.

Natural disasters could also adversely affect the service area of the Water Utility System, leading to reduced demand for water service and could also result in a loss or contamination of groundwater supplies and/or surface water supplies otherwise available to the City.

### **Demand for Water**

There can be no assurance that the demand for water service will occur as described in this Official Statement. Not only is it possible that future increases in demand for water service will not occur at the rate described herein, it is also possible that current levels of demand could be reduced. A reduction in the level of demand could require an increase in rates or charges in order to comply with the Rate Covenant. See “SECURITY FOR THE 2008 CERTIFICATES — Rate Covenant.”

### **Water Supply**

There can be no assurance that the supply of water available to the City to meet potential system-wide demand will be consistent with the assumptions described in this Official Statement. Adequacy of supply could be adversely affected by factors such as prolonged drought or increases in water quality standards which restrict the ability of the City to use existing groundwater supplies to meet demand. See “THE WATER UTILITY SYSTEM — Water Quality.” While the expansion of the Water Treatment Plant and the construction of the 2006 Project and subsequent improvements to the Water Utility System are intended to reduce the City’s dependence upon groundwater supplies, there is no assurance that any of such improvements will be completed or that they will be completed within a time frame and at a cost consistent with the various projections set forth in this Official Statement.

In addition to the potential problems of insufficient water to meet system-wide demand discussed above, it is possible that the supply of water to meet the demands of particular portions of the City’s water service area will be inadequate for such purposes. Some portions of the service area lack the wells necessary to supply them with groundwater, and other portions lack the infrastructure which would be required in order to deliver water from other portions of the service area.

### **Water Utility System Expenses**

There can be no assurance that the Maintenance and Operation Costs will be consistent with the descriptions in this Official Statement. Increases in such costs could require a significant increase in rates or charges in order to pay for existing and future improvements to the Water Utility System and comply with the Rate Covenant.

### **Rate Process**

The passage of Proposition 218 by the California electorate affects the City’s ability to impose future rate increases, and no assurance can be given that future rate increases will not encounter majority protest opposition under Proposition 218. See “THE WATER UTILITY SYSTEM — Impact of Proposition 218 on Water Utility System Fees and Charges” and “— Effect of Proposition 218 and of Possible General Limitations on Enforcement Remedies.”

### **Statutory and Regulatory Impact**

Laws and regulations governing the treatment and delivery of water are enacted and promulgated by governmental agencies on the federal, state and local levels. Compliance with these

laws and regulations may prove costly; and, as more stringent statutory and regulatory standards are developed to protect both the health of consumers and environment, these costs will likely continue to increase. Claims against the City with respect to the Water Utility System could be significant, and such claims will be payable from Gross Revenues. No assurance can be given that the cost of compliance with applicable laws and regulations will not materially adversely affect the ability of the City to comply with the Rate Covenant.

### **Limitations on Remedies and Bankruptcy**

The ability of the City to increase fees and charges for water service and to comply with the Rate Covenant may be adversely affected by actions and events outside of the control of the City and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of fees and charges. See “THE WATER UTILITY SYSTEM — Impact of Proposition 218 on Water Utility System Fees and Charges” and “— Effect of Proposition 218 and of Possible General Limitations on Enforcement Remedies.” Furthermore, any remedies available to the Owners of the 2008 Certificates upon the occurrence of an event of default under the Contract are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on remedies contained in the Contract, the rights and obligations under the 2008 Certificates and the Contract may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against cities in the State of California. Various legal opinions to be delivered concurrently with the issuance of the 2008 Certificates will be so qualified. In addition, the opinion to be delivered by Sidley Austin LLP, Special Counsel, concurrently with the execution and delivery of the 2008 Certificates, will also state that the enforceability of the Contract is subject to the limitations on the imposition of fees and charges by the City relating to the Water Utility System under Articles XIIC and XIID of the California Constitution. A copy of the proposed form of opinion of Special Counsel is set forth in Appendix C hereto. In the event the City fails to comply with its covenants under the Contract or to pay principal or interest evidenced by the 2008 Certificates, there can be no assurance that available remedies will be adequate to fully protect the interests of the Owners of the 2008 Certificates.

The enforcement of the remedies provided in the Contract could prove both expensive and time consuming. In addition, the rights and remedies provided in the Contract may be limited by and are subject to provisions of the federal bankruptcy laws, as now or hereafter enacted, and to other laws or equitable principles that may affect creditors’ rights.

### **Limited Obligations**

The 2008 Certificates are limited obligations of the City are not secured by a legal or equitable pledge or charge or lien upon any property of the City or any of its income or receipts, except the Gross Revenues of the Water Utility System. The obligation of the City to make the 2008 Payments does not constitute an obligation of the City to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

## **THE AUTHORITY**

The Authority was established pursuant to the provisions of Sections 6500 *et seq.* of the California Government Code and a Joint Exercise of Powers Agreement, dated as of December 1, 1989, by and between the City and the Industrial Development Authority of the City of Modesto. The Authority was established for the purpose of financing the acquisition, construction, improvement and equipping of public capital improvements. The governing board of the Authority consists of the City Council of the City.

## **APPROVAL OF LEGAL PROCEEDINGS**

The legality and enforceability of the 2008 Contract and certain other legal matters are subject to the approval of Sidley Austin LLP, San Francisco, California, acting as Special Counsel. The proposed form of said firm's legal opinion with respect to the 2008 Contract and the 2008 Certificates is attached hereto as APPENDIX C, and such legal opinion will be attached to each 2008 Certificate. Special Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Certain legal matters will be passed upon for the City and the Authority by the City Attorney and by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, Disclosure Counsel; for the Trustee by the Jensen Law Office, Orinda, California; for the 2008 Certificate Insurer by its General Counsel, for the Liquidity Facility Provider by Kathleen C. Johnson, Esq., Santa Barbara, California. Both Sidley Austin LLP and Stradling Yocca Carlson & Rauth, a Professional Corporation have represented the Underwriter in transactions not involving the City or the Authority. The payment of the fees of Special Counsel, Disclosure Counsel, Counsel to the Underwriter and the Trustee is contingent upon the execution and delivery of the 2008 Certificates.

## **LITIGATION**

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending or, to the knowledge of the City or the Authority, threatened against the City or the Authority affecting the existence of the City or the Authority or the titles of their respective directors or officers to their respective offices or seeking to restrain or to enjoin the sale or delivery of the 2008 Certificates, the application of the proceeds thereof in accordance with the 2008 Trust Agreement, or in any way contesting or affecting the validity or enforceability of the 2008 Certificates, the 2008 Trust Agreement, the Contract, or any action of the City or the Authority contemplated by any of said documents, or in any way contesting the completeness or accuracy of this Official Statement or any amendment or supplement thereto, or contesting the powers of the City or the Authority or their respective authority with respect to the 2008 Certificates or any action of the City or the Authority contemplated by any of said documents, nor to the knowledge of the City, is there any basis therefor.

## **TAX MATTERS**

In the opinion of Sidley Austin LLP, San Francisco, California, Special Counsel, based on existing statutes, regulations, rulings and judicial decisions and assuming compliance with certain covenants in the Trust Agreement and the 2008 Contract and requirements of the Internal Revenue Code of 1986, as amended (the "Code"), regarding the use, expenditure and investment of proceeds of the 2008 Certificates and the timely payment of certain investment earnings to the United States, interest with respect to the 2008 Certificates is not includable in the gross income of the owners of

the 2008 Certificates for federal income tax purposes. Failure to comply with such covenants and requirements may cause interest with respect to the 2008 Certificates to be included in gross income retroactively to the date of execution and delivery of the 2008 Certificates.

In the further opinion of Special Counsel, interest with respect to the 2008 Certificates is not treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals and corporations. Interest with respect to the 2008 Certificates, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation's alternative minimum tax liability.

Ownership of, or the receipt of interest with respect to, tax-exempt obligations may result in collateral tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, certain foreign corporations doing business in the United States, certain S corporations with excess passive income, individual recipients of Social Security or Railroad Retirement benefits, taxpayers that may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations and taxpayers who may be eligible for the earned income tax credit. Special Counsel expresses no opinion with respect to any collateral tax consequences and, accordingly, prospective purchasers of the 2008 Certificates should consult their tax advisors as to the applicability of any collateral tax consequences.

Certain requirements and procedures contained or referred to in the Trust Agreement and the 2008 Contract may be changed, and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of counsel nationally recognized in the area of tax-exempt obligations. Special Counsel expresses no opinion as to the effect of any change to any document pertaining to the 2008 Certificates or of any action taken or not taken where such change is made or action is taken or not taken without our approval or in reliance upon the advice of counsel other than Sidley Austin LLP with respect to the exclusion from gross income of the interest represented by the 2008 Certificates for federal income tax purposes.

### **Information Reporting and Backup Withholding**

Interest paid on tax-exempt obligations is subject to information reporting in a manner similar to interest paid on taxable obligations. While this reporting requirement does not, by itself, affect the excludability of interest from gross income for federal income tax purposes, the reporting requirement causes the payment of interest with respect to the 2008 Certificates to be subject to backup withholding if such interest is paid to beneficial owners that (a) are not "exempt recipients," and (b) either fail to provide certain identifying information (such as the beneficial owner's taxpayer identification number) in the required manner or have been identified by the IRS as having failed to report all interest and dividends required to be shown on their income tax returns. Generally, individuals are not exempt recipients, whereas corporations and certain other entities are exempt recipients. Amounts withheld under the backup withholding rules from a payment to a beneficial owner are allowed as a refund or credit against such beneficial owner's federal income tax liability so long as the required information is furnished to the IRS.

### **State Tax Exemption**

In the further opinion of Special Counsel, interest with respect to the 2008 Certificates is exempt from personal income taxes imposed by the State of California.

## **Future Developments**

Future legislative proposals, if enacted into law, regulations, rulings or court decisions may cause interest with respect to the 2008 Certificates to be subject, directly or indirectly, to federal income taxation or to State or local income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. Further, legislation or regulatory actions and proposals may affect the economic value of the federal or state tax exemption or the market value of the 2008 Certificates.

Prospective purchasers of the 2008 Certificates should consult their tax advisors regarding pending or proposed federal or state tax legislation, regulations, rulings or litigation, as to which Special Counsel expresses no opinion.

A copy of the proposed form of opinion of Special Counsel is attached hereto as Appendix C.

## **RATINGS**

Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Ratings Services ("S&P") will assign their ratings of "Aaa/VMIG-1" and "AAA/A-1+", respectively, to the 2008 Certificates upon the satisfaction of the following conditions: upon delivery of the 2008 Certificates, (a) the 2008 Certificate Insurance Policy will be issued by the 2008 Certificate Insurer and (b) the Liquidity Facility will be executed and delivered by the Liquidity Facility Provider. In addition, Moody's has assigned an underlying rating of "A2" to the 2008 Certificates, and S&P has assigned them an underlying rating of "A+." Generally, rating agencies base their ratings on information and material furnished directly to them and on investigations, studies and assumptions made by them. The ratings reflect only the views of such organizations and an explanation of the significance of such ratings may be obtained from Moody's Investors Service, 99 Church Street, New York, New York 10017 and Standard & Poor's Ratings Services, 55 Water Street, New York, New York 10041. There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies, if, in the judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the 2008 Certificates.

## **FINANCIAL ADVISOR**

The City has retained Public Financial Management, Inc., of San Francisco, California, as Financial Advisor (the "Financial Advisor") in connection with the execution and delivery of the 2008 Certificates. The Financial Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. Public Financial Management, Inc. is an independent financial advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities.

## **CERTAIN RELATIONSHIPS**

Banc of America Securities LLC, the Underwriter and Remarketing Agent, and Bank of America, N.A., the Swap Provider and the Liquidity Facility Provider, are affiliates, both being subsidiaries of Bank of America Corporation.

**UNDERWRITING**

The 2008 Certificates will be purchased by Banc of America Securities LLC (the “Underwriter”), under a Purchase Contract pursuant to which the Underwriter has agreed to purchase all, but not less than all, of the 2008 Certificates for an aggregate purchase price of \$47,471,079.37 (representing the principal evidenced thereby less Underwriter’s discount of \$153,920.63).

**MISCELLANEOUS**

Insofar as any statements made in this Official Statement involve matters of opinion or of estimates, whether or not expressly stated, they are set forth as such and not as representations of fact. No representation is made that any of such statements made will be realized. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the Owners of the 2008 Certificates.

The execution and delivery of this Official Statement have been duly authorized by the City and the Authority.

**CITY OF MODESTO, CALIFORNIA**

By: /s/ Wayne Padilla  
Finance Director/Treasurer

**MODESTO PUBLIC FINANCING AUTHORITY**

By: /s/ Wayne Padilla  
Auditor and Treasurer

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## **APPENDIX A**

### **EXCERPTS FROM THE CITY'S FINANCIAL STATEMENTS**

The City has filed its Comprehensive Annual Financial Report ("CAFR") for Fiscal Year 2006-07 with the Nationally Recognized Municipal Securities Information Repositories. Such CAFR is incorporated herein by reference. The following are excerpts from the CAFR relating to the Water Utility System.

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**CITY OF MODESTO**  
**STATEMENT OF NET ASSETS - PROPRIETARY FUNDS**  
**June 30, 2007**

	<i>Enterprise</i>					<i>Internal Service</i>
	<i>Water</i>	<i>Sewer</i>	<i>Bus</i>	<i>Other Enterprise</i>	<i>Total Enterprise</i>	
<b>ASSETS</b>						
Current assets:						
Cash and cash equivalents	\$ 39,127,144	\$ 22,773,037	\$ 4,152,663	\$ 5,032,664	\$ 71,085,508	\$ 53,382,339
Cash and cash equivalents with fiscal agent	2,445,103	4,049,547		610,647	7,105,297	
Receivables:						
Accounts		44,534	34,844	239,580	318,958	857,956
Interest	337,254	166,699	17,008	16,360	537,321	144,238
Utilities, net	6,441,602	2,641,080		557,922	9,640,604	
Taxes	5,109			796	5,905	
Due from governments			1,803,311	784,877	2,588,188	
Prepaid expenses	706,673				706,673	
Inventories						763,492
Property held for resale				630,000	630,000	
Advances to other funds						1,782,462
Total current assets	<u>49,062,885</u>	<u>29,674,897</u>	<u>6,007,826</u>	<u>7,872,846</u>	<u>92,618,454</u>	<u>56,930,487</u>
Noncurrent assets:						
Restricted assets-cash and cash equivalents	42,767,102	16,432,541			59,199,643	
Unamortized costs of issuance	892,938	892,896			1,785,834	
Land and construction in progress	15,958,371	34,942,347	5,416,369	13,989,727	70,306,814	821,033
Other capital assets, net of accumulated depreciation	<u>63,948,764</u>	<u>103,300,068</u>	<u>13,726,444</u>	<u>43,184,021</u>	<u>224,159,297</u>	<u>19,509,723</u>
Total noncurrent assets	<u>123,567,175</u>	<u>155,567,852</u>	<u>19,142,813</u>	<u>57,173,748</u>	<u>355,451,588</u>	<u>20,330,756</u>
Total assets	<u>172,630,060</u>	<u>185,242,749</u>	<u>25,150,639</u>	<u>65,046,594</u>	<u>448,070,042</u>	<u>77,261,243</u>
<b>LIABILITIES</b>						
Current liabilities:						
Accounts payable	\$ 523,698	\$ 2,715,641	\$ 753,143	\$ 995,442	\$ 4,987,924	\$ 1,401,535
Accrued salaries and benefits	73,227	99,100	18,910	47,027	238,264	87,910
Interest payable	264,620	410,407		51,807	726,834	1,038
Current portion - compensated absences						3,259,769
Current portion - claims liability						4,583,644
Current portion - long-term debt	1,018,977	1,710,000		289,148	3,018,125	102,188
Current portion - developer advances	92,822				92,822	
Deferred revenues			<u>2,897,511</u>	<u>221,058</u>	<u>3,118,569</u>	
Total current liabilities	<u>1,973,344</u>	<u>4,935,148</u>	<u>3,669,564</u>	<u>1,604,482</u>	<u>12,182,538</u>	<u>9,436,084</u>
Noncurrent liabilities:						
Payable from restricted assets						
refundable deposits	656,522	424,851			1,081,373	
Compensated absences						64,628,743
Claims liability						12,042,593
Long-term debt:						
Revenue bonds payable		49,848,192			49,848,192	
Loan payable	1,754,299				1,754,299	
Notes payable						116,220
Obligations under capital leases				77,485	77,485	137,392
Certificates of participation	63,541,989			5,435,000	68,976,989	
Developer advances	1,990,367				1,990,367	
Advances from other funds				<u>878,704</u>	<u>878,704</u>	
Total noncurrent liabilities	<u>67,943,177</u>	<u>50,273,043</u>	<u>3,669,564</u>	<u>6,391,189</u>	<u>124,607,409</u>	<u>76,924,948</u>
Total liabilities	<u>69,916,521</u>	<u>55,208,191</u>	<u>3,669,564</u>	<u>7,995,671</u>	<u>136,789,947</u>	<u>86,361,032</u>
<b>NET ASSETS</b>						
Invested in capital assets, net of related debt	55,702,450	102,691,913	19,142,813	51,372,115	170,791,021	20,091,176
Unrestricted	47,011,089	27,342,645	2,338,262	5,678,808	140,489,074	(29,190,965)
Total net assets	<u>\$ 102,713,539</u>	<u>\$ 130,034,558</u>	<u>\$ 21,481,075</u>	<u>\$ 57,050,923</u>	311,280,095	<u>\$ (9,099,789)</u>
Adjustment to reflect the consolidation of internal service fund activities related to enterprise funds.					<u>(875,700)</u>	
Net assets of business-type activities					<u>\$ 310,404,395</u>	

The notes to basic financial statements are an integral part of this statement.

**CITY OF MODESTO**  
**STATEMENT OF REVENUES, EXPENSES AND CHANGES**  
**IN FUND NET ASSETS - PROPRIETARY FUNDS**  
**Year Ended June 30, 2007**

	<i>Enterprise</i>				<i>Total Enterprise</i>	<i>Internal Service</i>
	<i>Water</i>	<i>Sewer</i>	<i>Bus</i>	<i>Other Enterprise</i>		
OPERATING REVENUES:						
Charges for services	\$ 49,289,417	\$ 24,776,869	\$ 2,390,892	\$ 11,086,967	\$ 87,544,145	\$ 43,641,010
Sales						4,757,411
Cost of sales						(3,939,828)
Miscellaneous	15,616	56,150	154,898	45,875	272,539	
Total operating revenues	<u>49,305,033</u>	<u>24,833,019</u>	<u>2,545,790</u>	<u>11,132,842</u>	<u>87,816,684</u>	<u>44,458,593</u>
OPERATING EXPENSES:						
Salaries and wages	4,105,016	5,136,040	914,950	2,633,769	12,789,775	4,379,438
Contractual services	2,041,814	2,700,492	7,667,756	4,921,651	17,331,713	983,009
Utilities	1,926,634	1,107,437	78,238	413,330	3,525,639	485,393
Maintenance and supplies	4,034,053	2,770,550	1,599,586	2,375,374	10,779,563	3,935,434
Water purchases	12,904,328				12,904,328	
Insurance	131,337	298,464	55,941	160,279	646,021	13,398,895
Claims expense						9,231,869
Employee benefits	1,561,618	2,100,382	339,276	1,032,997	5,034,273	10,851,683
Administration services	2,237,066	1,238,155	497,071	1,302,286	5,274,578	1,504,323
Allocated indirect administrative costs	1,049,489	760,932	277,794	406,422	2,494,637	264,010
Other	78,673	130,838	89,894	77,925	377,330	147,574
Depreciation	2,396,440	5,028,528	2,093,587	2,527,966	12,046,521	3,198,649
Total operating expenses	<u>32,466,468</u>	<u>21,271,818</u>	<u>13,614,093</u>	<u>15,851,999</u>	<u>83,204,378</u>	<u>48,380,277</u>
OPERATING INCOME (LOSS)	<u>16,838,565</u>	<u>3,561,201</u>	<u>(11,068,303)</u>	<u>(4,719,157)</u>	<u>4,612,306</u>	<u>(3,921,684)</u>
NONOPERATING REVENUES (EXPENSES)						
Operating grants			9,672,682	554,649	10,227,331	4,000
Gain (Loss) on disposition of capital assets	(147,600)	(112,741)	(18,470)	(189,445)	(468,256)	(659,282)
Tax revenue				222,776	222,776	
Tax expense	(85,487)	(91,495)		(14,801)	(191,783)	
Interest income	2,242,135	812,288	113,220	100,579	3,268,222	1,481,764
Net increase in fair value of investments	734,296	400,169	40,923	61,723	1,237,111	628,481
Rental income	37,770	58,354	78,106	727,076	901,306	
Settlements and recoveries	831,798	663,663			1,495,461	
Interest expense	(2,249,824)	(1,931,309)		(305,560)	(4,486,693)	(10,577)
Amortization of costs of issuance	(33,378)	(46,220)			(79,598)	
Total nonoperating revenues (expenses)	<u>1,329,710</u>	<u>(247,291)</u>	<u>9,886,461</u>	<u>1,156,997</u>	<u>12,125,877</u>	<u>1,444,386</u>
INCOME (LOSS) BEFORE CAPITAL CONTRIBUTIONS AND TRANSFERS	18,168,275	3,313,910	(1,181,842)	(3,562,160)	16,738,183	(2,477,298)
Capital contributions	2,345,957	2,666,690	363,651	1,922,714	7,299,012	558,148
Transfers in	264,000	226,389	1,500	985,437	1,477,326	1,298,335
Transfers out	(65,000)	(65,000)	(65,694)	(128,000)	(323,694)	(38,550)
Special item	(296,407)	(209,091)			(505,498)	
CHANGE IN NET ASSETS	20,416,825	5,932,898	(882,385)	(782,009)	24,685,329	(659,365)
NET ASSETS, July 1	<u>82,296,714</u>	<u>124,101,660</u>	<u>22,363,460</u>	<u>57,832,932</u>		<u>(8,440,424)</u>
NET ASSETS, June 30	<u>\$ 102,713,539</u>	<u>\$ 130,034,558</u>	<u>21,481,075</u>	<u>\$ 57,050,923</u>		<u>\$ (9,099,789)</u>
Adjustment to reflect the consolidation of internal service fund activities related to enterprise funds.					(1,712,901)	
Change in net assets of business-type activities					<u>\$ 22,972,428</u>	

The notes to basic financial statements are an integral part of this statement.

**CITY OF MODESTO**  
**STATEMENT OF CASH FLOWS - PROPRIETARY FUNDS**  
**Year Ended June 30, 2007**

	<i>Enterprise</i>					<i>Internal Service</i>
	<i>Water</i>	<i>Sewer</i>	<i>Bus</i>	<i>Other Enterprise</i>	<i>Total Enterprise</i>	
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>						
Receipts from customers and users	\$ 47,758,187	\$ 24,828,928	\$ 2,595,078	\$ 11,954,968	\$ 87,137,161	\$ 4,812,775
Receipts from interfund services provided	427,858	65,035		23,521	516,414	39,660,607
Payments to suppliers	(19,473,381)	(2,969,190)	(9,054,243)	(5,884,024)	(37,380,838)	(18,835,253)
Payment of insurance claims						(8,936,742)
Payments to employees	(5,661,907)	(7,237,125)	(1,251,420)	(3,663,140)	(17,813,592)	(8,956,088)
Payments for interfund services used	<u>(5,310,466)</u>	<u>(3,964,147)</u>	<u>(1,412,537)</u>	<u>(3,364,808)</u>	<u>(13,781,958)</u>	<u>(2,244,913)</u>
Net cash provided (used) by operating activities	<u>17,740,291</u>	<u>10,723,501</u>	<u>(8,853,122)</u>	<u>(933,483)</u>	<u>18,677,187</u>	<u>5,500,386</u>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:</b>						
Operating grants received			11,935,926	565,482	12,501,408	5,038
Taxes received				222,776	222,776	
Settlements and recoveries	831,798	663,663			1,495,461	
Transfers in	264,000	226,389	1,500	985,437	1,477,326	1,298,335
Transfers out	(65,000)	(65,000)	(65,694)	(128,000)	(323,694)	(38,550)
New advances from other funds				878,704		121,014
Net cash provided (used) by noncapital financing activities	<u>1,030,798</u>	<u>825,052</u>	<u>11,871,732</u>	<u>2,524,399</u>	<u>15,373,277</u>	<u>1,385,837</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</b>						
Acquisition and construction of capital assets	(6,058,751)	(10,512,609)	(1,222,095)	(2,120,363)	(19,913,818)	(3,732,362)
Proceeds of sale of capital assets		13,502				
Proceeds of debt issues	46,275,000	16,535,000				
Costs of issuance paid	(685,703)	(339,604)				
Bond discount paid		(323,867)				
Principal repayments	(1,072,336)	(1,650,000)		(275,955)	(2,998,291)	(26,587)
Interest paid	(2,163,506)	(2,055,524)		(309,551)	(4,528,581)	(10,577)
Capital grants received			363,651	1,546,459	1,910,110	
Connection fees for capital purposes	<u>2,023,224</u>	<u>663,316</u>			<u>2,686,540</u>	
Net cash used by capital and related financing activities	<u>38,317,928</u>	<u>2,330,214</u>	<u>(858,444)</u>	<u>(1,159,410)</u>	<u>(22,844,040)</u>	<u>(3,769,526)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>						
Interest received	2,029,235	1,227,069	105,360	136,465	3,498,129	1,557,085
Net increase in the fair value of investments	<u>734,296</u>	<u>400,169</u>	<u>40,923</u>	<u>61,723</u>	<u>1,237,111</u>	<u>628,481</u>
Net cash provided by investing activities	<u>2,763,531</u>	<u>1,627,238</u>	<u>146,283</u>	<u>198,188</u>	<u>4,735,240</u>	<u>2,185,566</u>
Net increase (decrease) in cash and cash equivalents	59,852,548	15,506,005	2,306,449	629,694	78,294,696	5,354,364
CASH AND CASH EQUIVALENTS, JULY 1	<u>24,486,801</u>	<u>27,749,120</u>	<u>1,846,214</u>	<u>5,013,617</u>	<u>59,095,752</u>	<u>48,027,975</u>
CASH AND CASH EQUIVALENTS, JUNE 30	<u>\$ 84,339,349</u>	<u>\$ 43,255,125</u>	<u>\$ 4,152,663</u>	<u>\$ 5,643,311</u>	<u>\$ 137,390,448</u>	<u>\$ 53,382,339</u>
<b>RECONCILIATION TO STATEMENT OF NET ASSETS:</b>						
Cash and cash equivalents	\$ 39,127,144	\$ 22,773,037	\$ 4,152,663	\$ 5,032,664	\$ 71,085,508	\$ 53,382,339
Cash and cash equivalents with fiscal agent	2,445,103	4,049,547		610,647	7,105,297	
Restricted assets-cash and cash equivalents	<u>42,767,102</u>	<u>16,432,541</u>			<u>59,199,643</u>	
TOTAL CASH AND CASH EQUIVALENTS	<u>\$ 84,339,349</u>	<u>\$ 43,255,125</u>	<u>\$ 4,152,663</u>	<u>\$ 5,643,311</u>	<u>\$ 137,390,448</u>	<u>\$ 53,382,339</u>

(continued)

	<i>Enterprise</i>					
	<i>Water</i>	<i>Sewer</i>	<i>Bus</i>	<i>Other Enterprise</i>	<i>Total Enterprise</i>	<i>Internal Service</i>
RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES:						
Operating income (loss)	<u>\$ 16,838,565</u>	<u>\$ 3,561,201</u>	<u>\$ (11,068,303)</u>	<u>\$ (4,719,157)</u>	<u>\$ 4,612,306</u>	<u>\$(3,921,684)</u>
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities:						
Depreciation	2,396,440	5,028,528	2,093,587	2,527,966	12,046,521	3,198,649
Rental income	37,770	58,354	78,106	727,076	901,306	
Taxes paid	(85,487)	(91,495)		(15,597)	(192,579)	
Special item	(296,407)	(209,091)			(505,498)	
Change in assets and liabilities:						
(Increase) in accounts receivable	1,440	14,175	(28,818)	120,541	107,338	(23,898)
(Increase) in utilities receivable	(1,149,441)	(200,399)		490	(1,349,350)	
(Increase) in taxes receivable	(1,169)				(1,169)	
Decrease in due from governments		127,064			127,064	38,687
(Increase) decrease in prepaid expenses	296,327				296,327	
(Increase) in inventories						(246,573)
(Decrease) in accounts payable and accrued expenses	(294,886)	2,374,117	69,500	423,236	2,571,967	(114,955)
Increase in accrued salaries and benefits	4,727	(703)	2,806	3,626	10,456	3,475
Increase in compensated absences						6,271,558
(Decrease) in claims liability						295,127
Increase in deferred revenues				(1,664)	(1,664)	
Increase (decrease) in refundable deposits	(7,588)	61,750			54,162	
Total adjustments	<u>901,726</u>	<u>7,162,300</u>	<u>2,215,181</u>	<u>3,785,674</u>	<u>14,064,881</u>	<u>9,422,070</u>
Net cash provided (used) by operating activities	<u>\$ 17,740,291</u>	<u>\$ 10,723,501</u>	<u>(8,853,122)</u>	<u>\$ (933,483)</u>	<u>\$ 8,677,187</u>	<u>\$ 5,500,386</u>
NONCASH INVESTING, CAPITAL AND FINANCING ACTIVITIES:						
Capital assets transferred in	\$ 38,683	\$ 444,898		\$ 18,545	\$ 502,126	\$ 558,148
Developer infrastructure contributions	284,050	1,558,476			1,842,526	

## APPENDIX B

### DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

The following is a summary of the provisions of the Contract and the Trust Agreement. This summary is not intended to be definitive and is qualified in its entirety by reference to the aforementioned documents. Copies of the Contract and the Trust Agreement are available upon request from the Trustee.

All capitalized terms not defined herein or elsewhere in this Official Statement shall have the meanings set forth in the Contract and the Trust Agreement.

#### THE CONTRACT

Certain provisions of the Contract are summarized below. THIS SUMMARY DOES NOT PURPORT TO BE COMPLETE OR DEFINITIVE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TERMS OF THE CONTRACT.

#### Definitions

The following are summaries of definitions of certain terms from the Contract used in this Summary of Principal Legal Documents or elsewhere in this Official Statement.

“Accountant’s Report” means a report signed by an Independent Certified Public Accountant.

“Adjusted Annual Gross Revenues” means, for any Fiscal Year or any designated twelve (12) month period in question, the Gross Revenues during such Fiscal Year or twelve (12) month period, plus deposits to the Revenue Fund from amounts on deposit in the Rate Stabilization Fund, but only as and to the extent specified in the Master Contract; minus, (y) amounts transferred from the Revenue Fund to the Rate Stabilization Fund in accordance with the Master Contract and, (z) for the purposes of determining compliance with the rate covenant only set forth in the Master Contract, earnings from the investments in the Parity Reserve Fund that are deposited in the Revenue Fund in such Fiscal Year or twelve (12) month period.

“Adjusted Annual Net Revenues” means, for any Fiscal Year or any designated twelve (12) month period in question, the Adjusted Annual Gross Revenues during such Fiscal Year or twelve (12) month period less the Maintenance and Operation Costs during such Fiscal Year or twelve (12) month period.

“Annual Debt Service” means, for any Fiscal Year or any designated twelve (12) month period in question, the required payments to be made with respect to all Outstanding Parity Obligations in such Fiscal Year or twelve (12) month period; provided, that for purposes of determining compliance with the rate covenant set forth in the Master Contract, the Reserve Fund Requirement and conditions for the execution of Parity Obligations:

(A) Generally. Except as otherwise provided by subparagraph (B) with respect to Variable Interest Rate Parity Obligations and by subparagraph (C) with respect to Parity Obligations with respect to which a Payment Agreement is in force, interest on any Parity Obligation will be calculated based on the actual amount of interest that is payable under that Parity Obligation;

(B) Interest on Variable Interest Rate Parity Obligations. The amount of interest deemed to be payable on any Variable Interest Rate Parity Obligation will be calculated on the assumption that the interest rate on that Parity Obligation would be equal to the rate (the “assumed RBI-based rate”) that is ninety percent (90%) of the average RBI during the twelve (12) calendar month period immediately preceding the date in which the calculation is made;

(C) Interest on Parity Obligations with respect to which a Payment Agreement is in force. The amount of interest deemed to be payable on any Parity Obligations with respect to which a Payment Agreement is in force will, so long as the Qualified Counterparty thereto is not in default thereunder, be based on the net economic effect on the City expected to be produced by the terms of such Parity Obligation and such Payment Agreement, including but not limited to the effects that (i) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a Variable Interest Rate instead will be treated as an obligation bearing interest at a fixed interest rate, and (ii) such Parity Obligation would, but for such Payment Agreement, be treated as an obligation bearing interest at a fixed interest rate instead will be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Parity Obligation with respect to which a Payment Agreement is in force will, so long as the Qualified Counterparty thereto is not in default thereunder, be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Parity Obligation plus the Payment Agreement Payments minus the Payment Agreement Receipts, and for the purpose of calculating Payment Agreement Receipts and Payment Agreement Payments under such Payment Agreement, the following assumptions will be made:

(1) Counterparty Obligated to Pay Actual Variable Interest Rate on Variable Interest Rate Parity Obligations. If the Payment Agreement obligates a Qualified Counterparty to make payments to the City based on the actual Variable Interest Rate on a Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation and obligates the City to make payments to the Qualified Counterparty based on a fixed rate, payments by the City to the Qualified Counterparty will be assumed to be made at the fixed rate specified by the Payment Agreement and payments by the Qualified Counterparty to the City will be assumed to be made at the actual Variable Interest Rate on such Parity Obligation, without regard to the occurrence of any event that, under the provisions of the Payment Agreement, would permit the Qualified Counterparty to make payments on any basis other than the actual Variable Interest Rate on such Parity Obligation, and such Parity Obligation will set forth a debt service schedule based on that assumption;

(2) Variable Interest Rate Parity Obligations and Payment Agreements Having the Same Variable Interest Rate Component. If both a Payment Agreement and the related Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation, include a variable interest rate payment component that is required to be calculated on the same basis (including, without limitation, on the basis of the same variable interest rate index), it will be assumed that the variable interest rate payment component payable pursuant to the Payment Agreement is equal in amount to the variable interest rate component payable on such Parity Obligation;

(3) Variable Interest Rate Parity Obligations and Payment Agreements Having Different Variable Interest Rate Components. If a Payment Agreement obligates either the City or the Qualified Counterparty to make payments of a variable interest rate component on a basis that is different (including, without limitation, on a different variable interest rate index) from the basis that

is required to be used to calculate interest on the Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation it will be assumed:

(a) City Obligated to Make Payments Based on Variable Interest Rate Index. If payments by the City under the Payment Agreement are based on a variable interest rate index and payments by the Qualified Counterparty are based on a fixed interest rate, payments by the City to the Qualified Counterparty will be based upon an interest rate equal to the assumed RBI-based rate, and payments by the Qualified Counterparty to the City will be based on the fixed rate specified by the Payment Agreement; and

(b) City Obligated to Make Payments Based on Fixed Interest Rate. If payments by the City under the Payment Agreement are based on a fixed interest rate and payments by the Qualified Counterparty are based on a variable interest rate index, payments by the City to the Qualified Counterparty will be based on an interest rate equal to the rate (the “assumed fixed payor rate”) that is one hundred and five percent (105%) of the fixed interest rate specified by the Payment Agreement to be paid by the City, and payments by the Qualified Counterparty to the City will be based on a rate equal to the actual variable interest rate on the Variable Interest Rate Parity Obligation.

(4) Certain Payment Agreements May be Disregarded. Notwithstanding the provisions of subparagraphs (C)(1), (2) and (3) of this definition, the City will not be required to (but may at its option) take into account as set forth in subparagraph (C) of this definition (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(D) Debt Service on Parity Payment Agreements. No interest will be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on a related Parity Obligation under subparagraph (C) of this definition; provided, that for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any Parity Obligation because the Parity Payment Agreement is not then related to any Parity Obligation, interest on that Parity Payment Agreement will be taken into account by assuming:

(1) City Obligated to Make Payments Based on Fixed Interest Rate. If the City is obligated to make Payment Agreement Payments based on a fixed interest rate and the Qualified Counterparty is obligated to make payments based on a variable interest rate index, payments by the City will be based on the assumed fixed payor rate, and payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the quarter preceding the quarter in which the calculation is made; and

(2) City Obligated to Make Payments Based on Variable Interest Rate Index. If the City is obligated to make Payment Agreement Payments based on a variable interest rate index and the Qualified Counterparty is obligated to make payments based on a fixed interest rate, payments by the City will be based on an interest rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the quarter preceding the quarter in which the calculation is made, and the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement; and

(3) Certain Payment Agreements May be Disregarded. Notwithstanding the provisions of subparagraphs (D)(1) and (2) of this definition, the City will not be required to (but may at its option) take into account (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(E) Balloon Parity Obligations. For purposes of calculating Annual Debt Service on any Balloon Parity Obligations, it will be assumed that the principal of those Balloon Parity Obligations, together with interest thereon at a rate equal to the assumed RBI-based rate, will be amortized in equal annual installments over a term of thirty (30) years from the date of issuance.

“Authority” means the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California.

“Average Annual Debt Service” means the sum of the Annual Debt Service for all Fiscal Years during the period commencing with the Fiscal Year in which such calculation is made (or if appropriate, the first full Fiscal Year following the issuance of Parity Obligations) and terminating with the last Fiscal Year in which payments are due under Outstanding Parity Obligations, divided by the number of such Fiscal Years.

“Balloon Parity Obligation” means any Parity Obligation described as such in such Parity Obligation.

“Business Day” means any day (other than a Saturday or a Sunday) on which banks in New York, New York, are open for business and on which the Trustee is open for business at its corporate trust office in San Francisco, California.

“CDWR Loan” means the loan to the City from the State of California Department of Water Resources in the principal amount of \$3,895,000, which obligation is payable from Gross Revenues on a parity with the Payments under the Contracts.

“Certificate of the City” means an instrument in writing signed by the City Manager, the Finance Director, or any other officer of the City duly authorized by the City Council for that purpose.

“City” means the City of Modesto, a charter city and municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State of California.

“Code” means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code will be deemed to be a reference to any successor to any such section.

“Connection Fees” means all fees and charges payable to the City for the privilege of connecting to the Water Utility System.

“Consultant’s Report” means a report signed by an Independent Consultant.

“Continuing Disclosure Agreement” means any continuing disclosure agreement, by and between the City and the Trustee, delivered pursuant to the Contracts.

“Contracts” means the Master Contract and all Supplemental Contracts.

“Event of Default” means an event described as an event of default under the Master Contract.

“Federal Securities” means United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations for which the full faith and credit of the United States of America are pledged for the payment of interest and principal, or securities evidencing ownership interests in such obligations or in specified portions of the interest on or principal of such obligations.

“Finance Director” means the Finance Director of the City.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the City Council of the City as the Fiscal Year of the City.

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures selected by the City, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Gross Revenues” means all gross income and revenue received or receivable by the City from the ownership or operation of the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including all rates, fees and charges (including all Connection Fees, contributions in aid of construction, and charges and standby water availability charges legally available for debt service) received by the City for the Water Service and the other services and facilities of the Water Utility System and all net proceeds of insurance covering business interruption loss relating to the Water Utility System and all other income and revenue howsoever derived by the City from the ownership or operation of the Water Utility System or arising from the Water Utility System, and including all Payment Agreement Receipts, and including all income from the deposit or investment of any money in the Revenue Fund or, to the extent deposited in the Revenue Fund, in the Parity Reserve Fund, but excluding in all cases any proceeds of taxes and any refundable deposits made to establish credit and advances.

“Improvement Fund” means the City of Modesto Water Utility System Improvement Fund established pursuant to the Master Contract.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State of California, appointed and paid by the City, and who, or each of whom:

(1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the City;

(2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and

(3) is not connected with the City as a director, officer or employee of the City, but who may be regularly retained to audit the accounting records of and make reports thereon to the City.

“Independent Consultant” means any registered engineer or firm of registered engineers of national reputation generally recognized to be well qualified in engineering matters relating to water systems, or any other financial consultant or firm of financial consultants generally recognized to be well qualified in matters relating to water systems, appointed and paid by the City, and who or each of whom:

- (1) is in fact independent and not under the domination of the City;
- (2) does not have a substantial financial interest, direct or indirect, in the operations of the City; and
- (3) is not connected with the City as a director, officer or employee of the City, but may be regularly retained to make reports to the City.

“Maintenance and Operation Costs” means the costs paid or incurred by the City for maintaining and operating the Water Utility System, determined in accordance with Generally Accepted Accounting Principles, including, but not limited to, (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water Utility System in good repair and working order, (b) all costs of water purchased by the City, including all costs under the Treatment and Delivery Agreement which do not constitute debt service thereunder, (c) all administrative costs of the City that are charged directly or apportioned to the operation of the Water Utility System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, payments into pension funds, and (d) all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Master Contract or of any resolution authorizing the execution of any Parity Obligation or of such Parity Obligation, such as compensation, reimbursement and indemnification of the trustee or remarketing agent for any such Parity Obligation, letter of credit fees for any such Parity Obligations and fees and expenses of Independent Certified Public Accountants and Independent Consultants; but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, premiums and discounts, (2) interest expense, (3) amounts paid from funds of the City other than Gross Revenues, and (4) in-lieu transfers or recoupment of contributed capital to the City’s general fund.

“Master Contract” means the Master Installment Purchase Contract executed and entered into as of November 1, 1997, by and between the City and the Authority, as the same may be amended or supplemented from time to time.

“Maximum Annual Debt Service” means the greatest Annual Debt Service payable on Parity Obligations in any Fiscal Year during the period commencing with the Fiscal Year in which the determination is being made and terminating with the last Fiscal Year in which payments are due under Outstanding Parity Obligations.

“Moody’s” means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the services of a municipal securities rating agency, then “Moody’s” will be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

“Net Proceeds” means, when used with respect to any condemnation award or with respect to any insurance proceeds, the amount of such condemnation award or such insurance proceeds remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such award or such proceeds.

“1997 Certificates” means the \$25,585,000 Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project), evidencing and representing proportionate interests of the owners thereof in the 1997 Payments to be made by the City.

“1997 Payments” means the installment payments required to be made by the City to the Authority under and pursuant to the 1997 Supplemental Contract.

“1997 Supplemental Contract” means the 1997 Supplemental Installment Purchase Contract, executed and entered into as of November 1, 1997, by and between the City and the Authority, supplementing the Master Contract.

“1997 Trust Agreement” means that certain Trust Agreement, dated as of November 1, 1997, by and between the Authority and State Street Bank and Trust Company, N.A., which has been succeeded by The Bank of New York Trust Company, N.A., as trustee, pursuant to which there was executed and delivered the 1997 Certificates.

“Opinion of Counsel” means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, retained by the City.

“Outstanding,” when used as of any particular time with reference to Parity Obligations, means all Parity Obligations which have not been paid or otherwise satisfied as provided in the Master Contract.

“Parity Bank Agreements” means an agreement with a bank or other financial institution relating to an irrevocable letter of credit, guarantee or other credit enhancement device providing liquidity or irrevocable credit or security for the payment of Parity Obligations.

“Parity Obligation Payment Fund” means the City of Modesto Water Utility System Parity Obligation Payment Fund established pursuant to the Master Contract.

“Parity Obligations” means the payment obligations under the Treatment and Delivery Agreement which constitute debt service, the payment obligations under the CDWR Loan Agreement, and all Supplemental Contracts and all other obligations hereafter incurred by the City the payment of which constitutes a charge and lien on the Gross Revenues equal to and on a parity with the charge and lien upon the Gross Revenues for the payment of the Payments, other than (i) such portion of the payment obligations (including certain payments due upon an early termination thereof) under any Parity Payment Agreement to the extent such obligations are expressly subordinate to Parity Obligations pursuant to the terms of such Parity Payment Agreement and (ii) Parity Bank Agreements; provided that no amounts have been drawn under any such Parity Bank Agreements which have not been reimbursed by the City.

“Parity Payment Agreement” means a Payment Agreement which is a Parity Obligation.

“Parity Reserve Fund” means the City of Modesto Water Utility System Parity Reserve Fund established pursuant to the 1997 Trust Agreement.

“Payment Agreement” means a written agreement for the purpose of managing or reducing the City’s exposure to fluctuations in interest rates or for any other interest rate, investment, cash flow, asset or liability managing purposes, entered into either on a current or forward basis by the City and a Qualified Counterparty in connection with, or incidental to, the entering into of any Parity Obligation, that provides for an exchange of payments based on interest rates, ceilings or floors on such payments, cash flows, options on such payments, or any combination thereof or any similar device.

“Payment Agreement Payments” means the amounts required to be paid periodically by the City to the Qualified Counterparty pursuant to a Payment Agreement.

“Payment Agreement Receipts” means the amounts required to be paid periodically by the Qualified Counterparty to the City pursuant to a Payment Agreement.

“Payment Date” means any date on which Payments are scheduled to be paid by the City under and pursuant to any Supplemental Contract.

“Payments” means the installment payments scheduled to be paid by the City under and pursuant to the Master Contract and all Supplemental Contracts.

“Permitted Investments” means any of the following obligations if and to the extent that they are permissible investments of funds of the City as stated in its current investment policy (copies of which the City will provide on a current basis to the Trustee) and to the extent then permitted by law:

- (1) Federal Securities;
- (2) Obligations issued by the Resolution Funding Corporation and the Student Loan Marketing Association, or obligations, participations, or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Government National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal);
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or any of its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System and which are drawn on any bank the short-term obligations of which are rated in the highest letter and numerical rating category as provided by Moody’s and by S&P; provided, that purchases of eligible bankers acceptances may not exceed two hundred seventy (270) days’ maturity;
- (4) Commercial paper of “prime” quality of the highest ranking or of the highest letter and numerical rating category as provided by Moody’s and by S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars (\$500,000,000) and that have an “A” or higher rating for the issuer’s unsecured debentures, other than commercial paper, as provided by Moody’s and by S&P; provided, that purchases of eligible commercial paper may not exceed one hundred eighty (180) days’ maturity nor represent more than ten percent (10%) of the outstanding commercial paper of an issuing corporation;

(5) Non-negotiable certificates of deposit issued by a state or national bank (including the Trustee or any of its affiliates) that have maturities of not more than three hundred sixty-five (365) days and that are fully insured by the Federal Deposit Insurance Corporation or the short-term obligations of which state or national bank are rated no lower than “A1” by Moody’s and “A+” by S&P;

(6) Any repurchase agreement of any securities enumerated in subdivisions (1) and (2) with any state or national bank (including the Trustee or any of its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than “A1” by Moody’s and “A+” by S&P or whose commercial paper is rated no lower than “P-1” by Moody’s and no lower than “A-1” by S&P; (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; provided, that (a) the term of such repurchase agreement is less than one (1) year or due on demand; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the market value of the collateral (as determined at least once in every fourteen (14) days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody’s and to S&P; (d) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; and (e) the repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with retail customers which falls under the jurisdiction of the Securities Investors Protection Corporation; provided, that: (a) the market value of the collateral (as determined at least once in every fourteen (14) days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody’s and to S&P; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the Trustee has a perfected first priority security interest in the collateral; (d) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (e) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;

(7) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State of California or any local agencies therein which are rated in the highest short-term rating category or within one of the three highest long-term rating categories by Moody’s and by S&P (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);

(8) For amounts less than one hundred thousand dollars (\$100,000), interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof, and of which an aggregate total of one hundred thousand dollars (\$100,000) is not exceeded in any one financial institution;

(9) Investments in units of a money-market fund portfolio that is rated in the highest letter and numerical rating category by Moody’s and by S&P (including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services) and that is composed of direct obligations of, or on obligations guaranteed by, the full faith and credit of the United States of America or repurchase agreements collateralized by such obligations;

(10) a guaranteed investment contract with a financial institution or insurance company (or guaranteed by a financial institution or insurance company) which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated within the two highest rating categories of any Rating Agency;

(11) Obligations approved in writing by Moody's and by S&P;

(12) The Local Agency Investment Fund or similar pooled fund operated by or on behalf of the State of California and which is authorized to accept investments by or on behalf of the City of the moneys held by the Trustee in any of the accounts or funds established pursuant to the Master Contract; and

(13) The California Asset Management Program (CAMP).

“Project” means any additions, betterments, extensions or improvements to the Water Utility System designated by the City Council of the City as a Project, the acquisition and construction of which (together with the incidental costs and expenses related thereto) is to be financed or refinanced by the proceeds of any Parity Obligation as provided therein.

“Qualified Counterparty” means a party (other than the City) who is the other party to a Payment Agreement and (1) (a) whose senior debt obligations are rated in one of the three (3) highest rating categories of each of the Rating Agencies then rating any Parity Obligations (without regard to any gradations within a rating category), or (b) whose obligations under the Payment Agreement are guaranteed for the entire term of the Payment Agreement by a bond insurer or other institution which has been, or whose debt service obligations have been, assigned a credit rating in one of the three highest rating categories of each of the Rating Agencies then rating any Parity Obligations, and (2) who is otherwise qualified to act as the other party to a Payment Agreement with the City under any applicable laws.

“Rate Stabilization Fund” means the fund by that name established pursuant to the Master Contract.

“Rating Agencies” means Moody's and S&P, and their respective successors or assigns, or any other nationally recognized securities rating agency or agencies rating any Parity Obligations at the Request of the City.

“RBI” means the Bond Buyer Revenue Bond Index or comparable index of long-term municipal obligations chosen by the City, or, if no comparable index can be obtained, eighty percent (80%) of the interest rate on actively traded thirty (30) year United States Treasury obligations.

“Request of the City” means an instrument in writing signed by the City Manager of the City, the Finance Director, or any other officer of the City duly authorized by the City Council for that purpose.

“Reserve Fund Requirement” means, as of any date of determination and excluding any Parity Obligations which are not Supplemental Contracts and the debt service thereon, the least of (a) ten percent (10%) of the initial offering price to the public of the Parity Obligations as determined under the Code, or (b) the Maximum Annual Debt Service, or (c) one hundred twenty-five percent (125%) of the Average Annual Debt Service, all as computed and determined by the City and

specified in writing to the Trustee; provided, that such requirement (or any portion thereof) may be provided by one or more policies of municipal bond insurance or surety bonds issued by a municipal bond insurer or by a letter of credit issued by a bank or other institution if the obligations insured by such insurer or issued by such bank or other institution, as the case may be, have ratings at the time of issuance of such policy or surety bond or letter of credit equal to “Aa” or higher assigned by Moody’s (if Moody’s is then rating any of the Parity Obligations) and “AA” or higher assigned by S&P (if S&P is then rating any of the Parity Obligations) and that maintain at all times ratings at least equal to the lowest ratings (without giving effect to municipal bond insurance or other credit enhancement) on any of the Parity Obligations provided by Moody’s (if Moody’s is then rating any of the Parity Obligations) and by S&P (if S&P is then rating any of the Parity Obligations). If at any time, obligations insured by any such municipal bond insurer issuing a policy of municipal bond insurance or surety bond or a bank or other institution issuing a letter of credit as permitted by this definition will no longer maintain such ratings as required in accordance with the immediately preceding sentence, the City will provide or cause to be provided cash or a substitute municipal bond insurance policy or surety bond or a letter of credit meeting such requirements.

“Revenue Fund” means the City of Modesto Water Utility System Revenue Fund established pursuant to the Master Contract.

“S&P” means Standard & Poor’s Ratings Services, a division of the McGraw Hill Companies, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors or assigns, except that if such entity will be dissolved or liquidated or will no longer perform the services of a municipal securities rating agency, then “S&P” will be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

“State” means the State of California.

“Subordinate Obligations” means obligations of the City authorized and executed by the City under applicable law, the payments under and pursuant to which are payable from Gross Revenues, subject and subordinate to payments under and pursuant to Parity Obligations and are payable from any fund established for the purpose of paying debt service on such Subordinate Obligations.

“Supplemental Contracts” means all installment purchase contracts of the City supplemental to the Master Contract and authorized and executed by the City under and pursuant to the Master Contract and applicable law, the installment payments under and pursuant to which are payable from Gross Revenues.

“Treatment and Delivery Agreement” means the Treatment and Delivery Agreement, by and among the City of Modesto, the Del Este Water Company, and the Modesto Irrigation District, which obligation is payable from the Gross Revenues on a parity with the Payments under the Master Contract and all Supplemental Contracts.

“Trust Agreements” means all trust agreements or indentures which are executed and delivered in connection with Parity Obligations, including the Trust Agreement.

“Trustee” means The Bank of New York Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America, or any

association or corporation which may at any time be substituted in its place, as provided in the Trust Agreements.

“Special Counsel” will have the meaning given such term in the 2008 Trust Agreement.

“2008 Certificate Insurance Policy” means the municipal bond insurance policy issued by the 2008 Certificate Insurer guaranteeing the scheduled payments of principal of and interest evidenced and represented by the 2008 Certificates.

“2008 Certificate Insurer” means Assured Guaranty Corp., its successors and assigns.

“2008 Certificates” means the City of Modesto Water Refunding Revenue Certificates of Participation, 2008 Series A, evidencing and representing proportionate interests of the owners thereof in the 2008 Payments to be made by the City, executed and delivered pursuant to the 2008 Trust Agreement.

“2008 Interest Rate Swap Agreement” means, collectively, the ISDA Master Agreement (Local Currency–Single Jurisdiction 1992), the U.S. Municipal Counterparty Schedule thereto and a Credit Support Annex, each dated as of May 29, 2008, and an amended Confirmation, originally entered into on September 27, 2006, as amended as of May 29, 2008, between Bank of America, N.A., as a Qualified Counterparty, and the City.

“2008 Payment Date” means each Interest Payment Date and each day on which payments of principal evidenced and represented by the 2008 Certificates become due (whether at maturity or because of prepayment or acceleration).

“2008 Payments” means the Payments scheduled to be paid by the City under and pursuant to the terms of the 2008 Supplemental Contract.

“2008 Project” means the improvements to the Water Utility System to be refinanced with the proceeds of the 2008 Certificates, as shown on Exhibit A to the 2008 Supplemental Contract.

“2008 Supplemental Contract” means the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, by and between the City and the Authority, as originally executed and as it may from time to time be amended or supplemented in accordance with its terms.

“2008 Supplemental Contract Payment Account” means the account by that name within the Parity Obligation Payment Fund established pursuant to the 2008 Supplemental Contract.

“2008 Swap Insurance Policy” means the interest rate swap insurance policy issued by the 2008 Certificate Insurer guaranteeing certain payments due by the City under the 2008 Interest Rate Swap Agreement.

“2008 Tax Certificate” means the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the 2008 Certificates executed and delivered by the City on the date of initial delivery of the 2008 Certificates, including any and all exhibits attached thereto.

“2008 Trust Agreement” means that certain Trust Agreement, dated as of May 1, 2008, by and between the Authority and the Trustee, delivered in connection with the 2008 Certificates.

“Variable Interest Rate” means any variable interest rate or rates to be paid under any Parity Obligations, the method of computing which variable interest rate will be as specified in the applicable Parity Obligation, which Parity Obligation will also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate will remain in effect, and (ii) the time or times based upon which any change in such variable interest rate will become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

“Variable Interest Rate Parity Obligations” means, for any period of time, any Parity Obligations that bear a Variable Interest Rate during such period, except that Parity Obligations will not be treated as Variable Interest Rate Parity Obligations if the net economic effect of interest rates on particular Payments or Parity Obligations and interest rates on other Payments of the same Supplemental Contract or Parity Obligations, as set forth in such Supplemental Contract or Parity Obligations, or the net economic effect of a Payment Agreement with respect to particular Parity Obligations, in either case is to produce obligations that bear interest at a fixed interest rate, and Supplemental Contracts with respect to which a Payment Agreement is in force will be treated as Variable Interest Rate Parity Obligations if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate, all in accordance with the definition of “Annual Debt Service” set forth in the Master Contract.

“Water Service” means the service furnished, made available or provided by the Water Utility System.

“Water Utility System” means (i) all property rights, contractual rights and facilities of the City relating to water, including all facilities, properties, structures or works for the treatment, conservation, storage, transmission or distribution of water now owned by the City; and (ii) all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

### **Acquisition, Construction and Sale of Projects; Funds**

Acquisition, Construction and Sale of Projects. Pursuant to the Master Contract, the Authority agrees to finance and refinance the costs of the acquisition and construction of the Projects for and to sell the Projects to the City, and in order to implement this provision, the Authority appoints the City as its agent for the purpose of such acquisition and construction, and the City agrees to enter into such construction contracts and purchase orders as may be necessary, as agent for the Authority, to provide for the complete acquisition and construction of the Projects.

The City agrees that as such agent it will cause the acquisition and construction of the Projects to be diligently completed after the deposit of funds in the Improvement Fund for such purpose pursuant to the Master Contract, and that it will use its best efforts to cause the acquisition and construction of the Projects to be completed in a timely fashion, unforeseeable delays beyond the reasonable control of the City only excepted, and, pursuant to the Master Contract, the Authority agrees to and sells the Projects to the City. Notwithstanding the foregoing, it is expressly understood and agreed that the Authority will be under no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the City for the acquisition and construction of the Projects and that all such costs and expenses will be paid by the City, regardless of whether the funds deposited in the Improvement Fund are sufficient to cover all such costs.

Improvement Fund. There is established under the Master Contract the City of Modesto Water Utility System Improvement Fund, which fund the City agrees to maintain until the completion of the acquisition and construction of the Projects to be funded from the separate accounts to be established in such fund as provided in the Supplemental Contracts.

Rate Stabilization Fund. There is established under the Master Contract a City of Modesto Water Utility System Rate Stabilization Fund, which fund the City agrees to maintain so long as any Parity Obligations remain unpaid. The City may deposit in the Rate Stabilization Fund any Gross Revenues, after providing for the payment of Parity Obligations and Maintenance and Operation Costs, and any other money received and available to be used therefor, provided that deposits from such Gross Revenues for each Fiscal Year may be made until (but not after) 180 days after the end of such Fiscal Year. The City may withdraw amounts from the Rate Stabilization Fund only for inclusion in Adjusted Annual Net Revenues, such withdrawal to be made until (but not after) 180 days after the end of such Fiscal Year. All interest or other earnings upon deposits in the Rate Stabilization Fund will be accounted for as Gross Revenues. Notwithstanding the foregoing, no Gross Revenues will be deposited in the Rate Stabilization Fund to the extent that such amount was included by the City in Adjusted Annual Net Revenues for purposes of determining compliance with certain provisions of the Master Contract relating to conditions for the execution of Parity Obligations or the rate covenant and deduction of the amounts to be deposited in the Rate Stabilization Fund would have caused noncompliance with such provisions.

Pledge of Gross Revenues; Revenue Fund. Pursuant to the Master Contract, all Gross Revenues of the Water Utility System are irrevocably pledged to the payment of the Payments, all payments required to be made by the City under all other Parity Obligations and the Maintenance and Operation Costs as provided in the Master Contract, and the Gross Revenues of the Water Utility System will not be used for any other purpose while any of the Payments remain unpaid; provided, however, that out of Gross Revenues there may be apportioned such sums for such purposes as are expressly permitted by the Master Contract. Such pledge constitutes a first pledge of and charge and lien upon the Gross Revenues of the Water Utility System for the payment of amounts due with respect to the Contracts, all other Parity Obligations and Maintenance and Operation Costs in accordance with the terms of the Master Contract.

In order to carry out and effectuate the obligation of the City contained in the Master Contract and in all Supplemental Contracts to pay the Payments, the City agrees and covenants that all Gross Revenues received by it will be deposited when and as received in the City of Modesto Water Utility System Revenue Fund, which fund is established under the Master Contract and which fund the City agrees and covenants to maintain separate and apart from other moneys of the City (subject to certain provisions of the Master Contract relating to investments) so long as any Parity Obligations remain unpaid, and all money on deposit in the Revenue Fund will be applied and used as follows. The City will pay at the following times in the following order of priority:

(a) Maintenance and Operation Costs and Parity Obligation Payment Fund Payments. The City will, from the money in the Revenue Fund, without preference or priority, and the event of any insufficiency of such moneys, ratably, without preference or priority, (i) pay charges for Maintenance and Operation Costs of the Water Utility System (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs the payment of which is not immediately required) as such charges are due and payable, and (ii) deposit in the City of Modesto Water Utility System Parity Obligation Payment Fund, which fund is established under the Master Contract and which fund the City agrees and covenants to maintain separate and apart

from other moneys of the City (subject to certain provisions of the Master Contract relating to investments) so long as any Parity Obligations remain unpaid, on the last Business Day of each month (1) an amount equal to the interest which has accrued or will accrue under all Parity Obligations during the next succeeding month calculated as if such interest has accrued or will accrue on a daily basis during such period, and (2) an amount equal to the principal which has accrued or will accrue (as a result of maturity, mandatory sinking fund payments or mandatory prepayment or otherwise) under all Parity Obligations during the next succeeding month calculated as if such principal has accrued or will accrue on a daily basis during such period, plus (3) the net payments due or which will be due on all Parity Payment Agreements calculated as if such net payments accrued or will accrue on a daily basis during such period, except that no such deposit need be made if the City then holds money in the Parity Obligation Payment Fund at least equal to the amount of interest and principal due or becoming due and payable under all Parity Obligations on the next succeeding date on which interest or principal becomes due and payable under any Parity Obligation plus the net payments due on all Parity Payment Agreements on such next succeeding due date therefor. Moneys on deposit in the Parity Obligation Payment Fund will be transferred by the City to make and satisfy the payments due on the next applicable date on which interest or principal becomes due and payable under any Parity Obligation or any net payment becomes due and payable by the City under any Parity Payment Agreement at least one Business Day prior to such next applicable due date.

Pursuant to the 2008 Supplemental Contract, there is established within the Parity Obligation Payment Fund a 2008 Supplemental Contract Payment Account to provide for the payment of the 2008 Payments. On or before the third Business Day immediately preceding each 2008 Payment Date or the date on which any net scheduled payment or insured termination payment is due under the 2008 Interest Rate Swap Agreement, the City will, from the money in the Parity Obligation Payment Fund, deposit in the 2008 Supplemental Contract Payment Account (i) a sum equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Supplemental Contract on the next succeeding 2008 Payment Date and (ii) the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement, except that no such deposit need be made if the amount then on deposit in the 2008 Supplemental Contract Payment Account is at least equal to the amount of the interest and principal components of the 2008 Payments becoming due and payable under the 2008 Supplemental Contract on the next succeeding 2008 Payment Date plus the net scheduled payments and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement on such next succeeding due date therefor. Moneys on deposit in the 2008 Supplemental Contract Payment Account will (i) be transferred by the City to the Trustee on the Business Day immediately preceding each 2008 Payment Date to make and satisfy the 2008 Payment due on such 2008 Payment Date and (ii) be transferred by the City to the Trustee on the due date therefor to satisfy the net scheduled payment and any insured termination payment, if applicable, due under the 2008 Interest Rate Swap Agreement, all in accordance with the Master Contract and the 2008 Trust Agreement.

(b) Parity Reserve Fund Deposits. On or before the last Business Day of each month, the City will, from the remaining money on deposit in the Revenue Fund after deposits and transfers pursuant to paragraph (a) above, transfer to the Trustee for deposit in the Parity Reserve Fund that sum, if any, necessary to restore the Parity Reserve Fund to an amount equal to the Reserve Fund Requirement. The City will also, from such remaining moneys in the Revenue Fund, transfer or cause to be transferred to the applicable reserve fund or account for any Parity Obligations for which a separate reserve has been funded pursuant to the Master Contract, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any

insufficiency of such moneys ratably without any discrimination or preference, the sum or sums, if any, equal to the amount required to be deposited therein pursuant to such Parity Obligations.

After making the foregoing deposits and transfers required to be made, the City may apply any remaining money in the Revenue Fund for any lawful purpose of the City, including for the payment of any Subordinate Obligations in accordance with the instruments authorizing such Subordinate Obligations.

2008 Interest Rate Swap Agreement. Pursuant to the 2008 Supplemental Contract, the City and the Authority agree and acknowledge that the 2008 Interest Rate Swap Agreement (excluding the obligations thereunder to post collateral under certain circumstances and to make termination payments upon any early termination event or event of default except to the extent such termination payment is insured under the terms of the 2008 Swap Insurance Policy) constitutes a Parity Payment Agreement and a Parity Obligation payable solely from and secured by a pledge of Gross Revenues on a parity with all other existing and future Parity Obligations. The City and the Authority agree and acknowledge that obligations under the 2008 Interest Rate Swap Agreement to post collateral under certain circumstances or to make termination payments upon an early termination event or event of default under the 2008 Interest Rate Swap Agreement (other than to the extent such termination payment is insured under the terms of the 2008 Swap Insurance Policy) are Subordinate Obligations payable solely from and secured by a pledge of Gross Revenues on a subordinate basis to the Parity Obligations. Amounts payable by the City as a termination payment under the 2008 Interest Rate Swap Agreement upon an event of default with respect to the City thereunder and the designation of an early termination by the 2008 Certificate Insurer pursuant to the terms of the 2008 Interest Rate Swap Agreement (which payments are insured under the terms of the 2008 Swap Insurance Policy) constitute a Parity Obligation payable solely from and secured by a pledge of Gross Revenues on a parity with all other existing and future Parity Obligations. In the event any obligation of the City to post collateral or to make payments upon an early termination or event of default under the 2008 Interest Rate Swap Agreement constituting a Subordinate Obligation will arise, the City will establish a fund as necessary for the purpose of satisfying such obligation. As provided and on the dates under the Master Contract, the City will from the money in the Revenue Fund deposit in the 2008 Supplemental Contract Payment Account of the Parity Obligation Payment Fund a sum equal to the scheduled payments next due on the 2008 Interest Rate Swap Agreement. The City will not be required to advance any moneys derived from any source of income other than the Gross Revenues for the payments due under the 2008 Interest Rate Swap Agreement or for the performance of any agreements or covenants required to be performed by it contained in the 2008 Interest Rate Swap Agreement. The general fund of the City is not liable, and neither the faith and credit nor the taxing power of the City is pledged, for the payments under the 2008 Interest Rate Swap Agreement.

Investments. Any moneys held in the Revenue Fund or the Parity Obligation Payment Fund will be invested in Permitted Investments which will, as nearly as practicable, mature on or before the dates when such moneys are anticipated to be needed for disbursement under the Contracts. Any moneys held in the Rate Stabilization Fund will be invested in Permitted Investments which will mature at such dates as the City will determine but prior to the final date on which payments are due under any Outstanding Parity Obligation. All investment earnings from moneys or deposits in the Revenue Fund, the Parity Obligation Payment Fund and the Rate Stabilization Fund will be retained in such fund.

The City may commingle any of the funds or accounts (except for funds held in any rebate fund, which will be held separately) established pursuant to the Master Contract into a separate fund or funds for investment purposes only; provided however, that all funds or accounts held by the City under the Master Contract will be accounted for separately notwithstanding such commingling. For the purpose of determining the amount in any such fund or account, all Permitted Investments credited to such fund or account will, except as otherwise provided in the Master Contract, be valued at the lower of cost or market value (inclusive of all interest accrued but not paid).

### **Execution of Parity Obligations and Other Obligations**

Conditions for the Execution of Parity Obligations. The City may at any time execute any Parity Obligations the payments under and pursuant to which are payable from the Gross Revenues on a parity with the Payments due under all Supplemental Contracts; provided there will be on file with the Trustee either:

(1) A Certificate of the City demonstrating that during any twelve (12) consecutive calendar months out of the immediately preceding eighteen (18) calendar month period, the Adjusted Annual Net Revenues were at least equal to one hundred twenty-five percent (125%) of the Maximum Annual Debt Service for all existing Parity Obligations plus the Parity Obligations proposed to be executed; provided, that for the purpose of providing this Certificate, the City may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from each new connection to the Water Utility System that was made prior to the execution of such Parity Obligations but which, during all or any part of said twelve (12) month period, was not in existence, in an amount equal to the estimated additional Gross Revenues that would have been derived from each such connection if it had been made prior to the beginning of said twelve (12) month period, and

(ii) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges fixed and prescribed for Water Service which became effective prior to the execution of such Parity Obligations but which, during all or any part of said twelve (12) month period, was not in effect, in an amount equal to the estimated additional Gross Revenues that would have been derived from such increase in rates, fees and charges if it had been in effect prior to the beginning of said twelve (12) month period; or

(2) A Consultant's Report showing that the Adjusted Annual Net Revenues for the Fiscal Year next following the end of the period during which interest on the Parity Obligations proposed to be executed is to be capitalized or, if no interest is capitalized, the Fiscal Year in which the Parity Obligations proposed to be executed are executed, will be at least equal one hundred twenty-five percent (125%) of the Maximum Annual Debt Service; provided, that for the purpose of providing such Consultant's Report, the Independent Consultant may adjust the foregoing Adjusted Annual Net Revenues to reflect:

(i) An allowance for Gross Revenues that would have been derived from any increase in the rates, fees and charges prescribed for Water Service in effect and being charged, or rates, fees and charges for Water Service that are expected to be charged in accordance with a program of specific rates, fees, charges, rate levels or increases in overall Gross Revenues approved by a resolution of the City Council; and

(ii) An allowance for Gross Revenues from customers of the Water Utility System anticipated to be served by the facilities or improvements financed in substantial part by the Parity Obligations proposed to be executed together with any additional Parity Obligations expected to be executed prior to the Fiscal Year of determination.

Notwithstanding the foregoing provisions, there will be no limitations on the ability of the City to execute any Parity Obligation at any time to refund any Outstanding Parity Obligation.

Other Obligations. The City may incur Subordinate Obligations without meeting any of the tests set forth above.

### **Covenants of the City**

Compliance with Contracts. The City will punctually pay the Payments in strict conformity with the terms of the Master Contract, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Master Contract required to be observed and performed by it, and will not terminate the Contracts or fail to make any Payment required by the Contracts for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Projects or the Water Utility System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Authority to observe or perform any agreement, condition, covenant or term contained in the Contracts required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected with the Contracts or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Authority or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

Use of Proceeds. The Authority and the City agree that the proceeds of the Contracts will be used by the City, as agent for the Authority, to pay the costs of financing or refinancing the acquisition and construction of the Projects and to pay the incidental costs and expenses related thereto as provided in the Contracts.

Against Encumbrances. The City will pay or cause to be paid when due all sums of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished, or alleged to have been furnished, to or for the City in, upon, about or relating to the Water Utility System and will keep the Water Utility System free of any and all liens against any portion of the Water Utility System. In the event any such lien attaches to or is filed against any portion of the Water Utility System, the City will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so if contesting such lien will not materially impair operation of the Water Utility System. If any such lien will be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City will forthwith pay or cause to be paid and discharged such judgment. The City will, to the maximum extent permitted by law, indemnify and hold the Authority harmless from, and defend it against, any claim, demand, loss, damage, liability or expense (including attorneys' fees) as a result of any such lien or claim of lien against any portion of the Water Utility System.

Sale or Other Disposition of Property. The City will not sell, transfer or otherwise dispose of any of the works, plant, properties, facilities or other part of the Water Utility System or any real or personal property comprising a part of the Water Utility System if such sale, transfer or disposition would cause the City to be unable to meet the requirements of the rate covenant set forth in the Master Contract.

Prompt Acquisition and Construction of the Projects. The City will take all necessary and appropriate steps to acquire and construct the Projects, with all practicable dispatch and in an expeditious manner and in conformity with law so as to complete the same in a timely fashion.

Maintenance and Operation of the Water Utility System; Budgets. The City will maintain and preserve the Water Utility System in good repair and working order at all times and will operate the Water Utility System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable. The City will adopt and file with the Authority, not later than October 1 of each year, a budget approved by the City Council setting forth the estimated Maintenance and Operation Costs for the then current Fiscal Year and will take such action as may be necessary to include all Payments required to be made under the Contracts in its annual budget; provided, that any such budget may be amended at any time during any Fiscal Year and such amended budget will be filed by the City with the Authority.

Compliance with Contracts for Use of the Water Utility System. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Water Utility System and all other contracts affecting or involving the Water Utility System to the extent that the City is a party thereto.

Insurance. The City will procure and maintain such insurance relating to the Water Utility System which it will deem advisable or necessary to protect its interests and the interests of the Authority, which insurance will afford protection in such amounts and against such risks as are usually covered in connection with water systems similar to the Water Utility System; provided, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner as is, in the opinion of an accredited actuary, actuarially sound. All policies of insurance required to be maintained under the Master Contract will provide that the Authority will be given thirty (30) days, written notice of any intended cancellation thereof or reduction of coverage provided thereby.

#### **Accounting Records; Financial Statements and Other Reports.**

(a) The City will keep appropriate accounting records in which complete and correct entries will be made of all transactions relating to the Water Utility System, which records will be available for inspection by the Authority at reasonable hours and under reasonable conditions.

(b) The City will prepare and file with the Authority annually within one hundred eighty (180) days after the close of each Fiscal Year:

(1) financial statements of the City for such Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon and a special report prepared by the Independent Certified Public Accountant who examined such financial statements stating that nothing came to its attention in connection with such examination that caused

it to believe that the City was not in compliance with any of the agreements or covenants contained in the Master Contract; and

(2) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the City with respect to the Water Utility System as of the close of such Fiscal Year, including the names of the insurers which have issued the policies and the amounts thereof and the property or risks covered thereby.

Protection of Security and Rights of the Authority. The City will preserve and protect the security of the Payments under the Contracts and the rights of the Authority to the Payments under the Contracts and will warrant and defend such rights against all claims and demands of all persons.

Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Water Utility System or any part thereof when the same will become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water Utility System or any part thereof, but the City will not be required to comply with any regulations or requirements so long as the validity or application thereof will be contested in good faith and contesting such validity or application will not materially impair operation of the Water Utility System.

Amount of Rates, Fees and Charges. The City will at all times fix, prescribe and collect rates, fees and charges for the Water Service during each Fiscal Year which are reasonably fair and nondiscriminatory and which will be at least sufficient to yield Adjusted Annual Net Revenues for such Fiscal Year equal to at least 125% of Annual Debt Service to be paid during the Fiscal Year.

Collection of Rates, Fees and Charges. The City will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Water Utility System to pay the rates, fees and charges applicable to the Water Service to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The City will not permit any part of the Water Utility System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof); provided, that the City may without charge use the Water Service.

Eminent Domain and Insurance Proceeds. If all or any part of the Water Utility System will be taken by eminent domain proceedings, or if the City receives any insurance proceeds resulting from a casualty loss to the Water Utility System, the Net Proceeds thereof, at the option of the City, will be applied either to the proportional prepayment of Outstanding Parity Obligations or will be used to substitute other components for the condemned or destroyed components of the Water Utility System.

Tax Covenants. Pursuant to the 2008 Supplemental Contract, the City covenants it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the portion of the 2008 Payments constituting interest under Section 103 of the Code. The City will not, directly or indirectly, use or permit the use of proceeds of the 2008 Supplemental Contract or any of the property financed or refinanced with proceeds of the 2008 Supplemental Contract, or any portion thereof, by any person other than a

governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the portion of the 2008 Payments constituting interest.

The City will not take any action, or fail to take any action, if any such action or failure to take action would cause any obligations delivered in connection with the 2008 Supplemental Contract to be “private activity bonds” within the meaning of Section 141 of the Code, and in furtherance thereof, will not make any use of the proceeds of the 2008 Supplemental Contract or any of the property financed or refinanced with proceeds of the 2008 Supplemental Contract, or any portion thereof, or any other funds of the City, that would cause any of the 2008 Certificates on other obligations delivered in connection with the 2008 Supplemental Contract to be “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any 2008 Payments are unpaid, the City, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, applicable and in effect. The City will establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of any obligations delivered in connection with the 2008 Supplemental Contract as “governmental bonds.”

The City will not, directly or indirectly, use or permit the use of any proceeds of the 2008 Supplemental Contract, or of any property financed or refinanced thereby, or other funds of the City, or take or omit to take any action, that would cause any obligations delivered in connection with the 2008 Supplemental Contract to be “arbitrage bonds” within the meaning of Section 148 of the Code. To that end, the City will comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the 2008 Supplemental Contract.

The City will not make any use of the proceeds of the 2008 Supplemental Contract or any other funds of the City, or take or omit to take any other action, that would cause the 2008 Supplemental Contract to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

In furtherance of the foregoing tax covenants, the City covenants that it will comply with the provisions of the 2008 Tax Certificate. Such covenants will survive payment in full or discharge of the 2008 Certificates and the 2008 Payments.

The Authority and the City covenant that, in the event of any change in the 2008 Trust Agreement, the 2008 Supplemental Contract or other relevant documents relating to the 2008 Certificates, or any other actions taken or omitted by the City or the Authority, upon the advice or with the approving opinion of Special Counsel other than Sidley Austin LLP, Special Counsel in connection with the original execution and delivery of the 2008 Certificates, the Authority and the City will, upon the making of any such change, or the taking or omission of any such other action, cause to be delivered an opinion of Special Counsel (together with a reliance letter thereon addressed to the 2008 Certificate Insurer and the Trustee) nationally recognized in the area of municipal bonds to the effect that the portion of each 2008 Payment due under the 2008 Supplemental Contract designated as and comprising interest with respect to the 2008 Certificates is excluded from gross income for federal income tax purposes.

Continuing Disclosure. Pursuant to the 2008 Supplemental Contract, the City covenants and agrees that it will comply with and carry out all of its obligations under the Continuing Disclosure Agreement delivered in connection with the execution and delivery of the 2008 Certificates. Notwithstanding any other provision of the Master Contract or hereof, failure of the City to comply with the Continuing Disclosure Agreement will not be considered an Event of Default under the Master Contract or the 2008 Supplemental Contract.

Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of the Contracts and for the better assuring and confirming unto the Authority of the rights and benefits provided to it in the Contracts.

### **Events of Default and Remedies**

Events of Default and Acceleration of Principal. If one or more of the following Events of Default will happen, that is to say:

(1) if default will be made in the due and punctual payment of any payment on any Parity Obligation when and as the same will become due and payable;

(2) if default will be made by the City in the performance of any of the agreements or covenants contained in the Master Contract or in any Parity Obligation required to be performed by it, and such default will have continued for a period of sixty (60) days after the City will have been given notice in writing of such default by the Authority; or

(3) if the City will file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction will approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction will assume custody or control of the City or of the whole or any substantial part of its property;

then and in each and every such case during the continuance of such Event of Default specified in clause (1) above, the Authority will, and for any other such Event of Default the Authority may, by notice in writing to the City, declare the entire principal amount of the unpaid Payments and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same will become immediately due and payable, anything contained in the Master Contract to the contrary notwithstanding. The foregoing provision is subject to the condition, however, that if at any time after the entire principal amount of the unpaid Payments and the accrued interest thereon will have been so declared due and payable and before any judgment or decree for the payment of the money due will have been obtained or entered the City will deposit with the Authority a sum sufficient to pay the unpaid principal amount of the Payments or the unpaid principal amount of any payments under any Parity Obligation referred to in clause (i) above due and payable prior to such declaration and the accrued interest thereon, with interest on such overdue installments at the rate or rates applicable to such unpaid principal amounts of the Payments if paid in accordance with their terms, and the reasonable expenses of the Authority, and any and all other defaults known to the Authority (other than in the payment of the entire principal amount of the unpaid Payments and the accrued interest thereon due and payable solely by reason of such declaration) will have been made good or

cured to the satisfaction of the Authority or provision deemed by the Authority to be adequate will have been made therefor, then and in every such case the Authority, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment will extend to or will affect any subsequent default or will impair or exhaust any right or power consequent thereon.

Application of Gross Revenues upon Acceleration. All Gross Revenues upon the date of the declaration of acceleration by the Authority as provided in the Master Contract and all Gross Revenues thereafter received will be applied in the following order:

First, to the payment of the costs and expenses of the Authority, if any, in carrying out the provisions of the Master Contract relating to Events of Default and acceleration of principal, including reasonable compensation to its agents, accountants and counsel and including any indemnification expenses; and

Second, to the payment of the Maintenance and Operation Costs of the Water Utility System and the payment of the entire principal amount of the unpaid Parity Obligations, and the accrued interest thereon, with interest on the overdue principal and interest amounts of the unpaid Parity Obligations at the rate or rates of interest then applicable to such Parity Obligations if paid in accordance with their terms, provided that if the amount available will not be sufficient to pay in full all such amounts then due and payable, then to the payment thereof ratably, according to the amounts due thereon without any discrimination or preference.

Gross Revenues may also be applied to make payments required under any Parity Payment Agreement on a parity with the payments under paragraph Second above, to the extent and in the manner provided by the terms of such Parity Obligation relating to such Parity Payment Agreement.

Other Remedies. The Authority will have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform and carry out its or his duties under the law and the agreements and covenants required to be performed by it or him contained in the Contracts;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Authority; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its directors, officers and employees to account as the trustee of an express trust.

Non-Waiver. Nothing in the Master Contract will affect or impair the obligation of the City, which is absolute and unconditional, to pay the Payments from the Gross Revenues to the Authority at the respective due dates or upon acceleration or prepayment, or will affect or impair the right of the Authority, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied in the Contracts.

A waiver of any default or breach of duty or contract by the Authority will not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise

any right or remedy accruing upon any default or breach of duty or contract will impair any such right or remedy or will be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by law or by the Master Contract may be enforced and exercised from time to time and as often as will be deemed expedient by the Authority.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the City and the Authority will be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Remedies Not Exclusive. No remedy in the Master Contract conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, and each such remedy will be cumulative and will be in addition to every other remedy given under the Master Contract or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

### **Discharge of Obligations**

(a) If the City will pay or cause to be paid all the Payments at the times and in the manner provided in the Master Contract, the right, title and interest of the Authority in the Master Contract and the obligations of the City under the Master Contract and under all Supplemental Contracts will cease, terminate, become void and be completely discharged and satisfied.

(b) Any unpaid principal installment of any of the Payments will on its payment date or date of prepayment be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) above if the City makes payment of such Payment and the prepayment premium, if applicable, in the manner provided in the Master Contract.

(c) All or any portion of unpaid principal installments of the Payments will, prior to their payment dates or dates of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in subsection (a) above if (i) there will have been deposited with the Trustee either money in an amount which will be sufficient, or Federal Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form) or municipal obligations which have been defeased under irrevocable escrow instructions with Federal Securities and which are rated in the highest rating category by the Rating Agencies, the interest on and principal of which when paid will provide money which, together with money, if any, deposited with the Trustee, will be sufficient (as evidenced by a report of an Independent Certified Public Accountant regarding such sufficiency) to pay when due the principal installments of such Payments or such portions thereof on their payment dates or their dates of prepayment, as the case may be, the interest installments of such Payments due on and prior to such payment dates or dates of prepayment, and the prepayment premiums, if any, applicable thereto, and (ii) an Opinion of Counsel is filed with the Trustee to the effect that the action taken pursuant to this subsection will not cause the interest installments of such Payments so paid to be includable in gross income under the Code for federal income tax purposes.

(d) After the payment of all Payments and prepayment premiums, if any, as provided in this section, and payment in full of all fees and expenses of the Authority, the Authority, upon request of the City, will cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and the Authority, and will execute and deliver to the City

all such instruments as may be necessary or desirable to evidence such total discharge and satisfaction of the Contracts, and the Authority will pay over and deliver to the City, as an overpayment of Payments, all such money or investments held by it pursuant to the Master Contract other than such money and such investments as are required for the payment or prepayment of the Payments and interest installments of such Payments and the prepayment premiums, if any, applicable thereto, which money and investments will continue to be held in trust for the payment of the Payments.

### **Liability of City Limited to Gross Revenues**

Notwithstanding anything contained in Contracts, the City will not be required to advance any moneys derived from any source of income other than the Gross Revenues for the payment of the Payments or for the performance of any agreements or covenants required to be performed by it contained in the Master Contract. The City may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Payments is a special obligation of the City payable solely from the Gross Revenues as provided in the Master Contract. The general fund of the City is not liable, and neither the credit nor taxing power of the City is pledged, for the payment of the Payments under the Contracts or any other payments required to be made by the City under other Parity Obligations.

## **THE TRUST AGREEMENT**

Certain provisions of the Trust Agreement are summarized below. THIS SUMMARY DOES NOT PURPORT TO BE COMPLETE OR DEFINITIVE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TERMS OF THE TRUST AGREEMENT.

### **Definitions**

The following are summaries of definitions of certain terms from the Trust Agreement used in this Summary of Principal Legal Documents or elsewhere in this Official Statement.

“Alternate Liquidity Facility” means a letter of credit, line of credit, surety bond, standby purchase agreement or other security or liquidity instrument, as the case may be, approved by the 2008 Certificate Insurer and issued in accordance with the terms hereof with respect to the 2008 Certificates as a replacement or substitute for any Liquidity Facility then in effect.

“Authority” means the Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State.

“Authorized Denominations” means (i) with respect to 2008 Certificates in a Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; (ii) with respect to 2008 Certificates in a Flexible Mode, \$100,000 and any integral multiple of \$1,000 in excess thereof; and (iii) with respect to 2008 Certificates in a Term Rate Mode or Fixed Rate Mode, \$5,000 and any integral multiple thereof.

“Automatic Termination Event” means an event of default set forth in a Reimbursement Agreement between the Authority and a Liquidity Facility Provider which would result in the

immediate termination of the Liquidity Facility provided pursuant to such Reimbursement Agreement prior to its stated expiration date without prior notice from the Liquidity Facility Provider to the Trustee.

“Book-Entry System” means a system under which physical certificates in fully registered form are registered only in the name of a Securities Depository or its nominee.

“Business Day” means any day other than (i) a Saturday or Sunday or (ii) a day on which the Trustee is required or authorized to be closed or (iii) a day on which the office of the applicable Credit Enhancement Provider at which draws or advances will be paid is required or authorized to be closed or (iv) a day on which The New York Stock Exchange is closed.

“Certificate of the Authority” means an instrument in writing signed by the Auditor and Treasurer of the Authority or by any other officer of the Authority duly authorized by the Authority for that purpose.

“Certificate Payment Date” means, with respect to any 2008 Certificate, the Certificate Payment Date designated therein, which is the October 1 on which or, in the case of 2008 Certificates subject to mandatory sinking fund prepayment, by which, the principal component of the final 2008 Payment evidenced and represented thereby will become due and payable.

“City” means the City of Modesto, a charter city and municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State.

“Code” means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code will be deemed to be a reference to any successor to any such section.

“Contract” means that certain Master Contract, as supplemented by the 1997 Supplemental Contract and the 2008 Supplemental Contract, and as otherwise amended or supplemented from time to time.

“Corporate Trust Office” means the corporate trust office of the Trustee in San Francisco, California, or such other office as may be specified by written notice from the Trustee to the Authority.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City or the Authority and related to the authorization, execution and delivery of the 2008 Supplemental Contract and the Trust Agreement and the execution, sale and delivery of the 2008 Certificates, including, but not limited to, costs of preparation and reproduction of documents, costs of rating agencies and costs to provide information required by rating agencies, filing and recording fees, initial fees and charges of the Trustee and its counsel, legal fees and charges, fees and disbursements of consultants and professionals, fees and expenses of the underwriter, fees and charges for preparation, execution and safekeeping of the 2008 Certificates, fees of the Liquidity Facility Provider, fees of the Authority and any other cost, charge or fee in connection with the original execution and delivery of the 2008 Certificates.

“Costs of Issuance Fund” means the fund by that name established pursuant to the Trust Agreement.

“Credit Enhancement Provider” means the 2008 Certificate Insurer.

“Daily Mode” means the Mode during which the 2008 Certificates evidence interest at the Daily Rate.

“Daily Rate” means the per annum interest rate with respect to the 2008 Certificates in the Daily Mode determined pursuant to the Trust Agreement.

“Daily Rate Period” means the period during which the 2008 Certificates in the Daily Mode will evidence interest at a Daily Rate, which will be from the Business Day upon which a Daily Rate is set to but not including the next succeeding Business Day.

“Delivery Date” means May 30, 2008.

“Event of Default” means an event described in the Trust Agreement.

“Expiration Date” means the stated expiration date of a Liquidity Facility, as it may be extended from time to time as provided in such Liquidity Facility, or any earlier date on which such Liquidity Facility will terminate at the direction of the Authority, expire or be cancelled (other than the date on which a Liquidity Facility will terminate as a result of an Automatic Termination Event or an event of default under the Reimbursement Agreement entered into in connection with such Liquidity Facility).

“Favorable Opinion of Special Counsel” means, with respect to any action the occurrence of which requires such an opinion, an Opinion of Special Counsel, addressed to the Trustee, to the effect that the action proposed to be taken will not, in and of itself, adversely affect any exclusion from gross income of interest with respect to the 2008 Certificates.

“Federal Securities” shall have the meaning ascribed thereto in the Contract.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the Authority as its Fiscal Year.

“Fixed Rate” means the per annum interest rate or interest rates evidenced by the 2008 Certificates in a Fixed Rate Mode determined pursuant to the Trust Agreement.

“Fixed Rate Mode” means the Mode during which the 2008 Certificates evidence interest at a Fixed Rate.

“Fixed Rate Period” means, with respect to 2008 Certificates converted to the Fixed Rate Mode, the period from the Mode Change Date upon which the 2008 Certificates were converted to a Fixed Rate Mode to but not including the Maturity Date.

“Flexible Mode” means the Mode during which the 2008 Certificates evidence interest at Flexible Rates.

“Flexible Rate” means, with respect to the 2008 Certificates in a Flexible Mode, the per annum interest rate determined for the 2008 Certificate pursuant to the Trust Agreement.

“Flexible Rate Certificates” means the 2008 Certificates in a Flexible Mode.

“Flexible Rate Period” means, with respect to the 2008 Certificates in a Flexible Mode, the period of from 1 to 397 calendar days (which Flexible Rate Period must end on a day preceding a Business Day) during which a Flexible Rate Certificate will evidence interest at a Flexible Rate, as established by the Remarketing Agent pursuant to the Trust Agreement.

“Improvement Fund” means the fund by that name established pursuant to the Contract.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State, appointed and paid by the Authority, and who, or each of whom:

(1) is in fact independent according to the Statement of Auditing Standards No. 1 and not under the domination of the Authority;

(2) does not have a substantial financial interest, direct or indirect, in the operations of the Authority; and

(3) is not connected with the Authority as a member, officer or employee of the Authority, but who may be regularly retained to audit the accounting records of and make reports thereon to the Authority.

“Information Services” means Financial Information, Inc.’s “Daily Called Bond Service,” 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; FIS/Mergent, Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attn: Call Notification; Standard & Poor’s Securities Evaluation, Inc., 55 Water Street, 45th Floor, New York, New York 10041, Attention: Notification Department; Xcitek, 5 Hanover Square, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to the redemption of bonds or the prepayment of certificates of participation as the Authority may designate in a Certificate of the Authority filed with the Trustee.

“Interest Payment Date” means each date on which interest is to be paid and is: (i) with respect to the 2008 Certificates in a Daily Mode or a Weekly Mode, the first Business Day of each month; (ii) with respect to the 2008 Certificates in a Flexible Mode, each Mandatory Purchase Date applicable thereto; (iii) with respect to the 2008 Certificates in a Fixed Rate Mode or a Term Rate Mode, the first day of April or October, which is at least 3 months after the month in which such Long-Term Mode takes effect, and the first day of each April and October thereafter or, upon the receipt by the Trustee of a Favorable Opinion of Special Counsel, any other six-month interval chosen by the Authority (beginning with the first such day which is at least three months after the Mode Change Date) and, with respect to a Term Rate Mode, the final day of the current Interest Period if other than a regular six-month interval; (iv) (without duplication as to any Interest Payment Date listed above) any Mode Change Date, other than a change between a Daily Mode and a Weekly Mode, and each Maturity Date; and (v) with respect to any Liquidity Provider Certificates, the day set forth in the applicable Reimbursement Agreement.

“Interest Period” means, for the 2008 Certificates in a particular Mode, the period of time that the 2008 Certificates evidence interest at the rate (per annum) which becomes effective at the

beginning of such period, and will include a Daily Rate Period, a Weekly Rate Period, a Flexible Rate Period, a Term Rate Period, and a Fixed Rate Period.

“Liquidity Facility” means, initially, the Stand-by Certificate Purchase Agreement, dated as of May 1, 2008, between the Authority and Bank of America, N.A., and any future line of credit, letter of credit, standby purchase agreement or other instrument, if any, which provides for the payment of the purchase price of the 2008 Certificates upon the tender thereof in the event remarketing proceeds are insufficient therefor.

“Liquidity Facility Provider” means, initially, Bank of America, N.A., and any future bank, insurance company, pension fund or other financial institution acceptable to the 2008 Certificate Insurer which provides a Liquidity Facility or Alternate Liquidity Facility for the 2008 Certificates.

“Liquidity Provider Certificates” means any 2008 Certificates purchased by a Liquidity Facility Provider with funds drawn on or advanced under the Liquidity Facility provided by such Liquidity Facility Provider.

“Mandatory Purchase Date” means (i) with respect to a Flexible Rate Certificate, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Certificate; (ii) for the 2008 Certificates in a Term Rate Mode, the first Business Day following the last day of each Term Rate Period for such 2008 Certificates; (iii) any Mode Change Date; (iv) any Substitution Date; (v) the fifth Business Day prior to an Expiration Date; (vi) the date specified by the Trustee following the occurrence of an event of default with respect to the Liquidity Facility which requires or gives the Liquidity Facility Provider the option to terminate the Liquidity Facility upon notice and requires that all Outstanding 2008 Certificates secured by such Liquidity Facility be tendered for purchase under the applicable Reimbursement Agreement, which date shall be a Business Day not less than 20 days after the Trustee’s receipt of notice of such event of default from the applicable Liquidity Facility Provider and in no event later than the Business Day preceding the termination date specified in the notice of event of default delivered to the Trustee by such Liquidity Facility Provider; and (vii) for the 2008 Certificates in a Daily Mode or a Weekly Mode, any Business Day specified by the Authority in a notice delivered to the Trustee, which Mandatory Purchase Date shall be not less than twenty (20) days after the Trustee’s receipt of such notice from the Authority.

“Master Contract” means that certain Master Installment Purchase Contract, executed and entered into as a November 1, 1997, by and between the City and the Authority, as the same may be amended or supplemented from time to time.

“Maturity Date” means, with respect to the 2008 Certificates, the maturity date specified for the 2008 Certificates in the Trust Agreement or, if Serial Certificates or more than one Term Certificates are established for the 2008 Certificates pursuant to the Trust Agreement upon a change of the 2008 Certificates to a Fixed Rate Mode, the maturity dates established for such Serial Certificates or Term Certificates.

“Maximum Rate” or “Maximum Interest Rate” means, with respect to all 2008 Certificates other than Liquidity Provider Certificates, a rate of interest of 12% per annum, and with respect to Liquidity Provider Certificates, such rate not greater than 25% as is provided for in the applicable Liquidity Facility; provided, however, that such rate will not in any event exceed the highest rate then permitted by law.

“Mode” means, as the context may require, the Daily Mode, the Weekly Mode, the Flexible Mode, the Term Rate Mode, or the Fixed Rate Mode.

“Mode Change Date” means with respect to the 2008 Certificates in a particular Mode, the day on which another Mode for the 2008 Certificates begins.

“Moody’s” means Moody’s Investors Service Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation will be dissolved or liquidated or will no longer perform the services of a municipal securities rating agency, then “Moody’s” will be deemed to refer to any other nationally recognized municipal securities rating agency selected by the Authority.

“1997 Certificates” means the \$25,585,000 Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project), evidencing and representing and proportionate interests of the owners thereof in the 1997 Payments to be made by the City.

“1997 Payments” means the installment payments required to be made by the City to the Authority under and pursuant to the 1997 Supplemental Contract.

“1997 Supplemental Contract” means the 1997 Supplemental Installment Purchase Contract, executed and entered into as of November 1, 1997, by and between the City and the Authority, supplementing the Master Contract.

“1997 Trust Agreement” means that certain Trust Agreement, dated as of November 1, 1997, by and between the Authority and State Street Bank and Trust Company, N.A., which has been succeeded by The Bank of New York Trust Company, N.A., as trustee, pursuant to which there was executed and delivered the 1997 Certificates.

“Notice Parties” means the Authority, the City, the Trustee, the Credit Enhancement Provider, if any, the Liquidity Facility Provider, if any, the Remarketing Agent, if any, and the Fixed Rate Remarketing Agent, if any.

“Opinion of Counsel” means a written opinion of counsel of recognized standing in the field of law being addressed in such opinion retained the Authority.

“Outstanding” when used as of any particular time with reference to 2008 Certificates, means (subject to the provisions of the Trust Agreement) all 2008 Certificates except (1) 2008 Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) 2008 Certificates paid or deemed to have been paid within the meaning of the Trust Agreement; and (3) 2008 Certificates in lieu of or in substitution for which other 2008 Certificates will have been executed and delivered by the Trustee pursuant to the Trust Agreement.

“Owner” means any person who will be the registered owner of any Outstanding 2008 Certificate.

“Parity Reserve Fund” means the fund by that name continued pursuant to the Trust Agreement.

“Payment Agreement Payments” has the meaning given such term in the Master Contract.

“Payment Agreement Receipts” has the meaning given such term in the Master Contract.

“Permitted Investments” means any of the following obligations if and to the extent then permitted by law:

- (1) Federal Securities;
- (2) Obligations issued by the Resolution Funding Corporation and the Student Loan Marketing Association, or obligations, participations, or other instruments of or issued by, or fully guaranteed as to interest and principal by, the Government National Mortgage Association (excluding stripped mortgage backed securities which are valued at greater than par on the unpaid principal);
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank (including the Trustee or any of its affiliates), otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System and which are drawn on any bank the short-term obligations of which are rated in the highest letter and numerical rating category as provided by Moody’s and by S&P; provided, that purchases of eligible bankers acceptances may not exceed 270 days’ maturity;
- (4) Commercial paper of “prime” quality of the highest ranking or of the highest letter and numerical rating category as provided by Moody’s and by S&P, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of \$500,000,000 and that have an “A1” or higher rating for the issuer’s unsecured debentures, other than commercial paper, as provided by Moody’s and by S&P; provided, that purchases of eligible commercial paper may not exceed 180 days’ maturity nor represent more than 10% of the outstanding commercial paper of an issuing corporation;
- (5) Non-negotiable certificates of deposit issued by a state or national bank (including the Trustee or any of its affiliates) that have maturities of not more than 365 days or deposit accounts with a state or national bank and that are fully insured by the Federal Deposit Insurance Corporation or the short-term obligations of which state or national bank are rated no lower than “A1” by Moody’s and “A+” by S&P;
- (6) Any repurchase agreement of any securities enumerated in subdivisions (1) and (2) with any state or national bank (including the Trustee or any of its affiliates) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is either (A) with any institution which has debt rated no lower than “A1” by Moody’s and “A+” by S&P or whose commercial paper is rated no lower than “P-1” by Moody’s and no lower than “A-1” by S&P; (B) with any corporation or other entity that falls under the jurisdiction of the Federal Bankruptcy Code; provided, that (a) the term of such repurchase agreement is less than one (1) year or due on demand; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the market value of the collateral (as determined at least once in every 14 days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody’s and to S&P; (d) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral immediately; and (e) the repurchase agreement securities are free and clear of any third-party lien or claim; or (C) with financial institutions insured by the Federal Deposit Insurance Corporation or any broker-dealer with “retail customers” which falls under the jurisdiction

of the Securities Investors Protection Corporation; provided, that: (a) the market value of the collateral (as determined at least once in every 14 days) exceeds the principal amount of the repurchase agreement plus accrued interest and the market value of the collateral is maintained at levels acceptable to Moody's and to S&P; (b) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral; (c) the Trustee has a perfected first priority security interest in the collateral; (d) the collateral is free and clear of third-party liens and in the case of a Securities Investors Protection Corporation broker was not acquired pursuant to a repurchase agreement or reverse repurchase agreement; and (e) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral immediately;

(7) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State or any local agencies therein which are rated in the highest short-term rating category or within one of the three highest long-term rating categories by Moody's and by S&P (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date);

(8) For amounts less than \$100,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof, and of which an aggregate total of \$100,000 is not exceeded in any one financial institution;

(9) Investments in units of a money-market fund portfolio that is rated in the highest letter and numerical rating category by Moody's and by S&P (including funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services) and that is composed of obligations guaranteed by the full faith and credit of the United States of America or repurchase agreements collateralized by such obligations;

(10) A guaranteed investment contract with a financial institution or insurance company (or guaranteed by a financial institution or insurance company) which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated within the two highest rating categories of any Rating Agency;

(11) Other investments approved in writing by the 2008 Certificate Insurer; and

(12) The Local Agency Investment Fund, the California Asset Management Program, or similar pooled fund operated by or on behalf of the State and which is authorized to accept investments by or on behalf of the Authority of the moneys held by the Trustee in any of the accounts or funds established pursuant to the Trust Agreement to the extent deposits and withdrawals may be made by the Trustee directly.

"Person" will mean an individual, a corporation, an association, a joint venture, a partnership, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Prepayment Date" means the date fixed for prepayment of any 2008 Certificate in any notice of prepayment given in accordance with the terms of the Trust Agreement.

"Purchase Date" means any Mandatory Purchase Date.

“Purchase Price” means an amount equal to the principal amount of the 2008 Certificates purchased on any Purchase Date, plus accrued interest to such Purchase Date (unless such Purchase Date is also an Interest Payment Date, in which case the Purchase Price will not include accrued interest, which will be paid in the normal course).

“Rating Agencies” means Moody’s and S&P, and their respective successors or assigns, or any other nationally recognized securities rating agency or agencies rating the 2008 Certificates at the request of the City.

“Rating Confirmation Notice” means a written notice from the Rating Agencies then rating the 2008 Certificates, confirming that the rating on the 2008 Certificates (without giving effect to any Liquidity Facility) will not be lowered or withdrawn (other than a withdrawal of a short-term rating upon a change to a Fixed Rate Mode) as a result of the action proposed to be taken.

“Record Date” means (i) with respect to the 2008 Certificates in a Short-Term Mode, the last Business Day before each Interest Payment Date; and (ii) with respect to the 2008 Certificates in a Long-Term Mode, the 15th day (whether or not a Business Day) of the month next preceding each Interest Payment Date.

“Reimbursement Agreement” means any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement, between a Credit Enhancement Provider or a Liquidity Facility Provider, as applicable, and the Authority and/or the City, as the same may be amended from time to time pursuant to its terms.

“Remarketing Agent” means the remarketing agent for the 2008 Certificates selected by the Authority pursuant to the Trust Agreement and approved by the 2008 Certificate Insurer.

“Reserve Funding Instruments” will have the meaning given such term in the Trust Agreement, including the 2008 Parity Reserve Fund Insurance Policy.

“Reserve Fund Requirement” will have the meaning ascribed thereto in the Contract.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Company, and its successors or assigns, except that if such entity will be dissolved or liquidated or will no longer perform the services of a municipal securities rating agency, then “S&P” will be deemed to refer to any other nationally recognized municipal securities rating agency selected by the Authority.

“Securities Depositories” means: The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099, Attention: Call Notification Department, Fax: (212) 855-7232; or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority may designate in a Certificate of the Authority to the Trustee.

“Serial Certificate” means any 2008 Certificate not subject to mandatory prepayment from Sinking Fund Payments.

“Sinking Fund Payments” means the payments required under the Trust Agreement to be deposited in the 2008 Sinking Fund Subaccount.

“Special Counsel” means any firm of nationally recognized municipal bond attorneys selected by the Authority and experienced in the issuance of municipal bonds and matters relating to the exclusion of the interest thereon from gross income for federal income tax purposes.

“State” means the State of California.

“Supplemental Contract” will have the meaning given such term in the Contract.

“Supplemental Trust Agreement” means any trust agreement then in full force and effect which has been duly executed and delivered by the Authority and the Trustee amendatory of or supplemental to the Trust Agreement; but only if and to the extent that such Supplemental Trust Agreement is specifically authorized under the Trust Agreement.

“Tax Certificate” means, collectively, the Tax Certificate concerning certain matters pertaining to the use and investment of proceeds of the 2008 Certificates, executed and delivered by the City on the date of delivery of the 2008 Certificates, including any and all exhibits attached thereto.

“Term Certificates” means the 2008 Certificates subject to mandatory prepayment from Sinking Fund Payments.

“Term Rate” means the per annum interest rate for the 2008 Certificates in the Term Rate Mode determined pursuant to the Trust Agreement.

“Term Rate Mode” means the Mode during which the 2008 Certificates evidence interest at a Term Rate.

“Term Rate Period” means the period from (and including) the Mode Change Date or the date of initial conversion of the 2008 Certificates to a Term Rate Mode, as applicable, to (but excluding) the last day of the first period that 2008 Certificates will be in the Term Rate Mode as established by the Authority pursuant to the Trust Agreement and, thereafter, the period from (and including) the beginning date of each successive Interest Rate Period selected for the 2008 Certificates by the Authority pursuant to the Trust Agreement while the 2008 Certificates are in the Term Rate Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period. Except as otherwise provided in the Trust Agreement, an Interest Period for the 2008 Certificates in the Term Rate Mode must be at least 180 days in length.

“Trust Agreement” means that certain Trust Agreement, dated as of May 1, 2008, between the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented by all Supplemental Trust Agreements executed pursuant to the provisions of the Trust Agreement.

“Trustee” means The Bank of New York Trust Company, N.A., or any other association or corporation which may at any time be substituted in its place as provided in the Trust Agreement.

“2008 Certificate Insurance Policy” means the financial guaranty insurance policy issued by the 2008 Certificate Insurer guaranteeing the scheduled payment of principal of and interest evidenced and represented by the 2008 Certificates.

“2008 Certificate Insurer” means Assured Guaranty Corp., its successors and assigns.

“2008 Debt Service Fund” means the fund by that name established pursuant to the Trust Agreement.

“2008 Interest Account” means the account by that name established within the 2008 Debt Service Fund pursuant to the Trust Agreement.

“2008 Interest Rate Swap Agreement” has the meaning given such term in the 2008 Supplemental Contract.

“2008 Parity Reserve Fund Insurance Policy” means the reserve fund financial guaranty insurance policy issued by the 2008 Certificate Insurer and deposited in the Parity Reserve Fund pursuant to the Trust Agreement.

“2008 Payments” means the installment payments of interest, principal, and prepayment premium, if any, payable by the City under and pursuant to the 2008 Supplemental Contract.

“2008 Prepayment Subaccount” means the subaccount by that name established within the 2008 Principal Account of the 2008 Debt Service Fund pursuant to the Trust Agreement.

“2008 Principal Account” means the account by that name established within the 2008 Debt Service Fund pursuant to the Trust Agreement.

“2008 Project” means the refinancing of improvements to the Water Utility System described in Exhibit A to the 2008 Supplemental Contract.

“2008 Sinking Fund Subaccount” means the subaccount by that name within the 2008 Principal Account of the 2008 Debt Service Fund established pursuant to the Trust Agreement.

“2008 Supplemental Contract” means that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, by and between the City and the Authority, supplementing the Master Contract.

“Weekly Mode” means the Mode during which the 2008 Certificates evidence interest at the Weekly Rate.

“Weekly Rate” means the per annum interest rate with respect to the 2008 Certificates in the Weekly Mode determined pursuant to the Trust Agreement.

“Weekly Rate Period” means the period during which the 2008 Certificates evidence interest at a Weekly Rate, which will be the period commencing on Thursday of each week to and including Wednesday of the following week, except the first Weekly Rate Period which will be from the Mode Change Date for the 2008 Certificates to and including the Wednesday of the following week and the last Weekly Rate Period which will be from and including the Thursday of the week prior to the Mode Change Date to and including the day next preceding the Mode Change Date.

“Written Request of the Authority” means an instrument in writing signed by the Auditor and Treasurer of the Authority or by any other officer of the Authority duly authorized by the Authority for that purpose.

## **Equal Security**

In consideration of the acceptance of the 2008 Certificates by the Owners thereof, the Trust Agreement will be deemed to be and will constitute a contract between the Authority and the Owners from time to time of all 2008 Certificates authorized, executed, and delivered under the Trust Agreement and then Outstanding to secure the full and final payment of the interest, principal, and prepayment premiums, if any, evidenced and represented by the 2008 Certificates which may from time to time be authorized, executed, issued and delivered under the Trust Agreement, subject to the agreements, conditions, covenants and provisions contained in the Trust Agreement; and all agreements and covenants set forth in the Trust Agreement to be performed by or on behalf of the Trustee will be for the equal and proportionate benefit, protection and security of all Owners without distinction, preference or priority as to security or otherwise of any 2008 Certificates over any other 2008 Certificates by reason of the number or date thereof or the time of authorization, sale, execution, or delivery thereof or for any cause whatsoever, except as expressly provided in the Trust Agreement or therein.

## **2008 Payments; 2008 Project**

2008 Payments Held in Trust. The 2008 Payments will be held in trust by the Trustee for the benefit of the Owners from time to time of the 2008 Certificates, but will nonetheless be disbursed, allocated and applied solely for the uses and purposes provided in the Trust Agreement.

Deposit of 2008 Payments. The Trustee agrees to establish, maintain and hold in trust a separate fund designated as the 2008 Debt Service Fund, for so long as any 2008 Certificates will be Outstanding under the Trust Agreement. All 2008 Payments (except as otherwise provided) received by the Trustee will be immediately deposited in the 2008 Debt Service Fund and will be disbursed and applied only as provided in the Trust Agreement.

Establishment and Maintenance of Accounts for Use of Money in the 2008 Debt Service Fund. All money in the 2008 Debt Service Fund will be set aside by the Trustee in the following respective special accounts within the 2008 Debt Service Fund (each of which is created by the Trust Agreement and each of which the Trustee agrees and covenants to maintain pursuant to the Trust Agreement) in the following order of priority:

- (a) 2008 Interest Account, and
- (b) 2008 Principal Account (with a 2008 Prepayment Subaccount and a 2008 Sinking Fund Subaccount therein).

All money in each of such accounts and subaccounts will be held in trust by the Trustee for the benefit of the Owners and will be applied, used and withdrawn only for the purposes authorized in the Trust Agreement.

(a) 2008 Interest Account. On the Delivery Date, the Trustee will deposit in the 2008 Interest Account any Payment Agreement Receipts relating to the 2008 Interest Rate Swap Agreement which the City has directed under the 2008 Interest Rate Swap Agreement to be transferred to the Trustee for deposit in the 2008 Interest Account and any amounts transferred to the Trustee pursuant to the 2008 Supplemental Contract for the payment of payments due under the 2008 Interest Rate Swap Agreement. On the Business Day immediately preceding each Interest Payment

Date, the Trustee will set aside from the 2008 Debt Service Fund and deposit in the 2008 Interest Account that amount of money which is equal to the amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on each such Interest Payment Date. The Trustee will also apply amounts on deposit in the 2008 Fees Subaccount to pay on behalf of the City, the Payment Agreement Payments required to be paid under the 2008 Interest Rate Swap Agreement and to pay the Remarketing Agent fees as the same will become due on each due date therefor until such 2008 Fees Subaccount will be depleted (expected to be on or about November 29, 2008). Investment earnings on amounts on deposit in the 2008 Fees Subaccount will be transferred to the City for deposit in the Revenue Fund.

No deposit need be made in the 2008 Interest Account if the amount contained therein (exclusive of amounts transferred for the payment of amounts due under the 2008 Interest Rate Swap Agreement) is at least equal to the aggregate amount of interest evidenced and represented by the 2008 Certificates becoming due and payable on such Interest Payment Date.

Except as otherwise provided in the Trust Agreement, all money in the 2008 Interest Account will be used and withdrawn by the Trustee solely for the purpose of paying the interest (including accrued interest evidenced and represented by any 2008 Certificates purchased or prepaid prior to their respective Certificate Payment Date) with respect to the 2008 Certificates as it will become due and payable and paying the Payment Agreement Payments due under the 2008 Interest Rate Swap Agreement as they will become due and payable.

(b) 2008 Principal Account. On the Business Day immediately preceding each October 1, commencing on October 1, 2008, the Trustee will set aside from the 2008 Debt Service Fund and deposit in the 2008 Principal Subaccount an amount of money equal to the principal amount evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1, and in the 2008 Sinking Fund Subaccount in the 2008 Principal Account the amount of all Sinking Fund Payments required to be made on such October 1.

Amounts to be applied to the optional prepayment of the principal component of the 2008 Certificates pursuant to the Trust Agreement will be deposited in the 2008 Prepayment Subaccount of the 2008 Principal Account.

No deposit need be made in the 2008 Principal Account if the amount contained therein is at least equal to the aggregate amount of the principal evidenced and represented by the Outstanding Serial Certificates with a Certificate Payment Date of such October 1 and the amount contained in the 2008 Sinking Fund Subaccount therein is at least equal to the aggregate amount of all Sinking Fund Payments required to be made on such October 1.

All money in the 2008 Principal Account will be used and withdrawn by the Trustee solely for the purpose of paying the principal evidenced and represented by the Serial Certificates as they will become due and payable, whether at their respective Certificate Payment Dates or on prior prepayment, and all money in the 2008 Sinking Fund Subaccount of the 2008 Principal Account will be used and withdrawn by the Trustee only to purchase or to prepay or to pay Term Certificates, and with respect to the 2008 Sinking Fund Subaccount, on each Sinking Fund Payment date, the Trustee will apply the Sinking Fund Payment required on that date to the prepayment (or payment at Certificate Payment Date, as the case may be) of the Term Certificates upon the notice and in the manner provided in the Trust Agreement; provided, that at any time prior to giving such notice of such prepayment, the Trustee may, upon the Written Request of the Authority and receipt of moneys

sufficient therefor, purchase for cancellation Term Certificates in accordance with the Trust Agreement.

Parity Reserve Fund. The Parity Reserve Fund created pursuant to the 1997 Trust Agreement is continued by the Trust Agreement. Pursuant to the Trust Agreement, the Trustee agrees and covenants to maintain the Parity Reserve Fund so long as the Contract has not been discharged in accordance with its terms or any 2008 Certificates remain Outstanding under the Trust Agreement. Amounts on deposit in the Parity Reserve Fund are pledged to the payment of the 1997 Certificates, the 2008 Certificates and any other obligations hereafter issued in connection with a Supplemental Contract and will be applied only for such purposes as provided in the Trust Agreement. The Trustee will deposit in the Parity Reserve Fund from the proceeds of the 2008 Certificates, the amount specified in the Trust Agreement, such amount being sufficient to cause the balance on deposit in or credited to the Parity Reserve Fund, to be equal to the Reserve Fund Requirement upon delivery of the 2008 Certificates. The Trustee will deposit in the Parity Reserve Fund such other amounts transferred to the Trustee by the City pursuant to the Contract, as directed by the Authority in a Written Request of the Authority. Moneys on deposit in the Parity Reserve Fund will be transferred by the Trustee to the 2008 Debt Service Fund to pay principal and interest evidenced and represented by the 2008 Certificates on any Interest Payment Date in the event amounts on deposit therein are insufficient for such purposes. The Trustee will also, from such amounts on deposit in the Parity Reserve Fund, transfer or cause to be transferred to any applicable debt service fund established under the 1997 Trust Agreement and under any other trust agreement under which any obligations are issued in connection with a Supplemental Contract, without preference or priority between transfers made pursuant to this sentence and the preceding sentence, and in the event of any insufficiency of such moneys ratably without discrimination or preference, that sum or sums, if any, equal to the amount required to be deposited therein pursuant to such trust agreement under which any obligations are issued in connection with a Supplemental Contract. All investments in the Parity Reserve Fund will (notwithstanding anything in the 1997 Trust Agreement to the contrary) be valued on or before October 1 of each year at the lesser of the cost or market value thereof. Following such valuation, any moneys on deposit in the Parity Reserve Fund representing an excess of the Reserve Fund Requirement will be transferred by the Trustee to the City for deposit in the Revenue Fund. The Trustee may create such subaccounts in the Parity Reserve Fund as may be necessary or convenient for the purposes of the Trust Agreement.

The Reserve Fund Requirement may be provided by one or more surety bonds, insurance policies, or letters of credit as described in the definition of Reserve Fund Requirement (“Reserve Funding Instruments”) set forth in the Contract.

Notwithstanding anything to the contrary contained in the Trust Agreement, at any time one or more Reserve Funding Instruments are on deposit in the Parity Reserve Fund, the Trustee will: (i) withdraw and use all cash, if any, on deposit in the Parity Reserve Fund prior to using and withdrawing any amounts derived from payments under any Reserve Funding Instruments; and (ii) draw on all Reserve Funding Instruments on a pro rata basis based on the draw limit of each Reserve Funding Instrument. Amounts received by the Trustee from the City pursuant to the Master Contract as a replenishment of amounts withdrawn from the Parity Reserve Fund will be applied (i) first on a pro rata basis to reimburse draws on any Reserve Funding Instruments and (ii) to replenish cash withdrawn from the Parity Reserve Fund.

Establishment and Application of Costs of Issuance Fund. Pursuant to the Trust Agreement, the Trustee agrees to establish, maintain and hold in trust a separate fund designated as the Costs of

Issuance Fund, which fund is created by the Trust Agreement and which fund the Authority agrees to maintain with the Trustee until November 29, 2008. The Trustee will deposit to the Costs of Issuance Fund the amounts specified in the Trust Agreement. All money in the Costs of Issuance Fund will be used and withdrawn by the Trustee to pay the Costs of Issuance relating to the 2008 Certificates upon receipt of a Written Request of the Authority filed with the Trustee, each of which will be sequentially numbered and will state the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On November 29, 2008, or upon the earlier Written Request of the Authority, any remaining balance in the Costs of Issuance Fund will be transferred to the City for deposit in the 2008 Debt Service Fund.

Deposit and Investments of Money in Accounts and Funds. All money held by the Trustee in any of the accounts or funds established pursuant to the Trust Agreement will be invested in Permitted Investments at the Written Request of the Authority filed with the Trustee which such Permitted Investments will, as nearly as practicable, mature on or before the dates on which such money is anticipated to be needed for disbursement under the Trust Agreement, and the Trustee will have no liability or responsibility for any loss resulting from any investment made in accordance with the Trust Agreement; provided, that if no such Written Request is received by the Trustee, the Trustee will invest such money in those Permitted Investments described in clause (9) of the definition thereof. Except as otherwise provided in the Trust Agreement with respect to the Parity Reserve Fund, all interest or profits received on any money so invested will be deposited in the 2008 Debt Service Fund.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority periodic cash transaction statements which include detail for all investment transactions made by the Trustee under the Trust Agreement.

The Trustee or any of its affiliates may act as principal or agent, sponsor, advisor or manager in connection with any investments made by the Trustee under the Trust Agreement. For investment purposes, the Trustee may commingle the funds and accounts established under the Trust Agreement, but will account for each separately.

The Trustee will not be liable for any loss from any Permitted Investment acquired, held, or disposed of at the written request of the Authority. Any Permitted Investments that are registered securities will be registered in the name of the Trustee.

#### **Assignment to Trustee; Enforcement of Obligations.**

(a) Pursuant to the Trust Agreement, the Authority transfers, assigns and sets over to the Trustee all of the 2008 Payments and any and all rights and privileges it has under the Contract, including, without limitation, the right to collect and receive directly all of the 2008 Payments, and any 2008 Payments collected or received by the Authority will be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee, and will forthwith be paid by the Authority to the Trustee. The Trustee also will, subject to the provisions of the Trust Agreement, take all steps, actions and proceedings required to be taken as provided in any Opinion of Counsel delivered to it, reasonably necessary to maintain in force for the benefit of the Owners of the 2008

Certificates the Trustee's rights in and priority to the following security granted to it for the payment of the 2008 Certificates: the Trustee's rights as assignee of the 2008 Payments under the Contract and as beneficiary of any other rights to security for the 2008 Certificates which the Trustee may receive in the future.

(b) The Trustee may, in performing the obligations set out above, rely and will be protected in acting or refraining from acting upon an Opinion of Counsel furnished by the City.

### **Covenants of the Authority and the Trustee**

Compliance with Trust Agreement. The Trustee will not execute or deliver any 2008 Certificates in any manner other than in accordance with the provisions of the Trust Agreement; and the Authority will not suffer or permit any default by it to occur under the Trust Agreement, but will faithfully comply with, keep, observe and perform all the agreements and covenants to be observed or performed by it contained in the Trust Agreement and in the 2008 Certificates.

Observance of Laws and Regulations. The Authority and the Trustee will faithfully comply with, keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on them by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of each and every franchise, right or privilege now owned or hereafter acquired by them, including their right to exist and carry on their respective businesses, to the end that such franchises, rights and privileges will be maintained and preserved and will not become abandoned, forfeited or in any manner impaired.

Accounting Records and Reports. The Trustee will keep or cause to be kept proper books of record and accounts in which complete and correct entries will be made of all transactions made by the Trustee relating to the receipts, disbursements, allocation and application of the 2008 Payments and the proceeds of the 2008 Certificates, and such books will be available for inspection by the Authority, at reasonable hours and under reasonable conditions. Not more than 180 days after the close of each Fiscal Year, the Trustee will furnish or cause to be furnished to the Authority and the 2008 Certificate Insurer a complete financial statement covering receipts, disbursements, allocation and application of 2008 Payments received by the Trustee for such Fiscal Year. The Authority will keep or cause to be kept such information as required under the Tax Certificate.

Prosecution and Defense of Suits. The Authority will defend against every suit, action or proceeding at any time brought against the Trustee upon any claim to the extent arising out of the receipt, application or disbursement of any of the 2008 Payments and the proceeds of the 2008 Certificates or to the extent involving the failure of the Authority to fulfill its obligations under the Trust Agreement; provided that the Trustee or any affected Owner at its election may appear in and defend any such suit, action or proceeding. The Authority will indemnify and hold harmless the Trustee against any and all liability claimed or asserted by any person to the extent arising out of such failure by the Authority, and will indemnify and hold harmless the Trustee against any attorney's fees or other expenses which it may incur in connection with any litigation to which it may become a party by reason of its actions under the Trust Agreement, except for any loss, cost, damage or expense resulting from the active or passive negligence, willful misconduct or breach of duty by the Trustee. Notwithstanding any contrary provision of the Trust Agreement, this covenant will remain in full force and effect even though all 2008 Certificates secured by the Trust Agreement may have been fully paid and satisfied.

Amendments to Contract. Except for any Supplemental Contract delivered in accordance with the terms of the Contract, the Authority will not supplement, amend, modify or terminate any of the terms of the Contract, or consent to any such supplement, amendment, modification or termination, without the prior written consent of the Trustee, which such consent will be given only if (a) such supplement, amendment, modification or termination will not materially adversely affect the interests of the Owners or result in any material impairment of the security given for the payment of the 2008 Certificates, or (b) the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount evidenced and represented by the 2008 Certificates then Outstanding to such supplement, amendment, modification or termination; provided, that no such supplement, amendment, modification or termination will reduce the amount of 2008 Payments to be made to the Authority or the Trustee by the City pursuant to the Contract, or extend the time for making such 2008 Payments in any manner that would require the amendment of the Trust Agreement in any manner not in compliance with the Trust Agreement, or permit the creation of any lien prior to or on a parity with the lien created by the Trust Agreement on the 2008 Payments without the written consent of all of the Owners of the 2008 Certificates then Outstanding.

Recording and Filing. The Trustee upon receipt of a Written Request of the Authority, at the expense of the Authority, will file, record, register, renew, refile and rerecord all such documents, including financing statements (or continuation statements in connection therewith), all in such manner, at such times and in such places as may be required and to the extent permitted by law in order to fully perfect, preserve and protect the security of the Owners and the rights and interests of the Trustee; provided, however, that the Trustee will not be required to execute a special or general consent to service of process, or to qualify as a foreign corporation in connection with any such filing, recording, registration, refile or rerecording in any jurisdiction in which it is not now so subject.

Further Assurances. Whenever and so often as reasonably requested to do so by the Trustee or any Owner, the Authority will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Owners all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by the Trust Agreement.

## **The Trustee**

The Trustee. The Bank of New York Trust Company, N.A., will serve as the Trustee for the purpose of receiving all money which the Authority is required to deposit with the Trustee under the Trust Agreement and for the purpose of allocating, applying and using such money as provided in the Trust Agreement and for the purpose of paying the interest and principal and prepayment premiums, if any, evidenced and represented by the 2008 Certificates presented for payment, and for the purpose of canceling all paid or prepaid 2008 Certificates as provided in the Trust Agreement. The Authority agrees that it will at all times maintain a Trustee having a corporate trust office in either San Francisco, California or Los Angeles, California.

The Authority may at any time, unless there exists any Event of Default as defined in the Trust Agreement, remove the Trustee initially appointed and any successor thereto and may appoint a successor or successors thereto by an instrument in writing; provided that any successor appointed under the Trust Agreement will be approved by the 2008 Certificate Insurer and will be a bank with trust powers or trust company doing business and having a principal office in either San Francisco,

California or Los Angeles, California, having (or if such bank or trust company is a member of a bank holding company system, its bank holding company has) a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000 and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this provision the combined capital and surplus of such bank or trust company will be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Trustee may at any time resign by giving written notice of such resignation to the Authority and by mailing to the Owners notice of such resignation. Upon receiving such notice of resignation, the Authority will promptly appoint a successor Trustee by an instrument in writing. Any removal or resignation of a Trustee and appointment of a successor Trustee will become effective only upon the acceptance of appointment by the successor Trustee. If, within 30 days after notice of the removal or resignation of the Trustee no successor Trustee will have been appointed and will have accepted such appointment, the removed or resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Trustee having the qualifications required by the Trust Agreement. Any successor trustee will signify its acceptance of the duties under the Trust Agreement by an instrument in writing provided to the Authority and the Notice Parties.

Liability of the Trustee. The recitals of facts, agreements and covenants in the Trust Agreement and in the 2008 Certificates will be taken as recitals of facts, agreements and covenants of the Authority, and the Trustee assumes no responsibility for the correctness of the same or makes any representation as to the sufficiency or validity of the Trust Agreement or of the 2008 Certificates, or will incur any responsibility in respect thereof other than in connection with the rights or obligations assigned to or imposed upon it in the Trust Agreement, in the 2008 Certificates or in law or equity. The Trustee will not be liable in connection with the performance of its duties under the Trust Agreement except for its own active or passive negligence or willful misconduct.

The Trustee will not be liable for any error of judgment made in good faith by a responsible officer, unless it will be proved that the Trustee was negligent in ascertaining the pertinent facts.

The Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the 2008 Certificates at the time Outstanding, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under the Trust Agreement.

The Trustee will be under no obligation to exercise any of the rights or powers vested in it by the Trust Agreement at the request, order or direction of any of the Owners pursuant to the provisions of the Trust Agreement unless such Owners will have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby. The Trustee has no obligation or liability to the Owners for the payment of interest, principal or prepayment premium, if any, evidenced and represented by the 2008 Certificates from its own funds; but rather the Trustee's obligations will be limited to the performance of its duties under the Trust Agreement.

The Trustee will not be deemed to have knowledge of any default under the Trust Agreement or default under the Contract unless and until it will have actual knowledge thereof or will have

received written notice thereof at its Corporate Trust Office. Except as otherwise expressly provided in the Trust Agreement, the Trustee will not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements in the Trust Agreement or of any of the documents executed in connection with the 2008 Certificates or as to the existence of a default under the Trust Agreement.

The Trustee will not be considered in breach of or in default in its obligations under the Trust Agreement or progress in respect thereto in the event of enforced delay (“unavoidable delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

### **Amendment of the Trust Agreement**

Amendment of the Trust Agreement. The Trust Agreement and the rights and obligations of the Authority and of the Owners may be amended at any time by a Supplemental Trust Agreement which will become binding when the written consents of the Owners of a majority in aggregate principal amount of the 2008 Certificates then Outstanding, exclusive of 2008 Certificates disqualified as provided in Trust Agreement, are filed with the Trustee; provided, that before executing any such Supplemental Trust Agreement the Trustee may first obtain at the Authority’s expense an Opinion of Counsel that such Supplemental Trust Agreement complies with the provisions of the Trust Agreement, on which opinion the Trustee may conclusively rely. No such amendment will (1) extend the Certificate Payment Date of, or change the payment dates of, or reduce the rate of interest or principal or prepayment premium, if any, evidenced and represented by any 2008 Certificate without the express written consent of the Owner of such Certificate, or (2) reduce the percentage of 2008 Certificates required for the written consent to any such amendment, or (3) modify any rights or obligations of the Trustee without its prior written assent thereto.

The Trust Agreement and the rights and obligations of the Authority and of the Owners may also be amended at any time by a Supplemental Trust Agreement which will become binding upon adoption without the consent of any Owners, but only to the extent permitted by law, for any purpose that will not materially adversely affect the interests of the Owners, including (without limitation) for any one or more of the following purposes:

(a) to add to the agreements and covenants required in the Trust Agreement to be performed by the Authority other agreements and covenants thereafter to be performed by the Authority, or to surrender any right or power reserved in the Trust Agreement to or conferred in the Trust Agreement on the Authority;

(b) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained in the Trust Agreement or in regard to questions arising under the Trust Agreement which the Authority may deem desirable or necessary and not inconsistent with the Trust Agreement;

(c) to add to the agreements and covenants required in the Trust Agreement, such agreements and covenants as may be necessary to qualify the Trust Agreement under the Trust Indenture Act of 1939;

(d) to make any amendments or supplements necessary or appropriate to preserve or protect the exclusion of interest evidenced and represented by the 2008 Certificates from gross income for federal income tax purposes under the Code or the exemption of such interest from State of California personal income taxes;

(e) to make such amendments or supplements as may be necessary or appropriate to maintain any then current rating on the 2008 Certificates by any of the Rating Agencies;

(f) to add to the rights of the Trustee;

(g) to modify, alter, amend or supplement the Trust Agreement in any other respect, including amendments which would otherwise be described in the Trust Agreement, if the effective date of such amendments is a date on which all 2008 Certificates affected thereby are subject to mandatory tender for purchase pursuant to the provisions of the Trust Agreement or if notice of the proposed amendments is given to Owners of the affected 2008 Certificates at least thirty (30) days before the proposed effective date of such amendments and, on or before such effective date, such Owners have the right to demand purchase of their 2008 Certificates pursuant to the provisions of the Trust Agreement; or

(h) for any other purpose that does not materially and adversely affect the interests of the Owners of the 2008 Certificates.

Amendment by Mutual Consent. Subject to certain provisions in the Trust Agreement related to the 2008 Certificate Insurance Policy, the Trust Agreement does not prevent any Owner from accepting any amendment as to the particular 2008 Certificates held by him, provided that due notation thereof is made on such 2008 Certificates.

Consent of the Liquidity Facility Provider. Notwithstanding anything to the contrary contained in the Trust Agreement, the Trust Agreement may not be amended without the prior written consent of the Liquidity Facility Provider.

Notice. The Trustee will give notice to the Rating Agencies of any amendments pursuant to the Trust Agreement.

### **Events of Default and Remedies of Owners**

Events of Default: Acceleration; Waiver of Default. If an Event of Default (as that term is defined in the Contract) will happen, then such Event of Default will constitute a default under the Trust Agreement, and in each and every such case during the continuance of such Event of Default the Trustee or the Owners of not less than a majority in aggregate principal amount of the 2008 Certificates then Outstanding will exercise the remedies provided to the Authority in the Contract; provided, that nothing contained in the Trust Agreement will affect or impact the right of action of any Owner to institute suit directly against the City to enforce payment of the obligation evidenced and represented by such Owner's 2008 Certificates. Upon the occurrence of any Event of Default, the Trustee will give notice to the Credit Enhancement Provider and the Liquidity Facility Provider.

In determining whether a payment default has occurred under the Trust Agreement or whether a payment on the 2008 Certificates has been made under the Trust Agreement, no effect will be given to payments made under the 2008 Certificate Insurance Policy.

Other Remedies of the Trustee. The Trustee will have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce the Authority's rights under the Contract against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform or carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained in the Contract;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Trustee; or

(c) by suit in equity upon the happening of any Event of Default under the Trust Agreement to enforce the Authority's rights under the Contract to require the City and its directors, officers and employees to account as the trustee of an express trust.

Non-Waiver. A waiver of any default or breach of any duty or contract by the Trustee will not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Trustee to exercise any right or remedy accruing upon any default or breach of duty or contract will impair any such right or remedy or will be construed to be a waiver of any such default or breach of duty or contract or any acquiescence therein, and every right or remedy conferred upon the Trustee by law or by the Trust Agreement may be enforced and exercised from time to time and as often as will be deemed expedient by the Trustee.

If any action, proceeding or suit to enforce any right or to exercise any remedy is abandoned or determined adversely to the Trustee, the Trustee, and the City will be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Remedies Not Exclusive. No remedy in the Trust Agreement conferred upon or reserved to the Trustee or the Owners is intended to be exclusive of any other remedy, and each such remedy will be cumulative and will be in addition to every other remedy given thereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

No Liability by the City to the Owners. Except for the payment when due of the 2008 Payments and the performance of the other agreements and covenants required to be performed by it contained in the Contract, the City will not have any obligation or liability to the Owners with respect to the Trust Agreement or the preparation, execution, delivery or transfer of the 2008 Certificates or the disbursement of the 2008 Payments by the Trustee to the Owners, or with respect to the performance by the Trustee of any right or obligation required to be performed by it contained in the Trust Agreement.

No Liability by the Trustee to the Owners. Except as expressly provided in the Trust Agreement, the Trustee will not have any obligation or liability to the Owners with respect to the

payment when due of the 2008 Payments by the City, or with respect to the performance by the City of the other agreements and covenants required to be performed by it contained in the Contract.

Control of Remedies by Credit Facility Provider or Liquidity Facility Provider. Provided that the Credit Facility or the Liquidity Facility remain in effect, notwithstanding anything in the Trust Agreement to the contrary, the Credit Facility Provider will have the right to direct all remedies upon the occurrence of an Event of Default. If the Credit Facility is no longer in effect or a default has occurred with respect to the Credit Facility, the Liquidity Facility Provider will have the right to direct all remedies upon the occurrence of an Event of Default.

## **Defeasance**

Discharge of Trust Agreement. When the obligations of the City under the Contract will cease pursuant to the Contract (except for the right of the Trustee and the obligation of the City to have the money and Federal Securities mentioned therein applied to the payment of 2008 Payments as therein set forth), and either (i) the 2008 Certificates are in Fixed Rate Mode at the time moneys or Federal Securities are deposited, (ii) the deposit of money and Federal Securities is sufficient to pay the 2008 Certificates at the Maximum Rate to the earlier of the first possible tender or redemption date, or (iii) the City will have received a Rating Confirmation Notice on any 2008 Certificate that will remain Outstanding following such redemption, then and in such case the obligations created by the Trust Agreement will thereupon cease, terminate and become void except for the right of the Owners and the obligation of the Trustee to apply such moneys and Federal Securities to the payment of the 2008 Certificates as set forth in the Trust Agreement and the right of the Trustee to collect any fees or expenses due thereunder and the Trustee will turn over to the City, as an overpayment of 2008 Payments, all balances remaining in any other funds or accounts other than moneys and Federal Securities held for the payment of the 2008 Certificates at maturity or on prepayment, which moneys and Federal Securities will continue to be held by the Trustee in trust for the benefit of the Owners and will be applied by the Trustee to the payment, when due, of the principal and interest and premium if any represented by the 2008 Certificates, and after such payment, the Trust Agreement will become void.

If moneys or Federal Securities are deposited with and held by the Trustee as provided in the Trust Agreement, the Trustee will mail a notice, first-class postage prepaid, to the Owners at the addresses listed on the registration books kept by the Trustee pursuant to the Trust Agreement, stating that (a) moneys or Federal Securities are so held by it, and (b) that the Trust Agreement has been released in accordance with the provisions of the Trust Agreement.

Notice of discharge of the Trust Agreement will be provided to the Rating Agencies by the Trustee.

Deposit of Money or Securities with Trustee. Whenever in the Trust Agreement or the Contract it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities (certified to be sufficient by a report of an Independent Certified Public Accountant) in the necessary amount to pay or prepay any 2008 Certificates, the money or securities to be so deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Trust Agreement and will be:

(a) lawful money of the United States of America in an amount equal to the principal amount represented by such 2008 Certificates and all unpaid interest represented thereby to maturity,

except that, in the case of 2008 Certificates which are to be prepaid prior to maturity and in respect of which notice of such prepayment will have been given as provided in the Trust Agreement or provision satisfactory to the Trustee will have been made for the giving of such notice, the amount to be deposited or held will be the principal amount plus accrued interest to such date of prepayment plus a prepayment premium, if any, represented by such 2008 Certificates; or

(b) Federal Securities which are not subject to redemption except by the holder thereof prior to maturity (including any such securities issued or held in book-entry form) or municipal obligations which have been defeased under irrevocable escrow instructions with Federal Securities and which are rated in the highest rating category by the Rating Agencies, the principal of and interest on which when due will provide, in its opinion of an Independent Certified Public Accountant, delivered to the Trustee, money sufficient to pay the principal plus prepayment premium, if any, plus all accrued interest to maturity or to the prepayment date, as the case may be, represented by the 2008 Certificates to be paid or prepaid, as such amounts become due, provided that, in the case of 2008 Certificates which are to be prepaid prior to the maturity thereof, notice of such prepayment will have been given as provided in the Trust Agreement or provision satisfactory to the Trustee will have been made for the giving of such notice;

provided, in each case, that the Trustee will have been irrevocably instructed (by the terms of the Trust Agreement and the Contract or by Written Request of the City) to apply such money to the payment of such principal plus prepayment premium, if any, plus interest represented by such 2008 Certificates.

Unclaimed Money. Notwithstanding anything contained in the Trust Agreement to the contrary, any money held by the Trustee in trust for the payment and discharge of any of the 2008 Certificates which remains unclaimed for two years after the date when such 2008 Certificates have become due and payable, either at their stated Certificate Payment Dates or by call for prepayment prior to Certificate Payment Date, if such money was held by the Trustee at such date, or for two years after the date of deposit of such money if deposited with the Trustee after the date when such Certificates have become due and payable, will be repaid by the Trustee to the City as its absolute property free from trust, and the Trustee will thereupon be released and discharged with respect thereto and the Owners will look only to the City for the payment of the 2008 Payments evidenced and represented by such 2008 Certificates; provided, however, that before being required to make any such payment to the City, the Trustee will, at the request of and at the expense of the City, cause to be mailed to all Owners and the Securities Depositories and the Information Services a notice that such money remains unclaimed and that, after a date named in such notice, which date will not be less than 30 days after the date of the first publication of each such notice, the balance of such money then unclaimed will be returned to the City.

#### **Additional Provisions Relating to the 2008 Certificate Insurance Policy**

(a) Notwithstanding anything in the Trust Agreement to the contrary so long as the 2008 Certificate Insurance Policy relating to the 2008 Certificates will be in full force and effect and the 2008 Certificate Insurer will not be in default of any of its obligations thereunder, the 2008 Certificate Insurer will be deemed to be sole Owner of the 2008 Certificates it insures for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the 2008 Certificate Owners are entitled to take pursuant to the Trust Agreement, including any consent to any modification, amendment or supplement to the Trust Agreement pursuant to the Trust Agreement.

(b) Notwithstanding anything in the Trust Agreement to the contrary the 2008 Certificate Insurer shall be deemed to be the Owners of all of the 2008 Certificates for purposes of (a) exercising all remedies and directing the Trustee to take actions or for any other purposes following an Event of Default (as defined herein), and (b) granting any consent, direction or approval or taking any action permitted or required by the Owners of the 2008 Certificates.

(c) Notwithstanding anything in the Trust Agreement to the contrary so long as the 2008 Certificate Insurance Policy will be in full force and effect and the 2008 Certificate Insurer will not be in default of any of its obligations thereunder, upon the occurrence and continuance of an Event of Default, the Trustee may, with the consent of the 2008 Certificate Insurer, and will at the direction of the 2008 Certificate Insurer or the Bondholders with the prior written consent of the 2008 Certificate Insurer, by written notice to the Authority and the 2008 Certificate Insurer, as applicable (i) declare the principal of the 2008 Certificates immediately due and payable, whereupon that portion of the principal of the 2008 Certificates thereby coming due and the interest thereon accrued to the date of payment will, without further action, become and be immediately due and payable, anything in the Trust Agreement or the 2008 Certificates to the contrary notwithstanding or (ii) annul any declaration of acceleration.

**APPENDIX C**

**PROPOSED FORM OF OPINION OF SPECIAL COUNSEL**

[Closing Date]

City Council  
City of Modesto  
Modesto, California

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Ladies and Gentlemen:

We have acted as special counsel to the City of Modesto (the “City”) in connection with the execution and delivery of \$47,625,000 principal amount of Water Revenue Certificates of Participation, 2008 Series A (the “Certificates”), evidencing and representing proportionate interests of the owners thereof in 2008 Payments (as that term is defined in the Trust Agreement referred to below) to be made by the City under and pursuant to that certain Master Installment Purchase Contract, dated as of November 1, 1997 (the “Master Installment Purchase Contract”), by and between the City and the Modesto Public Financing Authority (the “Authority”), as previously supplemented and as amended and supplemented by that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the “2008 Supplemental Installment Purchase Contract”), by and between the City and the Authority. The Master Installment Purchase Contract, as previously supplemented and as amended and supplemented by the 2008 Supplemental Installment Purchase Contract, is referred to herein as the “Installment Purchase Contract.” All of the Authority’s rights to receive such 2008 Payments have been assigned by the Authority to The Bank of New York Trust Company, N.A., as trustee (the “Trustee”), pursuant to that certain Trust Agreement, dated as of May 1, 2008 (the “Trust Agreement”), by and between the Authority and the Trustee. The Certificates have been executed by the Trustee pursuant to the terms of the Trust Agreement.

In our capacity as special counsel, we have reviewed relevant laws of the State of California, including the City Charter; executed copies of the Installment Purchase Contract and the Trust Agreement; certifications and resolutions of the City, the Authority, the Trustee, and others; opinions of counsel to the City, the Authority and the Trustee; and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. Our services as special counsel were limited to such examination and to rendering the opinions set forth below. We have assumed the genuineness of all documents and signatures presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents. Furthermore, we have assumed compliance with all covenants and agreements contained in the Installment Purchase Contract and the Trust Agreement, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest represented by the Certificates to be included in gross income for federal income tax purposes.

Certain requirements and procedures contained or referred to in the Installment Purchase Contract and the Trust Agreement or other relevant documents relating to the Certificates may be changed, and certain actions may be taken (including, without limitation, defeasance of the Certificates) or omitted, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of counsel nationally recognized in the area of municipal bonds. We express no opinion as to the effect of any change to any document pertaining to the Certificates or of any action taken or not taken where such change is made or action is taken or not taken without our approval or in reliance upon the advice of counsel other than ourselves with respect to the exclusion from gross income of the interest represented by the Certificates for federal income tax purposes.

With respect to the opinions expressed herein, the enforceability of the Installment Purchase Contract is subject to the limitations on the imposition of certain fees and charges by the City relating to the Water Utility System under Articles XIIC and XIID of the California Constitution. In addition, the rights and obligations under the Certificates, the Installment Purchase Contract and the Trust Agreement are subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting the enforcement of creditors' rights generally, to the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California. Furthermore, we express no opinion with respect to any indemnification, contribution, penalty, choice of forum or waiver provisions contained in the foregoing documents.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Master Installment Purchase Contract, the 2008 Supplemental Installment Purchase Contract and the Trust Agreement have been duly authorized, executed and delivered by the Authority; the Master Installment Purchase Contract and the 2008 Supplemental Installment Purchase Contract have been duly authorized, executed and delivered by the City; and, assuming (in the case of the Trust Agreement) due authorization, execution and delivery by the Trustee, such agreements are valid and binding obligations of the Authority and the City (as the case may be), enforceable against the Authority and the City (as the case may be) in accordance with their respective terms.

2. The Certificates, assuming due execution and delivery by the Trustee, are entitled to the benefits of the Trust Agreement.

3. The obligation of the City to make the 2008 Payments under the Installment Purchase Contract is a special obligation of the City payable solely from Gross Revenues (as such term is defined in the Installment Purchase Agreement). The general fund of the City is not liable, and neither the credit nor taxing power of the City is pledged, for the payment of the 2008 Payments under the Installment Purchase Contract.

4. Based on existing statutes, regulations, rulings and judicial decisions and assuming compliance by the City with certain covenants in the Installment Purchase Contract and with requirements of the Internal Revenue Code of 1986, as amended, regarding the use, expenditure and investment of Certificate proceeds and the timely payment of certain investment earnings to the United States Treasury, interest represented by the Certificates is not includable in the gross income

of the owners of the Certificates for purposes of federal income taxation. Failure by the City to comply with the above covenants and requirements may cause interest represented by the Certificates to be included in gross income retroactive to the date of execution and delivery of the Certificates.

Interest represented by the Certificates will not be treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals or corporations; however, interest represented by the Certificates will be included as an adjustment in the calculation of the alternative minimum taxable income of corporations and may therefore affect the federal alternative minimum tax liability of corporations.

5. Interest represented by the Certificates is exempt from present State of California personal income taxes.

Other than as described herein, we neither addressed nor are we opining on the tax consequences to any person of the investment in, or the receipt of interest represented by, the Certificates.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

This opinion is limited to the laws of the State of California and the federal laws of the United States. The opinions in this letter are expressed solely as of the date hereof for your benefit and may not be relied upon in any manner for any purposes by any other person.

Respectfully submitted,

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## APPENDIX D

### INFORMATION CONCERNING DTC

*The information in this Appendix concerning DTC and DTC's book entry only system has been obtained from sources that the Authority and the City believe to be reliable, but neither the Authority nor the City takes any responsibility for the completeness or accuracy thereof. The following description of the procedures and recordkeeping with respect to beneficial ownership in the 2008 Certificates, payment of principal, premium, if any, and interest with respect to the 2008 Certificates to all DTC Participants or to Beneficial Owners, confirmation and transfers of Beneficial Ownership interests in the 2008 Certificates and other related transactions by and between DTC, DTC Participants and Beneficial Owners is based solely on information provided by DTC.*

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the 2008 Certificates. The 2008 Certificates will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered security certificate will be issued for each maturity of the 2008 Certificates, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation, (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission.

Purchases of 2008 Certificates under the DTC system must be made by or through Direct Participants, which will receive credit for the 2008 Certificates on DTC's records. The ownership interest of each actual purchaser of each 2008 Certificate (a "Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchases. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2008 Certificates are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Certificates, except in the event that use of the book-entry system for the 2008 Certificates is discontinued.

To facilitate subsequent transfers, all 2008 Certificates deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co, or such other name as may be requested by an authorized representative of DTC. The deposit of 2008 Certificates with DTC and their registration in the

name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2008 Certificates; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2008 Certificates are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of 2008 Certificates may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2008 Certificates, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of 2008 Certificates may wish to ascertain that the nominee holding the 2008 Certificates for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Prepayment notices shall be sent to DTC. If less than all of the 2008 Certificates within a maturity are being prepaid, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be prepaid.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to 2008 Certificates unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts 2008 Certificates are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Prepayment proceeds, principal and interest payments on the 2008 Certificates will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of prepayment proceeds, principal and interest payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its 2008 Certificates purchased tendered, through its Participant, to the Remarketing Agent, and shall effect delivery of 2008 Certificates by causing the Direct Participant to transfer the Participant's interest in the 2008 Certificates, on DTC's records, to the Remarketing Agent. The requirement for physical delivery of 2008 Certificates in connection with an optional tender or a mandatory purchase will be deemed satisfied when ownership rights in the 2008 Certificates are transferred by Direct Participants on DTC's records followed by a book-entry credit of tendered 2008 Certificates to the Remarketing Agent's account.

DTC may discontinue providing its services as securities depository with respect to the 2008 Certificates at any time by giving reasonable notice to the City or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, 2008 Certificates are required to be printed and delivered.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, 2008 Certificates will be printed and delivered.

**APPENDIX E**  
**SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY**



Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, NY 10019  
t. 212.974.0100  
www.assuredguaranty.com

**Financial Guaranty Insurance Policy**

**Issuer:**

**Policy No.:**

**Obligations:**

**Premium:**

**Effective Date:**

Assured Guaranty Corp., a Maryland corporation ("**Assured Guaranty**"), in consideration of the payment of the Premium and on the terms and subject to the conditions of this Policy (which includes each endorsement hereto), hereby unconditionally and irrevocably agrees to pay to the trustee (the "**Trustee**") or the paying agent (the "**Paying Agent**") for the Obligations (as set forth in the documentation providing for the issuance of and securing the Obligations) for the benefit of the Holders that portion of the Insured Payments which shall become Due for Payment but shall be unpaid by reason of Nonpayment.

Assured Guaranty will make such Insured Payments to the Trustee or the Paying Agent on the later to occur of (i) the date applicable principal or interest becomes Due for Payment, or (ii) the Business Day next following the day on which Assured Guaranty shall have Received a completed Notice of Nonpayment. If a Notice of Nonpayment by Assured Guaranty is incomplete or does not in any instance conform to the terms and conditions of this Policy, it shall be deemed not Received, and Assured Guaranty shall promptly give notice to the Trustee or the Paying Agent. Upon receipt of such notice, the Trustee or the Paying Agent may submit an amended Notice of Nonpayment. The Trustee or the Paying Agent will disburse the Insured Payments to the Holders only upon receipt by the Trustee or the Paying Agent in form reasonably satisfactory to it of (i) evidence of the Holder's right to receive such payments, and (ii) evidence, including without limitation any appropriate instruments of assignment, that all of the Holder's rights to payment of such principal or interest Due for Payment shall thereupon vest in Assured Guaranty. Upon and to the extent of such disbursement, Assured Guaranty shall become the Holder of the Obligations, any appurtenant coupon thereto and right to receipt of payment of principal thereof or interest thereon, and shall be fully subrogated to all of the Holder's right, title and interest thereunder, including without limitation the right to receive payments in respect of the Obligations. Payment by Assured Guaranty to the Trustee or the Paying Agent for the benefit of the Holders shall discharge the obligation of Assured Guaranty under this Policy to the extent of such payment.

This Policy is non-cancelable by Assured Guaranty for any reason. The Premium on this Policy is not refundable for any reason. This Policy does not insure against loss of any prepayment premium or other acceleration payment which at any time may become due in respect of any Obligation, other than at the sole option of Assured Guaranty, nor against any risk other than Nonpayment.

Except to the extent expressly modified by any endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "**Avoided Payment**" means any amount previously distributed to a Holder in respect of any Insured Payment by or on behalf of the Issuer, which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder. "**Business Day**" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or Assured Guaranty are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York or in the State of Maryland. "**Due for Payment**" means (i) when referring to the principal of an Obligation, the stated maturity date thereof, or the date on which such Obligation shall have been duly called for mandatory sinking fund redemption, and does not refer to any earlier date on which payment is due by reason of a call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless Assured Guaranty in its sole discretion elects to make any principal payment, in whole or in part, on such earlier date) and (ii) when referring to interest on an Obligation, the stated date for payment of such interest. "**Holder**" means, in respect of any Obligation, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Obligation to payment of principal or interest thereunder, except that Holder shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Obligations. "**Insured Payments**" means that portion of the principal of and interest on the Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment. Insured Payments shall not include any additional amounts owing by the Issuer solely as a result of the failure by the Trustee or the Paying Agent to pay such amount when due and payable, including without limitation any such additional amounts as may be attributable to penalties or to interest accruing at a default rate, to amounts payable in respect of indemnification, or to any other additional amounts payable by the Trustee or the Paying Agent by reason of such failure. "**Nonpayment**" means, in respect of an Obligation, the failure of the Issuer to have provided sufficient funds to the Trustee or the Paying Agent for payment in full of all principal and interest Due for Payment on such Obligation. It is further understood that the term "Nonpayment" in respect of an Obligation includes any Avoided Payment. "**Receipt**" or "**Received**" means actual receipt or notice of or, if notice is given by overnight or other delivery service, or by certified or registered United States mail, by a delivery receipt signed by a person authorized to accept delivery on behalf of the person to whom the notice was given. Notices to Assured Guaranty may be mailed by registered mail or personally delivered or telecopied to it at 1325 Avenue of the Americas, New York, New York 10019, Telephone Number: (212) 974-0100, Facsimile Number: (212) 581-3268, Attention: Risk Management Department - Public Finance Surveillance, with a copy to the General Counsel, or to such other address as shall be specified by Assured Guaranty to the Trustee or the Paying Agent in writing. A Notice of Nonpayment will be deemed to be Received by Assured Guaranty on a given Business Day if it is Received prior to 12:00 noon (New York City time) on such Business Day; otherwise it will be deemed Received on the

next Business Day. "Term" means the period from and including the Effective Date until the earlier of (i) the maturity date for the Obligations, or (ii) the date on which the Issuer has made all payments required to be made on the Obligations.

At any time during the Term of this Policy, Assured Guaranty may appoint a fiscal agent (the "Fiscal Agent") for purposes of this Policy by written notice to the Trustee or the Paying Agent, specifying the name and notice address of such Fiscal Agent. From and after the date of Receipt of such notice by the Trustee or the Paying Agent, copies of all notices and documents required to be delivered to Assured Guaranty pursuant to this Policy shall be delivered simultaneously to the Fiscal Agent and to Assured Guaranty. All payments required to be made by Assured Guaranty under this Policy may be made directly by Assured Guaranty or by the Fiscal Agent on behalf of Assured Guaranty. The Fiscal Agent is the agent of Assured Guaranty only, and the Fiscal Agent shall in no event be liable to the Trustee or the Paying Agent for any acts of the Fiscal Agent or any failure of Assured Guaranty to deposit, or cause to be deposited, sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, Assured Guaranty hereby waives, in each case for the benefit of the Holders only, all rights and defenses of any kind (including, without limitation, the defense of fraud in the inducement or in fact or any other circumstance that would have the effect of discharging a surety, guarantor or any other person in law or in equity) that may be available to Assured Guaranty to deny or avoid payment of its obligations under this Policy in accordance with the express provisions hereof. Nothing in this paragraph will be construed (i) to waive, limit or otherwise impair, and Assured Guaranty expressly reserves, Assured Guaranty's rights and remedies, including, without limitation, its right to assert any claim or to pursue recoveries (based on contractual rights, securities law violations, fraud or other causes of action) against any person or entity, in each case, whether directly or acquired as a subrogee, assignee or otherwise, subsequent to making any payment to the Trustee or the Paying Agent, in accordance with the express provisions hereof, and/or (ii) to require payment by Assured Guaranty of any amounts that have been previously paid or that are not otherwise due in accordance with the express provisions of this Policy.

This Policy (which includes each endorsement hereto) sets forth in full the undertaking of Assured Guaranty with respect to the subject matter hereof, and may not be modified, altered or affected by any other agreement or instrument, including, without limitation, any modification thereto or amendment thereof. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. This Policy will be governed by, and shall be construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, Assured Guaranty has caused this Policy to be affixed with its corporate seal, to be signed by its duly authorized officer, and to become effective and binding upon Assured Guaranty by virtue of such signature.

**ASSURED GUARANTY CORP.**

(SEAL)

By: \_\_\_\_\_  
[Insert Authorized Signatory Name]  
[Insert Authorized Signatory Title]

Signature attested to by:

\_\_\_\_\_  
Counsel

## APPENDIX F

### CERTAIN INFORMATION REGARDING THE CITY OF MODESTO

The following information with respect to the City is presented for information purposes only. The 2008 Certificates do not constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitations and the City is not obligated to levy any ad valorem taxes therefor or to use any other funds of the City to pay the 2008 Payments or the interest thereon (other than Gross Revenues of the Water Utility System).

#### General Description

The City, which is the county seat of Stanislaus County, was incorporated in 1884. It covers approximately 36 square miles. The City operates under a council-manager form of government pursuant to a charter adopted in 1963. The City is located in central California approximately 93 miles east of the City and County of San Francisco.

The City Council (the "Council") appoints the City Clerk and Auditor, the City Attorney, and the City Manager. The City Manager heads the executive branch of government, implements Council directives and policies, and manages the administrative and operational functions through the various department heads who are appointed by the City Manager.

The City provides the full range of services normally associated with a municipality, including public safety (police and fire), highways and streets, sanitation, health and social services, culture-recreation, public improvements, planning and zoning and general administrative services. The City also provides parking and airport facilities and water, sewer and bus service. The school districts in the City are separate governmental entities which receive no funding from the City.

#### Population

The following table represents historical population statistics for the City, the County and the State.

#### CITY OF MODESTO Population Estimates<sup>(1)</sup>

<i>Calendar Year</i>	<i>City of Modesto</i>	<i>Stanislaus County</i>	<i>State of California</i>
2008	209,936	525,903	38,049,462
2007	208,150	518,938	37,559,440
2006	207,096	511,848	37,114,598
2005	207,029	503,003	36,675,346
2004	206,861	493,515	36,199,342
2003	203,813	483,705	35,652,700
2002	199,398	472,185	35,063,959
2001	193,640	458,512	34,430,970

<sup>(1)</sup> As of January 1.

Source: California State Department of Finance, Population Estimates for Cities, Counties and State, 2001-2008 with 2000 Benchmark.

## Employment

The following table summarizes the civilian labor force, employment and unemployment in the County for the calendar years 2003 through 2007. These figures are county-wide statistics and may not necessarily accurately reflect employment trends in the City.

### MODESTO METROPOLITAN STATISTICAL AREA Industry Employment and Labor Force (Annual Averages)

	2007	2006	2005	2004	2003
<u>Civilian Labor Force</u>					
Employment	231,200	227,100	210,800	204,600	201,500
Unemployment	20,300	18,100	19,000	20,700	22,000
Unemployment Rate	8.8%	8.0%	8.3%	9.2%	9.8%
<u>Wage and Salary Employment:</u>					
Total Farm	12,800	14,100	14,100	13,800	14,000
Natural Resources, Mining and Construction	11,400	13,400	13,300	12,300	11,400
Manufacturing	22,700	23,100	22,300	22,700	23,100
Wholesale Trade	6,000	5,900	6,200	6,000	5,700
Retail Trade	22,200	22,500	22,700	21,500	21,800
Transport., Warehousing, Utilities	5,600	5,200	5,200	4,700	4,600
Information	2,300	2,400	2,500	2,500	2,200
Financial Activities	6,200	6,400	6,200	6,100	6,000
Professional and Business Services	14,900	14,800	14,900	14,200	13,800
Educational and Health Services	21,100	19,600	19,500	19,200	18,900
Leisure and Hospitality	15,400	15,500	14,800	14,200	13,700
Other Services	6,000	5,900	6,100	6,200	6,200
Federal Government	1,100	1,200	1,200	1,200	1,200
State Government	1,800	1,800	1,700	1,700	1,900
Local Government	<u>23,300</u>	<u>23,300</u>	<u>22,700</u>	<u>22,100</u>	<u>21,900</u>
Total All Industries	172,800	172,500	173,300	168,500	166,300

<sup>(1)</sup> Latest available information.

Note: Totals may not add up because of rounding.

Source: Labor Division of the California State Employment Development Department.

## Effective Buying Income

“Effective Buying Income” is defined as money income less personal tax and non-tax payments, a number often referred to as “disposable” or “after-tax” income. Money income is the aggregate of wages and salaries, net farm and non-farm self-employment income, interest, dividends, net rental and royalty income, Social Security and railroad retirement income, other retirement and disability income, public assistance income, unemployment compensation, Veterans Administration payments, alimony and child support, military family allotments, net winnings from gambling and other periodic income. Deducted from this total money income are personal income taxes (federal, state and local), personal contributions to social insurance (Social Security and federal retirement payroll deductions), and taxes on owner-occupied non-business real estate.

The following table summarizes the total effective buying income for the County and the State for the period from 2002 through 2006.

**CITY OF MODESTO, STANISLAUS COUNTY AND THE STATE OF CALIFORNIA  
Total Effective Buying Income and Median Household Effective Buying Income  
2002 through 2006<sup>(1)</sup>**

<i>Year</i>	<i>Area</i>	<i>Total Effective Buying Income (000's Omitted)</i>	<i>Median Household Effective Buying Income</i>
2006	City of Modesto Stanislaus County California		
2005	City of Modesto	\$3,274,173	\$37,874
	Stanislaus County	7,416,705	37,815
	California	705,108,410	43,915
2004	City of Modesto	\$3,274,173	\$37,874
	Stanislaus County	7,416,705	37,815
	California	705,108,410	43,915
2003	City of Modesto	\$3,165,245	\$36,774
	Stanislaus County	7,078,408	36,670
	California	647,879,427	42,484
2002	City of Modesto	\$2,957,668	\$36,573
	Stanislaus County	6,679,400	36,331
	California	650,521,407	43,532

<sup>(1)</sup> In 2002, the publisher of Sales and Marketing Management, altered the methodology used in order to produce current year estimates. The 2006 edition of Sales and Marketing Management has not been published as of the date hereof, and therefore 2006 estimates are not available.

Source: Survey of Buying Power, Sales & Marketing Management Magazine, dated 2002 through 2006.

## Major Employers

The following table summarizes the largest employers in the City in fiscal year 2006-07.

**CITY OF MODESTO  
Ten Largest Employers  
2006-07**

<i>No.</i>	<i>Company Name</i>	<i>No. Employees</i>	<i>Percentage of Total City Employment</i>
1.	Stanislaus County	4,764	4.8%
2.	Modesto City Schools	3,345	3.4
3.	E&J Gallo Winery	3,311	3.3
4.	Memorial Medical Center	2,700	2.7
5.	Del Monte Foods	2,600	2.6
6.	Modesto Junior College	2,550	2.6
7.	Signature Fruit Company	2,321	2.3
8.	Stanislaus Food Products	2,000	2.0
9.	Doctors Medical Center	1,967	2.0
10.	City of Modesto	<u>1,700</u>	<u>1.7</u>
	Subtotal	27,258	27.5
	Total City Employment	99,100	

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Source: Stanislaus Economic Development and Workforce Alliance.

## Commercial Activity

The following two tables show the dollar volume of taxable transactions in the City of Modesto and County of Stanislaus from 2002 through 2006.

### CITY OF MODESTO Taxable Transactions Calendar Years 2002 through 2006 (in Thousands of Dollars)

<b>Retail Outlets</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Apparel stores	\$ 163,548	\$ 165,575	\$ 148,097	\$ 126,372	\$ 129,773
General merchandise stores	543,987	550,143	538,323	518,024	507,438
Food stores	131,263	131,100	133,058	136,462	119,423
Eating and drinking places	275,393	275,550	258,357	245,609	235,337
Home furnishing and appliances	121,102	138,642	136,143	130,089	131,234
Bldg. materials and farm implements	204,034	248,287	233,124	204,427	188,388
Auto dealers and supplies	218,243	232,889	253,170	259,395	247,861
Service stations	175,359	153,008	131,695	115,317	101,551
Other retail stores	449,981	452,236	418,822	392,650	381,371
<b>Subtotal</b>	<b>\$2,282,910</b>	<b>\$2,347,430</b>	<b>\$2,250,789</b>	<b>\$2,128,345</b>	<b>\$2,042,376</b>
All Other Outlets	395,515	400,579	414,841	433,387	372,899
<b>All Outlets</b>	<b>\$2,678,425</b>	<b>\$2,748,009</b>	<b>\$2,665,630</b>	<b>\$2,561,732</b>	<b>\$2,415,275</b>

Source: State of California, Board of Equalization.

### COUNTY OF STANISLAUS Taxable Transactions Calendar Years 2002 through 2006 (in Thousands of Dollars)

<b>Retail Outlets</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
Apparel stores	\$224,909	\$213,850	\$192,858	\$154,867	\$154,083
General merchandise stores	956,378	927,418	846,742	803,255	784,431
Specialty stores	558,432	535,480	501,694	465,562	432,777
Food stores	320,361	308,864	291,867	282,781	260,781
Eating and drinking places	505,384	489,169	452,120	421,793	403,421
Household	192,275	210,720	198,691	187,214	181,384
Building materials	567,014	572,552	508,825	416,983	368,472
Automotive	1,573,719	1,516,702	1,396,277	1,305,986	1,248,936
Other retail stores	369,917	368,269	331,376	297,729	273,693
<b>Subtotal</b>	<b>\$5,268,389</b>	<b>\$5,143,024</b>	<b>4,720,450</b>	<b>4,336,170</b>	<b>4,107,978</b>
Business and Personal Services	240,304	253,838	240,245	224,429	233,862
All Other Outlets	<u>\$1,843,839</u>	<u>\$1,889,038</u>	<u>\$1,804,973</u>	<u>\$1,614,893</u>	<u>\$1,494,025</u>
<b>All Outlets</b>	<b>\$7,352,532</b>	<b>\$7,285,900</b>	<b>\$6,765,668</b>	<b>\$6,175,492</b>	<b>\$5,825,865</b>

Source: State of California, Board of Equalization.

## **Construction Trends**

“Single Family Housing,” includes detached, semi-detached, rowhouse and townhouse units. Rowhouses and townhouses are included when each unit is separated from the adjacent unit by an unbroken ground-to-roof party or fire wall. Condominiums are included in single-family when they are of zero-lot-line or zero-property-line construction; when units are separated by an air space; or, when units are separated by an unbroken ground-to-roof party or fire wall. “Multi-Family Housing,” includes duplexes, 3-4-unit structures and apartment-type structures with five units or more. Multi-family housing also includes condominium units in structures of more than one living unit that do not meet the above single-family housing definition. “Residential Alterations and Additions,” means alterations, additions, and conversions to residential structures, excluding special installation permits for electrical, plumbing, heating, air-conditioning, or similar mechanical work, or installation of fire escapes, elevators, signs, etc.

“New Commercial,” includes new hotels and motels, office and bank buildings, stores and other mercantile buildings, parking garages, service stations, and amusement and recreational buildings. “New Industrial,” includes manufacturing plants and affiliated buildings. “Other New Nonresidential,” includes churches and religious buildings, hospitals and institutional buildings, schools and educational buildings, residential garages, public works and utilities buildings, and miscellaneous nonresidential structures. “Nonresidential Alterations and Additions,” means alterations, additions, and conversions to nonresidential structures, excluding special installation permits for electrical, plumbing, heating, air-conditioning, or similar mechanical work, or installation of fire escapes, elevators and signs, etc.

Provided below are the building permits and valuations for the City of Modesto for calendar years 2003 through 2007.

**CITY OF MODESTO**  
**Residential and Nonresidential Building Permit Valuations**  
**and Total Residential Building Permits**

	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>
<b>Permit Valuation</b>					
New Single-family	\$ 169,031,342	\$ 69,285,758	\$ 168,770,716	\$ 80,245,831	\$ 55,199,615
New Multi-family	6,105,669	20,343,871	1,118,710	3,812,649	30,912,544
Res. Alterations & Additions	39,686,601	80,226,181	45,317,392	39,017,104	80,583,151
Total Residential	214,823,612	169,855,810	215,206,818	123,075,584	166,695,310
New Commercial	24,687,807	46,240,400	11,798,301	27,027,077	59,163,453
New Industrial	994,822	3,204,092	1,202,465	2,279,197	10,000
New Other	39,686,601	37,838,523	62,440,247	21,941,020	5,188,331
Non-Res. Alterations & Additions	33,473,125	36,444,721	69,587,431	36,071,154	40,412,881
Total Nonresidential	<u>98,842,355</u>	<u>123,727,736</u>	<u>145,028,444</u>	<u>87,318,448</u>	<u>104,774,665</u>
Total All Building	\$313,665,967	\$293,583,546	\$360,235,262	\$210,394,032	\$271,469,975
<b>New Dwelling Units</b>					
Single Family	838	345	868	378	288
Multiple Family	77	288	13	37	288
Total	915	633	881	415	576

Source: Building Permit Summary, City of Modesto.

**Agriculture**

The following table summarizes historical agricultural production within the County for calendar years 2002 through 2006.

**STANISLAUS COUNTY**  
**Agricultural Production**  
**2002-2006**

<i>Commodity</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>
Fruit and Nut Crops	\$393,520,000	\$431,642,000	\$616,452,000	\$686,897,000	\$660,001,000
Vegetable Crops	105,508,000	105,667,000	125,903,000	91,454,000	93,239,000
Field Crops	132,418,000	127,329,000	137,871,000	147,744,000	167,576,000
Seed Crops	561,000	533,000	401,000	810,000	617,000
Apiary	7,323,000	7,565,000	8,865,000	12,045,000	12,745,000
Nursery Crops	85,889,000	99,164,000	111,272,000	71,240,000	87,351,000
Livestock & Poultry	242,677,000	239,990,000	403,205,000	401,244,000	628,551,000
Livestock & Poultry Products	400,075,000	443,042,000	574,465,000	566,161,000	498,072,000
<b>TOTALS</b>	<b>\$1,367,971,000</b>	<b>\$1,454,932,000</b>	<b>\$1,978,434,000</b>	<b>\$1,977,595,000</b>	<b>\$2,148,152,000</b>

Source: Stanislaus County Department of Agriculture.

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**UNDERWRITING**

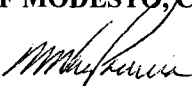
The 2008 Certificates will be purchased by Banc of America Securities LLC (the "Underwriter"), under a Purchase Contract pursuant to which the Underwriter has agreed to purchase all, but not less than all, of the 2008 Certificates for an aggregate purchase price of \$47,471,079.37 (representing the principal evidenced thereby less Underwriter's discount of \$153,920.63).

**MISCELLANEOUS**

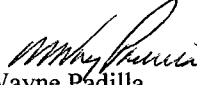
Insofar as any statements made in this Official Statement involve matters of opinion or of estimates, whether or not expressly stated, they are set forth as such and not as representations of fact. No representation is made that any of such statements made will be realized. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the Owners of the 2008 Certificates.

The execution and delivery of this Official Statement have been duly authorized by the City and the Authority.

**CITY OF MODESTO, CALIFORNIA**

  
By: /s/ Wayne Padilla  
Finance Director/Treasurer

**MODESTO PUBLIC FINANCING AUTHORITY**

  
By: /s/ Wayne Padilla  
Auditor and Treasurer



**Moody's Corporation**

7 World Trade Center at 250 Greenwich Street  
New York, New York 10007

May 29, 2008

Wayne Padilla  
Director of Finance  
City of Modesto  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, CA 95353

**City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A**

Dear Mr. Padilla:

We have reviewed the documentation submitted to us in connection with the above captioned transaction. I am pleased to inform you that Moody's has assigned a rating of **Aaa/VMIG 1** to the bonds.

The long-term portion of the rating is based upon the financial strength rating of Assured Guaranty Corp. (Assured) as provider of the insurance policy (policy # D-2008-461) and will be changed whenever the rating of Assured is changed. The long-term portion of the rating will expire upon the termination of the policy. The short-term portion of the rating is based upon the credit quality of the provider of the standby bond purchase agreement Bank of America N.A. (the Bank) and the financial strength rating of Assured. The short term portion of the rating will be changed whenever the Bank's short-term rating is changed and will be reviewed and may be downgraded upon downgrade of the financial strength rating of Assured.

Additionally, the short-term rating will expire upon the earliest to occur of: (i) the stated expiration date of the standby bond purchase agreement, May 29, 2011; (ii) the mandatory tender date in connection with such expiry; (iii) conversion of the interest rate mode on the bonds from the weekly mode; or (iv) any earlier termination of the standby bond purchase agreement.

In assigning our rating, we relied on documents provided to us. **In order to maintain the rating, we must be provided with a set of executed documents as soon as possible.** In connection with the surveillance of our rating, please forward information concerning SBPA substitutions, SBPA extensions, bond redemptions, mandatory tenders or any amendments to the governing documents to the Moody's Municipal Structured Products Surveillance Group by email at [MSPGSurveillance@moodys.com](mailto:MSPGSurveillance@moodys.com) or by fax at (212) 553-1066.

If you have any questions regarding the rating or the information required for maintaining the rating, please do not hesitate to contact me at (212) 553-3806.

Sincerely,

Ishani Goonasekera  
Analyst



**Moody's Investors Service**

May 29, 2008

One Front Street, Suite 1900  
San Francisco, CA 94111

Wayne Padilla  
Finance Director  
City of Modesto  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, CA 95353

Dear Mr. Padilla:

We wish to inform you that on May 22, 2008, Moody's Investors Service reviewed and assigned a rating of **A2** to Modesto (City of) CA Water Enterprise's Water Refunding Revenue Certificates of Participation 2008 Series A issued through Modesto Public Financing Authority, CA.

In order for us to maintain the currency of our ratings, we request that you provide ongoing disclosure, of current financial and statistical information.

Moody's will monitor this rating and reserves the right, at its sole discretion, to revise or withdraw this rating at any time in the future.

The rating, as well as any revisions or withdrawals thereof, will be publicly disseminated by Moody's through normal print and electronic media and in response to verbal requests to Moody's Rating Desk.

Should you have any questions regarding the above, please do not hesitate to contact me or the analyst assigned to this transaction, Michael Wertz at 415-274-1722.

Sincerely,

Kenneth B. Kurtz  
Managing Director

KBK:MW/cm

cc: Scott Nagelson  
BANC OF AMERICA SECURITIES LLC  
CA5-801-18-36  
600 Montgomery Street, Suite 1800  
San Francisco, CA 94111-2719

**STANDARD  
& POOR'S**

One Market  
Steuart Tower, 15th Floor  
San Francisco, CA 94105-1000  
tel 415 371-5004  
reference no.: 40228589

May 29, 2008

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, NY 10019  
Attention: Ms. Kathy Evers, Managing Director

Re: *\$47,625,000 City of Modesto, California Water Refunding Revenue Certificates of Participation, 2008 Series A, dated: May 15, 2008, due: October 1, 2036, (POLICY#D-2008-461/DSRF#D-2008-462)*

Dear Ms. Evers:

Standard & Poor's has reviewed the rating on the above-referenced obligations. After such review, we have changed the rating to "AAA/A-1+" from "A+" and changed the outlook to stable from positive. The rating was changed due to the bond insurance policy your company is providing and the standby bond purchase agreement provided by Bank of America N.A.. Therefore, rating adjustments may result from changes in the financial position of Bank of America N.A. or your company, or from alterations in the documents governing the issue.

The rating is not investment, financial, or other advice and you should not and cannot rely upon the rating as such. The rating is based on information supplied to us by you but does not represent an audit. We undertake no duty of due diligence or independent verification of any information. The assignment of a rating does not create a fiduciary relationship between us and you or between us and other recipients of the rating. We have not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the Securities Act of 1933. The rating is not a "market rating" nor is it a recommendation to buy, hold, or sell the obligations.

This letter constitutes Standard & Poor's permission to you to disseminate the above-assigned rating to interested parties. Standard & Poor's reserves the right to inform its own clients, subscribers, and the public of the rating.

Standard & Poor's relies on the issuer and its counsel, accountants, and other experts for the accuracy and completeness of the information submitted in connection with the rating. This rating is based on financial information and documents we received prior to the issuance of this letter. Standard & Poor's assumes that the documents you have provided to us are final. If any subsequent changes were made in the final documents, you must notify us of such changes by sending us the revised final documents with the changes clearly marked.

Ms. Kathy Evers  
Page 2  
May 29, 2008

Standard & Poor's is pleased to be of service to you. For more information please visit our website at [www.standardandpoors.com](http://www.standardandpoors.com). If we can be of help in any other way, please contact us. Thank you for choosing Standard & Poor's and we look forward to working with you again.

Sincerely yours,

Standard & Poor's Ratings Services  
a division of The McGraw-Hill Companies, Inc.

A handwritten signature in black ink that reads "Standard and Poor's" followed by a stylized monogram, likely "SP" or "S&P".

ms

**STANDARD  
& POOR'S**

One Market  
Steuart Tower, 15th Floor  
San Francisco, CA 94105-1000  
tel 415 371-5004  
reference no.: 897349

May 5, 2008

City of Modesto  
Office of the City Manager  
1010 Tenth Street, Suite 6100  
P.O. Box 642  
Modesto, CA 95353  
Attention: Mr. James E. Niskanen, Interim City Manager

Re: ***US\$47,100,000 Modesto, California, Water Revenue Certificate of Participation, dated:  
Date of Delivery, due: October 1, 2036***

Dear Mr. Niskanen:

Pursuant to your request for a Standard & Poor's rating on the above-referenced obligations, we have reviewed the information submitted to us and, subject to the enclosed *Terms and Conditions*, have assigned a rating of "A+". Standard & Poor's views the outlook for this rating as positive. A copy of the rationale supporting the rating is enclosed.

The rating is not investment, financial, or other advice and you should not and cannot rely upon the rating as such. The rating is based on information supplied to us by you or by your agents but does not represent an audit. We undertake no duty of due diligence or independent verification of any information. The assignment of a rating does not create a fiduciary relationship between us and you or between us and other recipients of the rating. We have not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the Securities Act of 1933. The rating is not a "market rating" nor is it a recommendation to buy, hold, or sell the obligations.

This letter constitutes Standard & Poor's permission to you to disseminate the above-assigned rating to interested parties. Standard & Poor's reserves the right to inform its own clients, subscribers, and the public of the rating.

Standard & Poor's relies on the issuer/obligor and its counsel, accountants, and other experts for the accuracy and completeness of the information submitted in connection with the rating. This rating is based on financial information and documents we received prior to the issuance of this letter. Standard & Poor's assumes that the documents you have provided to us are final. If any subsequent changes were made in the final documents, you must notify us of such changes by sending us the revised final documents with the changes clearly marked.

To maintain the rating, Standard & Poor's must receive all relevant financial information as soon as such information is available. Placing us on a distribution list for this information would

Mr. James E. Niskanen

Page 2

May 5, 2008

facilitate the process. You must promptly notify us of all material changes in the financial information and the documents. Standard & Poor's may change, suspend, withdraw, or place on CreditWatch the rating as a result of changes in, or unavailability of, such information. Standard & Poor's reserves the right to request additional information if necessary to maintain the rating.

Please send all information to:

Standard & Poor's Ratings Services  
Public Finance Department  
55 Water Street  
New York, NY 10041-0003

Standard & Poor's is pleased to be of service to you. For more information on Standard & Poor's, please visit our website at [www.standardandpoors.com](http://www.standardandpoors.com). If we can be of help in any other way, please call or contact us at [nypublicfinance@standardandpoors.com](mailto:nypublicfinance@standardandpoors.com). Thank you for choosing Standard & Poor's and we look forward to working with you again.

Sincerely yours,

Standard & Poor's Ratings Services  
a division of The McGraw-Hill Companies, Inc.

A handwritten signature in cursive script that reads "Standard & Poor's".

nk

enclosures

cc: Ms. Kim Nakahara, Associate  
Banc of America Securities LLC

# STANDARD & POOR'S

## Standard & Poor's Ratings Services Terms and Conditions Applicable To U.S. Public Finance Ratings

**Request for a rating.** Standard & Poor's issues public finance ratings for a fee upon request from an issuer, or from an underwriter, financial advisor, investor, insurance company, or other entity, provided that the obligor and issuer (if different from the obligor) each has knowledge of the request. The term "issuer/obligor" in these Terms and Conditions means the issuer and the obligor if the obligor is different from the issuer.

**Agreement to Accept Terms and Conditions.** Standard & Poor's assigns Public Finance ratings subject to the terms and conditions stated herein and in the rating letter. The issuer/obligor's use of a Standard & Poor's public finance rating constitutes agreement to comply in all respects with the terms and conditions contained herein and in the rating letter and acknowledges the issuer/obligor's understanding of the scope and limitations of the Standard & Poor's rating as stated herein and in the rating letter.

**Fees and expenses.** In consideration of our analytic review and issuance of the rating, the issuer/obligor agrees to pay Standard & Poor's a rating fee. Payment of the fee is not conditioned on Standard & Poor's issuance of any particular rating. In most cases an annual surveillance fee will be charged for so long as we maintain the rating. The issuer/obligor will reimburse Standard & Poor's for reasonable travel and legal expenses if such expenses are not included in the fee. Should the rating not be issued, the issuer/obligor agrees to compensate Standard & Poor's based on the time, effort, and charges incurred through the date upon which it is determined that the rating will not be issued.

**Scope of Rating.** The issuer/obligor understands and agrees that (i) an issuer rating reflects Standard & Poor's current opinion of the issuer/obligor's overall financial capacity to pay its financial obligations as they come due, (ii) an issue rating reflects Standard & Poor's current opinion of the likelihood that the issuer/obligor will make payments of principal and interest on a timely basis in accordance with the terms of the obligation, (iii) a rating is an opinion and is not a verifiable statement of fact, (iv) ratings are based on information supplied to Standard & Poor's by the issuer/obligor or by its agents and upon other information obtained by Standard & Poor's from other sources it considers reliable, (v) Standard & Poor's does not perform an audit in connection with any rating and a rating does not represent an audit by Standard & Poor's, (vi) Standard & Poor's relies on the issuer/obligor, its accountants, counsel, and other experts for the accuracy and completeness of the information submitted in connection with the rating and surveillance process, (vii) Standard & Poor's undertakes no duty of due diligence or independent verification of any information, (viii) Standard & Poor's does not and cannot guarantee the accuracy, completeness, or timeliness of the information relied on in connection with a rating or the results obtained from the use of such information, (ix) Standard & Poor's may raise, lower, suspend, place on CreditWatch, or withdraw a rating at any time, in Standard & Poor's sole discretion, and (x) a rating is not a "market" rating nor a recommendation to buy, hold, or sell any financial obligation.

**Publication.** Standard & Poor's reserves the right to publish, disseminate, or license others to publish or disseminate the rating and the rationale for the rating unless the issuer/obligor specifically requests that the rating be assigned and maintained on a confidential basis. If a confidential rating subsequently becomes public through disclosure by the issuer/obligor or a third party other than Standard & Poor's, Standard & Poor's reserves the right to publish it. Standard & Poor's may publish explanations of Standard & Poor's ratings criteria from time to time and nothing in this Agreement shall be construed as limiting Standard & Poor's ability to modify or refine Standard & Poor's criteria at any time as Standard & Poor's deems appropriate.

**Information to be Provided by the Issuer/obligor.** The issuer/obligor shall meet with Standard & Poor's for an analytic review at any reasonable time Standard & Poor's requests. The issuer/obligor also agrees to provide Standard & Poor's promptly with all information relevant to the rating and surveillance of the rating including information on material changes to information previously supplied to Standard & Poor's. The rating may be affected by Standard & Poor's opinion of the accuracy, completeness, timeliness, and reliability of information received from the issuer/obligor or its agents. Standard & Poor's undertakes no duty of due diligence or independent verification of

information provided by the issuer/obligor or its agents. Standard & Poor's reserves the right to withdraw the rating if the issuer/obligor or its agents fails to provide Standard & Poor's with accurate, complete, timely, or reliable information.

Standard & Poor's Not an Advisor, Fiduciary, or Expert. The issuer/obligor understands and agrees that Standard & Poor's is not acting as an investment, financial, or other advisor to the issuer/obligor and that the issuer/obligor should not and cannot rely upon the rating or any other information provided by Standard & Poor's as investment or financial advice. Nothing in this Agreement is intended to or should be construed as creating a fiduciary relationship between Standard & Poor's and the issuer/obligor or between Standard & Poor's and recipients of the rating. The issuer/obligor understands and agrees that Standard & Poor's has not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the U.S. Securities Act of 1933.

Limitation on Damages. The issuer/obligor agrees that Standard & Poor's, its officers, directors, shareholders, and employees shall not be liable to the issuer/obligor or any other person for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the rating or the related analytic services provided for in an aggregate amount in excess of the aggregate fees paid to Standard & Poor's for the rating, except for Standard & Poor's gross negligence or willful misconduct. In no event shall Standard & Poor's, its officers, directors, shareholders, or employees be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, legal fees, or losses (including, without limitation, lost profits and opportunity costs). In furtherance and not in limitation of the foregoing, Standard & Poor's will not be liable in respect of any decisions made by the issuer/obligor or any other person as a result of the issuance of the rating or the related analytic services provided by Standard & Poor's hereunder or based on anything that appears to be advice or recommendations. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise. The issuer/obligor acknowledges and agrees that Standard & Poor's does not waive any protections, privileges, or defenses it may have under law, including but not limited to, the First Amendment of the Constitution of the United States of America.

Term. This Agreement shall terminate when the ratings are withdrawn. Notwithstanding the foregoing, the paragraphs above, "Standard & Poor's Not an Advisor, Fiduciary, or Expert" and "Limitation on Damages", shall survive the termination of this Agreement or any withdrawal of a rating.

Third Parties. Nothing in this Agreement, or the rating when issued, is intended or should be construed as creating any rights on behalf of any third parties, including, without limitation, any recipient of the rating. No person is intended as a third party beneficiary to this Agreement or to the rating when issued.

Binding Effect. This Agreement shall be binding on, and inure to the benefit of, the parties hereto and their successors and assigns.

Severability. In the event that any term or provision of this Agreement shall be held to be invalid, void, or unenforceable, then the remainder of this Agreement shall not be affected, impaired, or invalidated, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.

Complete Agreement. This Agreement constitutes the complete agreement between the parties with respect to its subject matter. This Agreement may not be modified except in a writing signed by authorized representatives of both parties.

Governing Law. This Agreement and the rating letter shall be governed by the internal laws of the State of New York. The parties agree that the state and federal courts of New York shall be the exclusive forums for any dispute arising out of this Agreement and the parties hereby consent to the personal jurisdiction of such courts.

**STANDARD  
& POOR'S**

One Market  
Steuart Tower, 15th Floor  
San Francisco, CA 94105-1000  
tel 415 371-5004  
reference no.: 40178368

May 5, 2008

City of Modesto  
Office of the City Manager  
1010 Tenth Street, Suite 6100  
P.O. Box 642  
Modesto, CA 95353  
Attention: Mr. James E. Niskanen, Interim City Manager

Re: *Modesto, California, Water (MBIA)*

Dear Mr. Niskanen:

Standard & Poor's has reviewed the Standard & Poor's underlying rating (SPUR) on the above-referenced obligations. After such review, we have affirmed the "A+" rating and changed the outlook to positive from stable. A copy of the rationale supporting the rating and outlook is enclosed.

The rating is not investment, financial, or other advice and you should not and cannot rely upon the rating as such. The rating is based on information supplied to us by you or by your agents but does not represent an audit. We undertake no duty of due diligence or independent verification of any information. The assignment of a rating does not create a fiduciary relationship between us and you or between us and other recipients of the rating. We have not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the Securities Act of 1933. The rating is not a "market rating" nor is it a recommendation to buy, hold, or sell the obligations.

This letter constitutes Standard & Poor's permission to you to disseminate the above-assigned rating to interested parties. Standard & Poor's reserves the right to inform its own clients, subscribers, and the public of the rating.

Standard & Poor's relies on the issuer/obligor and its counsel, accountants, and other experts for the accuracy and completeness of the information submitted in connection with the rating. To maintain the rating, Standard & Poor's must receive all relevant financial information as soon as such information is available. Placing us on a distribution list for this information would facilitate the process. You must promptly notify us of all material changes in the financial information and the documents. Standard & Poor's may change, suspend, withdraw, or place on CreditWatch the rating as a result of changes in, or unavailability of, such information. Standard & Poor's reserves the right to request additional information if necessary to maintain the rating.

Mr. James E. Niskanen

Page 2

May 5, 2008

Please send all information to:

Standard & Poor's Ratings Services  
Public Finance Department  
55 Water Street  
New York, NY 10041-0003

If you have any questions, or if we can be of help in any other way, please feel free to call or contact us at [nypublicfinance@standardandpoors.com](mailto:nypublicfinance@standardandpoors.com). For more information on Standard & Poor's, please visit our website at [www.standardandpoors.com](http://www.standardandpoors.com). We appreciate the opportunity to work with you and we look forward to working with you again.

Sincerely yours,

Standard & Poor's Ratings Services  
a division of The McGraw-Hill Companies, Inc.

nk  
enclosure

cc: Ms. Kim Nakahara, Associate  
Banc of America Securities LLC

May 6, 2008

**Summary:**  
**Modesto, California; Water/Sewer**

**Primary Credit Analyst:**

Lisa Schroeer, San Francisco (1) 415-371-5006; lisa\_schroeer@standardandpoors.com

**Secondary Credit Analyst:**

Ian Carroll, San Francisco (1) 415-371-5060; ian\_carroll@standardandpoors.com

**Table Of Contents**

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Rationale

Outlook

**Summary:**

# Modesto, California; Water/Sewer

## Credit Profile

US\$50. mil wtr rev certs of part, 2008 ser A due 10/01/2036

<i>Long Term Rating</i>	A+/Positive	New
Modesto wtr (MBIA)		
<i>Unenhanced Rating</i>	A+(SPUR)/Positive	Affirmed

Many issues are enhanced by bond insurance.

## Rationale

Standard & Poor's Ratings Services revised its outlook to positive and affirmed its 'A+' rating on the City of Modesto, Calif.'s water revenue bonds. The outlook reflects the expectation that in 2009, the city will implement multi-year rate increases to address its remaining large capital projects while ensuring strong coverage and cash. In addition, Standard & Poor's assigned its 'A+' rating to the city's 2008 series A certificates of participation (COPs).

The rating reflects:

- Solid historical financial performance and good projected coverage of annual debt service;
- Solid management that will be able to navigate the future capital and changing water needs of the city;
- A growing city in California's Central Valley, with average income levels and an economy that remains anchored in agriculture but is expanding to include other service industries, in particular the medical industry; and
- A primarily residential customer base that currently has sufficient water supply.

These strengths are offset by slightly above-average user rates and additional capital needs that will likely necessitate future rate increases.

A revenue pledge secures the certificates. The 2008 series A COPs will refund the city's 2006 auction rate COPs, to a weekly rate mode with a standby bond purchase agreement (SBPA). The swap, entered into with the 2006 COPs, will remain in place for the 2008 COPs.

The COPs are protected by a 1.25x parity debt rate covenant, a standard three-prong reserve requirement, and an additional bonds test at 1.25x projected maximum annual debt service (MADS) based on net revenues, which can include rate increases and expected new customers.

The city's water enterprise finances and cash position continue to be strong. The enterprise fund's 2007 audited net revenues, using ongoing revenues, provided 2.9x coverage on the city's debt payments. Using conservative projections, the city estimates that coverage in fiscal 2008 will be 2.8x, excluding one-time revenues from connection fees. Projected coverage falls to a still good 1.7x in fiscal 2011, due to additional debt payments to the Modesto Irrigation District (MID). The city makes conservative revenue and expenditure assumptions, including additional operations and maintenance (O&M) costs for the plant expansion, and accounts for possible but unknown expenditures through a contingency cost. The city also excludes additional revenue from anticipated, but unapproved, rate increases. Given the area's increased foreclosure rate, management has built in an increased

cushion for possible delinquencies and is still projecting strong coverage. Available cash remains strong, and the city has a policy to maintain at least 25% of operations costs, but 2007 audited numbers show more than a year's worth of operations available.

Rates were raised aggressively to support the city's transition to metering and other capital projects. The city raised rates 20% in July 2005, 15% in 2006, and 5% in 2007 and 2008. In addition, the city anticipates proposing rate increases in 2009 to support additional capital needs. Rates are slightly above average at roughly \$48 for the average household. Management has indicated its desire and has demonstrated its past ability to raise rates, and this will be necessary to maintain good finances, given the city's current capital plans.

Currently, the city has adequate water supply with a combination of surface water and groundwater. The city has a treatment and delivery agreement (TDA) with the MID, which operates a treatment plant with capacity up to 30 million gallons per day (mgd). The plant expansion, which is expected to be completed in 2010, will double its treatment capacity. The plant's maximum treatment expansion capability is 80 mgd. The city meets its peak and average daily demand by drawing on its groundwater resource and stored water. The city can draw on several storage tanks, including two elevated tanks with capacities of 100,000 and 600,000 gallons each and seven ground-level tanks and booster pump stations with capacities ranging from 500,000 to 1.3 million gallons each. The city's future capital projects are geared toward reducing its reliance on groundwater and moving toward more treated surface water.

The city provides water to its mostly residential base through roughly 77,000 connections, with the 10 largest users of the system accounting for just 8.3% of total revenues. The primarily residential and diverse nature of the customer base provides strong revenue stability.

The city anticipates \$188 million in capital needs during the next four years. Management is currently undergoing a rate study and will assess varying strategies for financing these projects and to ensure strong coverage and cash. The city had excess net revenues of about \$20 million in 2007, but it will decline to an estimated \$12.6 million in 2011.

The City of Modesto entered into a \$46.5 million floating-to-fixed rate swap, which is effective Oct. 1, 2006, through Oct. 1, 2036. Although the city is refunding the 2006 COPs, the swap will stay in place for the 2008 bonds. The city's swap has been assigned a Debt Derivative Profile (DDP) score of '1.5', on a four-point scale where '1' represents the lowest risk. The score indicates the swap is very low risk and does not have a meaningful impact on the district's rating.

## Outlook

The positive outlook reflects Standard & Poor's expectation that the city will approve rate increases in 2009 that will ensure good coverage and solid cash. A clear financing plan for the city's future capital needs, with approved rate increases and identified cash expenditures would improve its rating. Insufficient rate increases could compromise rating quality. Adding to the stability of the credit is the area's diversifying underlying economy.

Complete ratings information is available to subscribers of RatingsDirect, the real-time Web-based source for Standard & Poor's credit ratings, research, and risk analysis, at [www.ratingsdirect.com](http://www.ratingsdirect.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com); under Credit Ratings in the left navigation bar, select Find a Rating, then Credit Ratings Search.



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\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

RECEIPT FOR CERTIFICATES

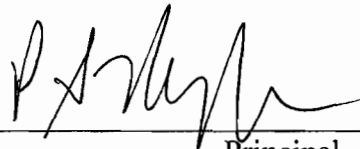
The undersigned, an authorized officer of Banc of America Securities LLC, as underwriter under the Purchase Contract, dated May 29, 2008 (the "Purchase Contract"), by and among Banc of America Securities LLC, the City of Modesto (the "City") and the Modesto Public Financing Authority (the "Authority"), for the purchase of the above-captioned Certificates, does hereby acknowledge that it has received from The Bank of New York Trust Company, N.A. (the "Trustee") the City's Water Refunding Revenue Certificates of Participation 2008 Series A, in the aggregate principal amount of \$47,625,000, dated May 30, 2008, consisting of fully registered certificates without coupons, all as set forth in the Trust Agreement, dated as of May 1, 2008, by and between the Authority and the Trustee, with respect to the Certificates.

The undersigned hereby further acknowledges the receipt of, or waives the requirement for, each opinion, document and certificate required by Section 8(f) of the Purchase Contract, and agrees that the Underwriter have received each such opinion, document and certificate and that each is satisfactory to the Underwriter as to form and substance or have waived the requirements therefor.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Dated: May 30, 2008

BANC OF AMERICA SECURITIES LLC,  
as Underwriter

By:  \_\_\_\_\_  
Principal

**REPORT OF PROPOSED DEBT ISSUANCE**

California Debt and Investment Advisory Commission  
915 Capitol Mall, Room 400, Sacramento, CA 95814  
P.O. Box 942809, Sacramento, CA 94209-0001  
Tel.: (916) 653-3269 FAX: (916) 654-7440

For Office Use Only

CDIAC #: \_\_\_\_\_

RCVD APR 17 '08

Completion and timely submittal of this form to the California Debt and Investment Advisory Commission (CDIAC) at the above address will assure your compliance with existing California State law and will assist in the maintenance of a complete database of public debt in California. Thank you for your cooperation.<sup>1</sup>

ISSUER NAME: City of Modesto, California (Modesto Public Financing Authority)

(If pool bond, list participants)

ISSUE NAME: Water Refunding Revenue Certificates of Participation, 2008 Series A

Please specify type/name of project: Refunding of Water Revenue Certificates of Participation, 2006 Series A

PROPOSED SALE DATE: 5/13/08 PRINCIPAL TO BE SOLD: \$ 50,000,000

**IS ANY PORTION OF THE DEBT FOR REFUNDING?<sup>2</sup>**

No  Yes, proposed amount for refunding \$ 46,275,000

**Issuer Contact:**

Name: Wayne Padilla

Title: Director of Finance

Address: City of Modesto, City Hall, 1010 Tenth Street, Suite 5200, Modesto, California 95353

Phone: (209) 577-5371 E-mail: wpadilla@modestogov.com Issuer Located In Stanislaus County

**Filing Contact:** Name of Individual (representing:  Bond Counsel,  Issuer,  Financial Advisor, or  Lead Underwriter) who completed this form and may be contacted for information:

Name: Eric D. Tashman, Esq.

Firm/Agency: Sidley Austin LLP

Address: 555 California Street, Suite 2000, San Francisco, California 94104

Phone: (415) 772-1200 E-mail: etashman@sidley.com

Send acknowledgement/copies to: Katy A. McNeil, Legal Assistant E-mail: kamcneil@sidley.com

**FINANCING PARTICIPANTS:**

BOND COUNSEL: Sidley Austin LLP

FINANCIAL ADVISOR: Public Financial Management

UNDERWRITER/PURCHASER: Banc of America Securities LLC

**IS THE INTEREST ON THE DEBT TAXABLE?**

Under State law:  NO (tax-exempt)  YES (taxable)

Under Federal law:  NO (tax-exempt)  YES (taxable)

If the issue is federally tax-exempt, is interest a specific preference item for the purpose of alternative minimum tax?

Yes, preference item  No, not a preference item

TYPE OF SALE:  Competitive  Negotiated

<sup>1</sup> Section 8855(k) of the California Government Code requires the issuer of any proposed new public debt issue to give written notice of the proposed sale to the CDIAC no later than 30 days prior to the sale. Under California Government Code Section 8855(l), "The issuer of any new public debt issue shall, not later than 45 days after the signing of the bond purchase contract in a negotiated or private financing, or after the acceptance of a bid in a competitive offering, submit a report of final sale and official statement to the Commission. The Commission may require information to be submitted in the report of final sale that is considered appropriate."

<sup>2</sup> Section 53583(c)(2)(B) of the California Government Code requires that any local agency selling refunding bonds at private sale or on a negotiated basis shall send a written statement, within two weeks after the bonds are sold, to the CDIAC explaining the reasons why the local agency determined to sell the bonds at private sale or on a negotiated basis instead of at public sale.

**TYPE OF DEBT INSTRUMENT**

**NOTE**

- Bond anticipation (BAN)
- Grant anticipation (GAN)
- Other note (Please specify below.) (OTHN)
- Revenue anticipation (RAN)
- Tax allocation (TALN)
- Tax and revenue anticipation (TRAN)
- Tax anticipation (TAN)
  
- Commercial paper (CP)
- Certificates of participation/leases (COPL)
- Other (Please specify below.) (OTH)

**BOND**

- Conduit revenue (Private obligor) (CRB)
- General obligation (GOB)
- Limited tax obligation (LTOB)
- Other bond (Please specify below.) (OTHB)
- Public lease revenue (PLRB)
- Revenue (Pool) (RB)
- Revenue (Public enterprise) (PERB)
- Sales tax revenue (STRB)
- Special assessment (SAB)
- Tax allocation (TAB)

Please specify if "Other note/Other bond/Other" was checked: \_\_\_\_\_

**SOURCE(S) OF REPAYMENT**

- Bond proceeds (BDPR)
- General fund of issuing jurisdiction (GNFD)
- Grants (GRNT)
- Intergovernmental transfers other than grants (ITGV)
- Local obligations (LOB)
- Private obligor payments (POP)
- Other (Please specify.) (OTHS): \_\_\_\_\_

- Property tax revenues (PRTX)
- Public enterprise revenues (PER)
- Sales tax revenues (SATR)
- Special assessments (SA)
- Special tax revenues (SPTR)
- Tax-increment (TI)

**PURPOSE(S) OF FINANCING**

- Cash flow, interim financing (CFIF)
- Project, interim financing (PIF)
  
- College/university housing (CUH)
- Multifamily housing (MFH)
- Single-family housing (SFH)
  
- Health care facilities (HCF)
- Hospital (HOSP)
- Other/multiple health care purposes (equipment; etc.)(OMHC)
  
- College/university facility (CUF)
- K-12 school facility (KSCH)
- Other/multiple education uses (equipment, etc.)(OMED)
- Student loans (SLC)
  
- Redevelopment, multiple uses (RD)
  
- Commercial development (CMDV)
- Industrial development (INDV)
- Pollution control (PC)

- Airport (APRT)
- Bridges and highways (BRHI)
- Convention center (CCTR)
- Equipment (EQUF)
- Flood control/storm drainage (FLDS)
- Multiple capital improvements and public works (MCAP)
- Other capital improvements and public works (OCAP)
- Parking (PRKG)
- Parks/open space (PRKO)
- Ports and marinas (PRTS)
- Power generation/transmission (PWR)
- Prisons/jails/correctional facilities (PRSN)
- Public building (PB)
- Public transit (PTR)
- Recreation and sports facilities (RCSP)
- Seismic safety improvements/repair (SSI)
- Solid waste recovery facilities (SWST)
- Street construction and improvements (SCI)
- Wastewater collection and treatment (WSTW)
- Water supply/storage/distribution (WTR)
  
- Insurance/pension funds (IPF)
- Other than listed above (OTH)

Please specify type/name of project if different from above: \_\_\_\_\_



**CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION**

915 CAPITOL MALL, ROOM 400  
P.O. BOX 942809  
SACRAMENTO, CA 94209-0001  
TELEPHONE: (916) 653-3269  
FAX: (916) 654-7440

April 21, 2008

**TO:** Katy A McNeil  
Sidley Austin LLP  
555 California St 20th Fl  
San Francisco, CA 94104-1715

**FROM:** John Decker, Executive Director

**RE: ACKNOWLEDGEMENT OF REPORT OF PROPOSED DEBT ISSUANCE**

Section 8855(k) of the California Government Code requires written notice to be given to the California Debt and Investment Advisory Commission (CDIAC) no later than 30 days prior to the proposed sale of any public agency debt issue.

CDIAC acknowledges receipt of your notice of the following proposed debt issuance:

**CDIAC Nbr:** 2008-0371  
**Issuer:** Modesto  
**Project:** Water supply, storage, distribution  
**Proposed Amount:** \$50,000,000.00  
**Proposed Sale Date:** May 13, 2008  
**Date Notice Received:** April 17, 2008

Issuers may electronically file the **Report of Final Sale** through CDIAC's website, using the following information:

**CDIAC Nbr:** 2008-0371  
**Password:** 47000

A *CDIAC Number* and *Password* will be provided for each electronic filing of the **Report of Proposed Debt Issuance**. This information is unique to this filing and must be used for any subsequent reporting under this *CDIAC Number*.

Please submit the **Report of Final Sale** and the Official Statement (or Offering Memorandum) on this issue within 45 days of the signing of the bond purchase contract or the acceptance of a bid to purchase the debt, to [www.treasurer.ca.gov/cdiac/reporting.htm](http://www.treasurer.ca.gov/cdiac/reporting.htm) under the heading "Reporting Forms". Official Statements or Offering Memorandums can be sent by e-mail to [CDIAC\\_issuance@treasurer.ca.gov](mailto:CDIAC_issuance@treasurer.ca.gov).

Any questions regarding reporting requirements may be directed to the CDIAC's Data Unit at (916) 653-3269.

Cc: Wayne Padilla  
Finance Director

**REPORT OF FINAL SALE**

California Debt and Investment Advisory Commission  
915 Capitol Mall, Room 400, Sacramento, CA 95814  
P.O. Box 942809, Sacramento, CA 94209-0001  
Tel.: (916) 653-3269 FAX: (916) 654-7440

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RCD JUL 1 '08

Under California Government Code Section 8855(i), "The issuer of any new public debt issue shall, not later than 45 days after the signing of the bond purchase contract in a negotiated or private financing, or after the acceptance of a bid in a competitive offering, submit a report of final sale and official statement to the Commission. The Commission may require information to be submitted in the report of final sale that is considered appropriate."

CDIAC #: 2008-0371

ISSUER NAME: City of Modesto, California

(If pool bond, list participants)

ISSUE NAME: Water Refunding Revenue Certificates of Participation, 2008 Series A

IF THIS IS A POOLED FINANCING, WHICH ISSUANCE STATUTE IS IT AUTHORIZED UNDER?

- 1) Marks-Roos Local Bond Pooling Act
- 2) JPA Law
- 3) Installment Sales Agreement, Lease...
- 4) Housing Revenue Bond Law & Industrial Development Bond Law
- 5) Other \_\_\_\_\_

WILL A VALIDATION ACTION BE PURSUED:  No  Yes  Unknown

ACTUAL SALE DATE: 5/29/08 PRINCIPAL SOLD: \$ 47,625,000

IS ANY PORTION OF THE DEBT FOR REFUNDING?<sup>1</sup>

No  Yes, refunding amount (including costs) \$ 47,625,000

**Issuer Contact:**

Name: Wayne Padilla

Title: Director of Finance

Address: City of Modesto, City Hall, 1010 Tenth Street, Suite 5200, Modesto, California 95353

Phone: (209) 577-5371 ISSUER LOCATED IN Stanislaus COUNTY

Filing Contact: Name of Individual (representing:  Bond Counsel,  Issuer,  Financial Advisor, or  Lead Underwriter) who completed this form and may be contacted for information:

Name: Eric D. Tashman, Esq.

Firm/Agency: Sidley Austin LLP

Address: 555 California Street, Suite 2000, San Francisco, California 94104

Phone: (415) 772-1200 E-Mail: etashman@sidley.com

Send acknowledgement/copies to: Katy A. McNeil, Legal Assistant (kamcneil@sidley.com)

Name of individual to whom an invoice for the CDIAC issue fee should be sent:<sup>2</sup>

Name: Scott Nagelson, Principal

Firm: Banc of America Securities LLC

Address: 600 Montgomery Street, 18th Floor, CA5-801-18-36

Phone: (415) 953-7314

<sup>1</sup> Section 53583(c)(2)(B) of the California Government Code requires that any local agency selling refunding bonds at private sale or on a negotiated basis shall send a written statement, within two weeks after the bonds are sold, to the CDIAC explaining the reasons why the local agency determined to sell the bonds at a private sale or on a negotiated basis instead of at public sale.

<sup>2</sup> This fee is authorized by Section 8856 of the California Government Code and is charged to the lead underwriter or purchaser of the issue. The fee is administratively set by the Commission. The current fee schedule may be obtained from CDIAC.

**FINANCING PARTICIPANTS (Firm name)**

FINANCIAL ADVISOR: Public Financial Management  
 LEAD UNDERWRITER/PURCHASER: Banc of America Securities LLC  
 BOND COUNSEL: Sidley Austin LLP  
 TRUSTEE/PAYING AGENT: The Bank of New York Trust Company, N.A.

**OFFICE LOCATION (City/State)**

San Francisco, CA  
San Francisco, CA  
San Francisco, CA  
San Francisco, CA

**MATURITY SCHEDULE**

Attached  Included in Official Statement

**MATURITY STRUCTURE**

Serial (S)  Term (T)  
 Serial and term bonds or two or more term (B)

FINAL MATURITY DATE: 10/1/2036

FIRST OPTIONAL CALL DATE: Any Business Day (in Weekly Mode)

SENIOR/SUBORDINATE STRUCTURE  Yes  No

**OFFICIAL STATEMENT/OFFERING MEMORANDUM:**

Enclosed  None prepared

**WAS THE ISSUE INSURED OR GUARANTEED?**

No  
 Bond Insurance (I)  
 Letter of Credit (L)  
 State Intercept Program (T)  
 Other (O)

GUARANTOR: Assured Guaranty Corp.

ENHANCEMENT EXPIRATION DATE: 10/1/2036

**INDICATE CREDIT RATING:**

(For example, "AAA" or "Aaa")

Not Rated  
 Rated  
 Standard & Poor's: AAA/A-1+ (Underlying: A+)  
 Fitch: n/a  
 Moody's: Aaa/VMIG-1 (Underlying: A2)  
 Other: n/a

**REASON FOR NEGOTIATED REFUNDINGS**

If the issue is a negotiated refunding, indicate the reason(s) why the bonds were issued at a private or negotiated versus a competitive sale.

- (1) Timing of the sale provided more flexibility than a public sale
- (2) More cost savings were expected to be realized than a public sale
- (3) More flexibility in debt structure was available than a public sale
- (4) Issuer able to work with participants familiar with issue/r than a public sale
- (5) All of the above
- (6) Other (please specify) \_\_\_\_\_

**IS THE INTEREST ON THE DEBT TAXABLE?**

Under State Law  No (tax-exempt)  Yes (taxable)  
 Under Federal Law  No (tax-exempt)  Yes (taxable)  
 If the issue is federally tax-exempt, is interest a specific preference item for the purpose of alternative minimum tax?  Yes  No

INTEREST TYPE:  NIC  TIC  Variable

INTEREST COST: 4.133655 %

CAPITAL APPRECIATION BOND:  Yes  No

**ISSUANCE COSTS AND FEES:**

A) Management Fee	\$ <u>47,625.00</u>
B) Total Takedown	\$ <u>71,437.50</u>
C) Underwriter Expenses	\$ <u>34,858.13</u>
<b>Underwriter Spread or Discount</b>	\$ <u>153,920.63</u>
D) Bond Counsel	\$ <u>132,000.00</u>
E) Disclosure Counsel	\$ <u>37,073.00</u>
F) Financial Advisor	\$ <u>n/a</u>
G) Rating Agency	\$ <u>47,450.00</u>
H) Credit Enhancement	\$ <u>889,091.00</u>
I) Trustee Fee	\$ <u>1,500.00</u>
J) Other Expenses	\$ <u>88,928.62</u>
<b>Total Issuance Costs</b>	\$ <u>1,196,042.62</u>
K) ORIGINAL ISSUE PREMIUM	\$ <u>n/a</u>
L) ORIGINAL ISSUE DISCOUNT	\$ <u>n/a</u>
M) NET ORIGINAL ISSUE DISCOUNT/PREMIUM	\$ <u>n/a</u>

FOR OFFICE USE ONLY  
  
FEE: \$ \_\_\_\_\_

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CLOSING CERTIFICATE OF THE AUTHORITY

The undersigned, the Auditor and Treasurer and Secretary, respectively, of the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority organized under the laws of the State of California, hereby certify on behalf of the Authority, in connection with the \$47,625,000 City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates"), as follows:

1. The undersigned further certify that authorized officers of the Authority executed the following documents on behalf of the Authority:
  - (a) Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Authority and The Bank of New York Trust Company, N.A., as Trustee;
  - (b) 2008 Supplemental Installment Purchase Contract (the "2008 Contract"), dated as of May 1, 2008, by and between the City of Modesto (the "City") and the Authority;
  - (c) Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Standby Purchase Agreement"), by and among the Authority, the City and Bank of America, N.A, as Liquidity Facility Provider;
  - (d) the Remarketing and Interest Services Agreement, dated as of May 1, 2008 (the "Remarketing Agreement"), between the Authority and Banc of America Securities LLC, as Remarketing Agent;
  - (e) Purchase Contract, dated May 29, 2008 (the "Purchase Contract"), by and among the City, the Authority and Banc of America Securities LLC, as Underwriter, and
  - (f) the Official Statement, dated May 29, 2008 (the "Official Statement").

2. The undersigned further certify that the following persons were the duly appointed or elected, qualified and acting members of the Commission of the Authority on May 13, 2008:

<u>Name</u>	<u>Position</u>
Jim Ridenour	Chairperson
Will O'Bryant	Vice Chairperson
Dave Lopez	Member
Brad Hawn	Member
Janice Keating	Member
Garrad Marsh	Member
Kristin Olsen	Member

3. The undersigned further certify that:

(i) the Authority is a public body corporate and politic, organized and existing pursuant to the laws of the State of California, including Section 6500 et seq. of the California Government Code, as amended, and the Joint Exercise of Powers Agreement, dated as of December 1, 1989 (the "JPA Agreement"), by and between the City and the Industrial Development Authority of the City of Modesto, with the full power and authority to enter into the Agreements;

(ii) the Joint Powers Agreement of the Authority, as filed in the Office of the Secretary of State of the State of California on December 19, 1989, has not been amended in any respect since said date and continues to be in full force and effect on the date of this certificate, and the Authority is not in violation of any provisions thereof;

(iii) the representations and warranties of the Authority contained in (i) the Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), by and between the City and the Authority, (ii) the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Contract"), (iii) the 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006 (the "2006 Contract," and, together with the Trust Agreement, the Master Contract, the 1997 Contract, the 2008 Contract, the Standby Purchase Agreement, the Remarketing Agreement and the Purchase Contract, the "Authority Documents"), by and between the City and the Authority, (iv) the 2008 Contract, and (v) the Purchase Contract, are accurate in all material aspects, as and if made on the date hereof;

(iv) the Authority Documents have been duly executed and delivered and each constitutes a valid and legally binding obligation of the Authority enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought;

(v) the resolution of the Authority, adopted on October 21, 1997, at a meeting of the Commission duly called, noticed and conducted, at which a quorum was present

and acting throughout, a certified copy of which is attached as Exhibit A hereto (the “1997 Authority Resolution”), authorizing the execution, delivery and due performance of the Master Contract and the 1997 Contract, and the resolution of the Authority, adopted on May 13, 2008, at a meeting of the Commission of the Authority, duly called, noticed and conducted, at which a quorum was present and acting throughout (the “2008 Authority Resolution” and, together with the 1997 Authority Resolution, the “Authority Resolutions”), authorizing the execution, delivery and due performance of the 2008 Contract, the Trust Agreement, the Standby Purchase Agreement and the Purchase Contract, are in full force and effect at the date hereof and have not been amended, modified or supplemented;

(vi) the Authority has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied on or prior to the date hereof;

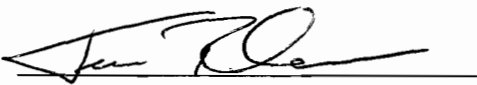
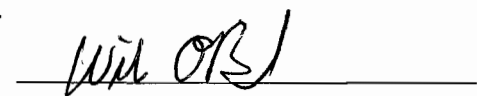
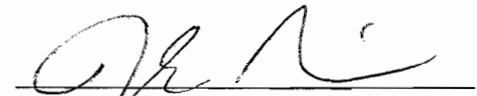

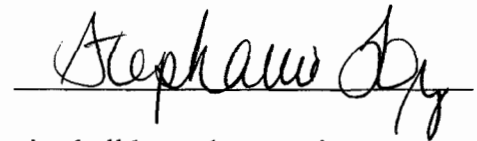
(vii) no “event of default,” “potential event of default” or “involuntary insolvency event” under, and as defined in, the Authority Documents, has occurred and is continuing as of the date hereof; and

(viii) the information contained in the Official Statement under the captions “THE AUTHORITY” and “LITIGATION” (solely as it relates to the Authority) does not contain any untrue or misleading statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used herein not otherwise defined shall have the meanings ascribed thereto in the Official Statement.

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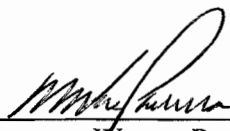
4. The officers identified below are duly authorized by the Commission of the Authority to execute on behalf of the Authority, certain documents, certificates and agreements relating to the Certificates, and that pursuant to such authority certain documents, certificates and agreements have been executed by such persons, and attested to by the signature of the Secretary of the Commission, and, each of the undersigned by their signature confirms that the other signatures set forth below are genuine or an authorized facsimile signature:

<u>Name</u>	<u>Official Title</u>	<u>Signature</u>
Jim Ridenour	Chairperson of the Commission of the Modesto Public Financing Authority	
Will O'Bryant	Vice Chairperson of the Commission of the Modesto Public Financing Authority	
James E. Niskanen	Executive Director of the Modesto Public Financing Authority	
Wayne Padilla	Auditor and Treasurer of the Modesto Public Financing Authority	
Stephanie Lopez	Secretary of the Commission of the Modesto Public Financing Authority	

Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Trust Agreement.

Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By:   
 Wayne Padilla  
 Auditor and Treasurer

By:   
 Stephanie Lopez  
 Secretary

EXHIBIT A

CERTIFICATE REGARDING AUTHORITY RESOLUTION

I, Stephanie Lopez, hereby certify that I am the Secretary of the Governing Board of the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority organized under the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the Authority.

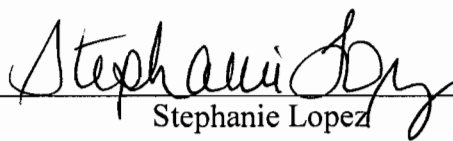
I hereby further certify that the attached resolution is a full, true and correct copy of Resolution No. 97-1, adopted at the regular meeting of the Governing Board of the Authority held on October 21, 1997, of which meeting all of the members of the Governing Board had due notice and at which a quorum was present and acting throughout.

I hereby further certify that I have carefully compared the same with the original resolution so adopted at said meeting and that it is a full, true and correct copy of said resolution; and that said resolution has not been amended, modified or rescinded since the date of adoption and is now in full force and effect.

Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

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



Stephanie Lopez  
Secretary

*UWA*

MODESTO PUBLIC FINANCING AUTHORITY

RESOLUTION NO. 97-1

A RESOLUTION OF THE MODESTO PUBLIC FINANCE AUTHORITY RELATING TO REFUNDING REVENUE CERTIFICATES OF PARTICIPATION (1997 WATER UTILITY SYSTEM REFINANCING PROJECT); APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER INSTALLMENT PURCHASE CONTRACT, A 1997 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT, A TRUST AGREEMENT, AN ESCROW AGREEMENT, AND A PURCHASE CONTRACT IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS

WHEREAS, the Modesto Public Financing Authority (the "Authority") is authorized under the Modesto Public Financing Joint Exercise of Powers Agreement, dated as of December 5, 1989, by and between the City of Modesto (the "City") and the Industrial Development Authority of the City of Modesto, and the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4, Chapter 5, Division 7, Title 1 (commencing with Section 6584) of the California Government Code, among other things, to purchase at public or negotiated sale certain obligations ("Obligations") issued by Members of the Authority and other public agencies and sell at public or negotiated sale such Obligations or issue and sell at public or negotiated sale bonds secured in whole or in part by such Obligations or by other revenues designed in such Obligations;

WHEREAS, in order to assist the City in the financing the acquisition, construction, installation of certain improvements to its municipal water utility system (the "1992 Project"), the City, the Authority and the 1992 Trustee (as defined below) caused the execution and delivery of \$25,065,000 in aggregate principal amount of Certificates of Participation (1992 Water System Improvement Project) (the "1992 Certificates") under and pursuant to a Trust Agreement, dated as of November 1, 1992, by and among the City, the Authority and State Street Bank and Trust Company of California, N.A., as trustee (the "1992 Trustee");

WHEREAS, in order to pay the purchase price of the 1992 Project the Authority and the City entered into an Installment Sale Agreement (the "Installment Sale Agreement"), dated as of November 1, 1997, by and between the Authority and the City, pursuant to which the City would pay installment payments for the purchase price of the 1992 Project;

WHEREAS, the City and the Authority have determined that in order to achieve debt service savings it would be their best interest to provide for the prepayment of the Installment

Sale Agreement through the deposit into an escrow fund of an amount, together with investment earning thereon, which would be sufficient to defease the 1992 Certificates;

WHEREAS, in order to implement the foregoing, the City and the Authority propose to execute and enter into a Master Installment Purchase Contract, dated as of October 1, 1997 (the "Master Installment Purchase Contract") and a 1997 Supplemental Installment Purchase Contract, dated as of October 1, 1997 (the "Supplemental Installment Purchase Contract") whereby the Authority will sell the Project to the City, and the City will be obligated to make installment payments to the Authority for the purchase of the Project;

WHEREAS, the Authority and State Street Bank and Trust Company, N.A., as Trustee, propose to enter into a Trust Agreement, dated as of October 1, 1997 (the "Trust Agreement") providing for the execution and delivery of Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project) (the "Certificates"), evidencing and representing the proportionate interests of the owners thereof in such installment payments to be made by the City;

WHEREAS, the Authority proposes to execute and deliver a Purchase Contract (the "Purchase Contract") with Lehman Brothers (the "Underwriter"), pursuant to which the Underwriter will purchase the Certificates for reoffering to the public; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE MODESTO FINANCE AUTHORITY, AS FOLLOWS:

Section 1. Findings. The Governing Board of the Authority hereby specifically finds and determines it is desirable and furthers the public purpose to assist the City in the financing of the 1997 Project through the actions authorized hereby and that the statements, findings and determinations of the Authority set forth above and in the preambles of the documents approved herein are true and correct.

Section 2. Master Installment Purchase Contract. The Master Installment Purchase Contract, proposed to be executed and entered into by and between the City and the Authority, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and the President, Vice President, Executive Director or Treasurer of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the City the Master Installment Purchase Contract in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. Supplemental Installment Purchase Contract. The Supplemental Installment Purchase Contract, proposed to be executed and entered into by and between the City and the Authority, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and the President, Vice President, Executive Director or Treasurer of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the City the Supplemental Installment Purchase Contract in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Escrow Agreement. The Escrow Agreement, proposed to be executed and entered into by and among the City, the Authority and State Street Bank and Trust Company of California, as escrow agent thereunder, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and the President, Vice President, Executive Director or Treasurer of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the City the Escrow Agreement in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Trust Agreement. The Trust Agreement, proposed to be executed and entered into by and between the Authority and the Trustee, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and the President, Vice President, Executive Director or Treasurer of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the Trustee the Trust Agreement in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the aggregate principal amount of the Certificates to be executed and delivered thereunder shall not exceed \$32,000,000, the final principal payment date of the Certificates shall be not later than the maturity of the 1992 Certificates from their date of delivery, and the net interest cost of the Certificates shall not exceed eight [8%] percent per annum.

Section 6. Purchase Contract. The Purchase Contract, proposed to be executed and entered into by and among the City, the Authority, and the Underwriter, in the form presented at this meeting and on file with the Secretary of the Authority, is hereby approved, and the President, Vice President, Executive Director or Treasurer of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver to the Underwriter the Purchase Contract in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. Attestations. The Secretary of the Authority is hereby authorized and directed to attest the signatures of the President, Vice President, Executive Director or Treasurer of the Authority in connection with the execution and delivery of the Master Installment Purchase Contract, the Supplemental Installment Purchase Contract, the Escrow Agreement and the Trust Agreement.

Section 8. Other Actions. The President, Vice President, Treasurer and Secretary of the Authority are hereby authorized and directed, jointly and severally, to do any and all things (including the negotiating and obtaining of a municipal bond insurance policy or reserve fund surety bond with respect to the Certificates if the City Manager or Finance Director of the City determine that such insurance policy or surety bond will result in savings to the City) and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Master Installment Purchase Contract, the Supplemental Installment Purchase Contract, the Trust Agreement, the Escrow Agreement, the Purchase Contract, and the Certificates; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 9. Effective Date. This Resolution shall take effect immediately upon its passage.

The foregoing resolution was introduced at a special meeting of the Modesto Public Financing Authority of the City of Modesto held on the 21st day of October, 1997, by Authority Member Friedman, who moved its adoption, which motion being duly seconded by Authority Member Dobbs, was upon roll call carried and the resolution adopted by the following vote:

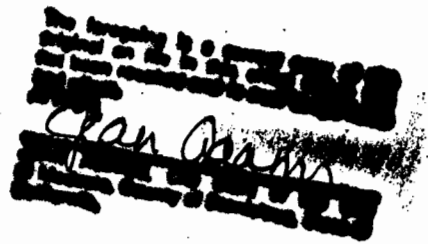
AYES: Authority Members: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Chairman Lang  
NOES: Authority Members: None  
ABSENT: Authority Members: None

ATTEST: Jean Adams  
JEAN ADAMS, Secretary

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich  
MICHAEL D. MILICH, Legal Advisor





# MINUTES

## MODESTO PUBLIC FINANCING AUTHORITY

City Council Chambers, City Hall  
801 11th Street  
Modesto, California

MINUTES  
SPECIAL MODESTO PUBLIC FINANCING AUTHORITY MEETING  
OF MONDAY, OCTOBER 21, 1997, AT 7:00 P.M.

Roll Call - Present: Commissioners Cogdill, Dobbs, Fisher, Friedman,  
McClanahan, Serpa, Chairman Lang

Absent: None

CONSENT ITEMS - ROLL CALL VOTE REQUIRED: Items A

ACTION: (McClanahan/Friedman, unan.)

### MINUTES

CONSENT  
A. Approval of the minutes of the special Modesto Public Financing  
Authority meeting of December 16, 1996.  
(Motion approving needed.)

ACTION: By motion (McClanahan/Friedman, unan.), minutes approved.  
(Clerk to handle)

### ORAL COMMUNICATIONS

B. None.

### NEW BUSINESS

10/21/97

C. Consider approving the refunding of 1992 Water Certificates of Participation (COP's).  
(Resolution approving the refunding of 1992 Water Certificates of Participation in an amount not to exceed \$32,000,000 and related documents, and authorizing related actions in connection therewith needed.)

ACTION: Res. 97-1 adopted (Friedman/Dobbs, unan.) approving the refunding of 1992 Water Certificates of Participation in an amount not to exceed \$32,000,000 and related documents, and authorizing related actions in connection therewith

### MATTERS TOO LATE FOR THE AGENDA

D. None.

### ADJOURNMENT

Meeting adjourned at 10:16 p.m.

ATTEST: Jean Adams  
JEAN ADAMS, City Clerk

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

WRITTEN REQUEST OF THE AUTHORITY TO THE TRUSTEE AND  
TRUSTEE CERTIFICATE OF DELIVERY AND PAYMENT

To THE BANK OF NEW YORK TRUST COMPANY, N.A., as trustee (the "Trustee") under the Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Modesto Public Financing Authority (the "Authority") and the Trustee, pursuant to which the City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates"), in the aggregate principal amount of \$47,625,000, have been delivered.

You are hereby requested to execute and deliver \$47,625,000 initial principal amount of the Certificates, and to deliver the Certificates to The Depository Trust Company, New York, New York in a F.A.S.T. delivery for the account of Banc of America Securities LLC, as underwriter (the "Underwriter"), upon payment to you as Trustee, for the account of the Authority, of: the net purchase price of the Certificates, which has been calculated by the Underwriter and represented to the Trustee as being equal to \$47,471,079.37 (representing the aggregate principal amount of the Certificates of \$47,625,000, less an underwriting discount of \$153,920.63) and from such purchase price, the Underwriter will wire (a) the amount of \$889,091.18 directly to Assured Guaranty Corp., as 2008 Certificate Insurer, and (b) the remaining balance of \$46,581,988.19 to you, as trustee.

Pursuant to Section 2.12 of the Trust Agreement, you are hereby authorized and directed to deposit or transfer the following amounts (representing the net purchase price for the Certificates) as follows:

- (a) the amount of \$46,275,000.00 shall be deposited in or credited to the 2006 Debt Service Fund; and
- (b) the amount of \$306,951.62 shall be deposited in the Costs of Issuance Fund established pursuant to the Trust Agreement, representing the remainder of the proceeds of sale of the Certificates; and
- (c) the amount of \$36.57 shall be deposited in the Parity Reserve Fund, created pursuant to the 1997 Trust Agreement.

Simultaneously with the deposit of aforementioned proceeds, you are hereby instructed to (i) retain in the Parity Reserve Fund, created pursuant to the 1997 Trust Agreement, the amount of \$1,834,515.50 from amounts in the Parity Reserve Fund deposited from the proceeds of the 2006 Certificates and (ii) deposit in the Parity Reserve Fund the 2008 Parity Reserve Fund Insurance Policy, and, together with the deposit above, being an amount sufficient to cause the balance on deposit in, or credited to the Parity Reserve Fund to be equal to the Reserve Fund Requirement upon delivery of the Certificates.

You are hereby further authorized and directed to pay the interest due with respect to, together with the prepayment price of, the 2006 Certificates from the 2006 Debt Service Fund on May 30, 2008.

The Trustee hereby acknowledges receipt of the net purchase price (as described above) of the Certificates and confirms that it has taken the actions and deposited, credited or transferred the proceeds from the sale of the Certificates as instructed as set forth above. The Trustee hereby further confirms receipt of the 2008 Certificate Insurance Policy relating to the Certificates by Assured Guaranty Corp.

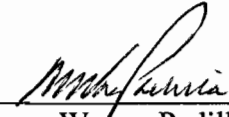
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Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Trust Agreement.

Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By:

  
\_\_\_\_\_  
Wayne Padilla  
Auditor and Treasurer

Acknowledged:

THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as Trustee

By:

\_\_\_\_\_  
Authorized Officer

Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Trust Agreement.


Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By: \_\_\_\_\_  
Wayne Padilla  
Auditor and Treasurer

Acknowledged:

THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as Trustee

By:  \_\_\_\_\_  
Authorized Officer

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

TO: The Bank of New York Trust Company, N.A.

RE: Disbursement from the Cost of Issuance Fund pursuant to Section 4.05 of the Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between THE BANK OF NEW YORK TRUST COMPANY, N.A., as Trustee (the "Trustee") and MODESTO PUBLIC FINANCING AUTHORITY (the "Authority")

WRITTEN REQUEST FOR REQUISITION  
FROM COSTS OF ISSUANCE FUND

REQUISITION NO. 1

You are here by instructed to pay as Costs of Issuance of the City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates") from the Cost of Issuance Fund as provided in Section 4.05 of the Trust Agreement the amounts set forth on Exhibit A hereto, to the persons or entities designated therein as Payee. These Costs of Issuance have been properly incurred, are a proper charge against the Costs of Issuance Fund and have not been the basis of any previous disbursements.

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Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

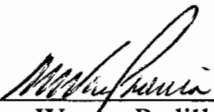
By:   
\_\_\_\_\_  
Wayne Padilla  
Auditor and Treasurer

EXHIBIT A

Upon presentation of an invoice from the undersigned Payees, the Trustee is instructed to pay such invoices up to the following amounts:

<u>Payee</u>	<u>Description</u>	<u>Amount</u>
Sidley Austin LLP	Bond Counsel Fee	\$132,806.33
Stradling Yocca Carlson & Rauth, A Professional Corporation	Disclosure Counsel Fee	37,073.55
Law Offices of Kathleen C. Johnson	Bank Counsel Fee	17,500.00
Winston & Strawn LLP	Insurer Counsel Fee	20,000.00
Jensen Law Office	Trustee Counsel Fee	1,750.00
The Bank of New York Trust Company, N.A.	Trustee Fee	1,500.00
Standard & Poor's	Rating Agency Fee	24,000.00
Moody's Investors Service	Rating Agency Fee	23,450.00

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE REGARDING JOINT EXERCISE OF POWERS AGREEMENT

The undersigned hereby states and certifies that:

1. He is the duly appointed, qualified and acting Auditor and Treasurer of the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority, duly organized under the laws of the State of California (the "State"), and operating pursuant to Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California and pursuant to an agreement which became effective on December 1, 1989 (the "Agreement"), by and among the members of the Authority, and as such, is familiar with the facts herein certified and is authorized to certify the same.

2. Attached hereto as Exhibit A is a true copy of the Joint Exercise of Powers Agreement of the Authority, and such Agreement has not been amended, modified or repealed as of the date hereof.

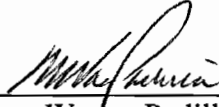
3. Attached hereto as Exhibit B is an initial Notice as to a Joint Powers Agreement duly filed with the California Secretary of State on December 19, 1989.

4. Attached hereto as Exhibit C is the Statement of Facts executed on April 15, 2008, and duly filed with the California Secretary of State on April 18, 2008.

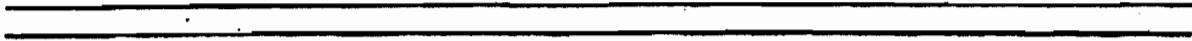
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Dated: May 30, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By:   
\_\_\_\_\_  
Wayne Padilla  
Auditor and Treasurer





**JOINT EXERCISE OF POWERS AGREEMENT**

**MODESTO PUBLIC FINANCING AUTHORITY**

**Dated as of December 1, 1989**

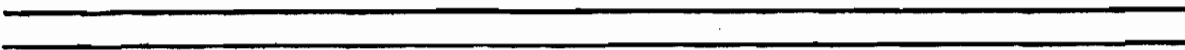


TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

Section 1.01. Definitions..... 2

ARTICLE II

GENERAL PROVISIONS

Section 2.01. Purpose..... 3  
 Section 2.02. Creation of Authority ..... 3  
 Section 2.03. Commission..... 3  
 Section 2.04. Meetings of the Commission ..... 3  
 Section 2.05. Minutes ..... 3  
 Section 2.06. Voting..... 3  
 Section 2.07. Quorum; Required Votes; Approvals..... 3  
 Section 2.08. Bylaws..... 3

ARTICLE III

OFFICERS AND EMPLOYEES

Section 3.01. Chairperson, Vice-Chairperson, Executive Director and  
                   Secretary..... 4  
 Section 3.02. Auditor and Treasurer..... 4  
 Section 3.03. Officers in Charge of Records, Funds and Accounts ..... 4  
 Section 3.04. Bonding Persons Having Access to Public Capital  
                   Improvements ..... 4  
 Section 3.05. Legal Advisor..... 5  
 Section 3.06. Other Employees ..... 5  
 Section 3.07. Assistant Officers..... 5

ARTICLE IV

POWERS

Section 4.01. General Powers ..... 6  
 Section 4.02. Power to Issue Bonds ..... 6  
 Section 4.03. Specific Powers..... 6  
 Section 4.04. Restrictions on Exercise of Certain Powers ..... 7  
 Section 4.05. Obligations of Authority ..... 7

**ARTICLE V**

**METHODS OF PROCEDURE; CREDIT TO MEMBERS**

Section 5.01. Assumption of Responsibilities By the Authority ..... 8  
Section 5.02. Delegation of Powers ..... 8  
Section 5.03. Credit to Members..... 8

**ARTICLE VI**

**CONTRIBUTION: ACCOUNTS AND REPORTS: FUNDS**

Section 6.01. Contributions ..... 9  
Section 6.02. Accounts and Reports ..... 9  
Section 6.03. Funds ..... 9  
Section 6.04. Administrative Expenses ..... 9

**ARTICLE VII**

**TERM; DISPOSITION OF ASSETS**

Section 7.01. Term..... 10  
Section 7.02. Disposition of Assets ..... 10

**ARTICLE VIII**

**MISCELLANEOUS PROVISIONS**

Section 8.01. Notices ..... 11  
Section 8.02. Section Headings..... 11  
Section 8.03. Consent..... 11  
Section 8.04. Law Governing..... 11  
Section 8.05. Amendments ..... 11  
Section 8.06. Enforcement by Authority..... 11  
Section 8.07. Severability ..... 11  
Section 8.08. Successors..... 11

**THIS AGREEMENT is by and among the CITY OF MODESTO (the "City") and the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF MODESTO (the "IDA"), each duly organized and existing under the laws of the State of California (the "State"), collectively called the "Members".**

**WITNESSETH:**

**WHEREAS, the Marks-Roos Local Bond Pooling Act of 1985 (hereinafter defined as the "Bond Law") authorizes agencies formed under the Joint Exercise of Powers Law (hereinafter defined as the "Act") to issue bonds for the purpose of acquiring and constructing Public Capital Improvements (as that term is defined in the Act) and to lease those Public Capital Improvements to public agencies in California;**

**WHEREAS, the City intends to finance the renovation of the main terminal building at the Modesto City-County Airport/Harry Sham Field by entering into a lease/leaseback financing of the Airport, and the IDA is willing to assist the City and to facilitate such financing;**

**NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Members do hereby agree as follows:**

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meanings herein specified.

**"Act"** means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State.

**"Agreement"** means this Joint Exercise of Powers Agreement.

**"Auditor and Treasurer"** means the Director of Finance of the City, designated as Auditor and Treasurer of the Authority in Section 3.02.

**"Authority"** means the Modesto Public Financing Authority created pursuant to this Agreement.

**"Bond Law"** means the Marks-Roos Local Bond Pooling Act of 1985, being Article 4 of the Act (commencing with Section 6584), as now or hereafter amended, or any other law hereafter legally available for use by the Authority in the authorization and issuance of Bonds to finance the acquisition of Obligations and/or Public Capital Improvements.

**"Bonds"** means bonds of the Authority issued pursuant to Section 6590 or 6591 of the Bond Law.

**"Chairperson"** means the Chairperson of the Authority.

**"Commission"** means the Commission referred to in Section 2.03, which shall be the governing body of the Authority.

**"Commissioners"** means the representatives of the Members appointed to the Commission pursuant to Section 2.03.

**"Fiscal Year"** means the period from July 1 to and including the following June 30.

**"Members and Member"** means each of the parties to this Agreement and "Member" means any such party.

**"Public Agency"** means any public agency authorized by the Act to enter into a joint exercise of powers agreement with the Members.

**"Public Capital Improvement"** has the meaning given to such term in Section 6585(g) of the Act, as in effect on the date hereof, and as hereafter amended.

**"Secretary"** means the secretary of the Authority.

**"State"** means the State of California.

**"Vice Chairperson"** means the vice Chairperson of the Authority.

## ARTICLE II

### GENERAL PROVISIONS

**Section 2.01. Purpose.** This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the Members. The purpose of this Agreement is to provide for the financing of Public Capital Improvements for the Members through the issuance of Bonds by the Authority and the leasing of the Public Capital Improvements to the Members.

**Section 2.02. Creation of Authority.** Pursuant to the Act, there is hereby created a public entity to be known as the "Modesto Public Financing Authority". The Authority shall be a public entity separate and apart from the Members, and shall administer this Agreement.

**Section 2.03. Commission.** The Authority shall be administered by a Commission of seven (7) Commissioners. The members of the City Council of the City shall be, *ex officio*; the Commissioners of the Authority. The number of Commissioners may be changed by amendment of this Agreement. The Commission shall be called the "Commission of the Modesto Public Financing Authority". All voting power of the Authority shall reside in the Commission.

#### **Section 2.04. Meetings of the Commission.**

(a) **Regular Meetings.** The Commission shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each year. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Commission and a copy of such resolution shall be filed with each of the Members.

(b) **Special Meetings.** Special meetings of the Commission may be called in accordance with the provisions of Section 54956 of the Government Code of the State.

(c) **Call, Notice and Conduct of Meetings.** All meetings of the Commission, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of Sections 54950 et seq. of the Government Code of the State.

**Section 2.05. Minutes.** The Secretary shall cause to be kept minutes of the meetings of the Commission and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Commissioner and to each of the Members.

**Section 2.06. Voting.** Each Commissioner shall have one vote.

**Section 2.07. Quorum; Required Votes; Approvals.** Commissioners holding a majority of the votes shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative votes of at least a majority of the Commissioners shall be required to take any action by the Commission.

**Section 2.08. Bylaws.** The Commission may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary for the purposes hereof.

**ARTICLE III**  
**OFFICERS AND EMPLOYEES**

**Section 3.01. Chairperson, Vice-Chairperson, Executive Director and Secretary.** The Mayor of the City shall, *ex officio*, serve as the Chairperson of the Authority, the Mayor pro tem of the City shall, *ex officio*, serve as the Vice Chairperson of the Authority, and the City Clerk of the City shall, *ex officio*, serve as the Secretary. The City Manager of the City shall, *ex officio*, serve as the Executive Director of the Authority. The officers shall perform the duties normal to said offices; and

(a) the Chairperson shall preside over all meetings of the Commission of the Authority, and shall perform such other duties as may be imposed by the Commission;

(b) the Vice Chairperson shall perform all of the Chairperson's duties in the absence of the Chairperson;

(c) the Executive Director shall sign all contracts on behalf of the Authority, and shall perform such other duties as may be imposed by the Commission;

(d) the Secretary shall countersign all contracts signed by the Executive Director on behalf of the Authority, perform such other duties as may be imposed by the Commission and cause a copy of this Agreement to be filed with the Secretary of State of the State pursuant to the Act.

**Section 3.02. Auditor and Treasurer.** Pursuant to Section 6505.6 of the Act, the Director of Finance of the City is hereby designated as the Auditor and Treasurer of the Authority. The Auditor and Treasurer shall be the depository, shall have custody of all of the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in Sections 6505 and 6505.5 of the Act and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority.

**Section 3.03. Officers in Charge of Records, Funds and Accounts.** Pursuant to Section 6505.1 of the Act, the Auditor and Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

**Section 3.04. Bonding Persons Having Access to Public Capital Improvements.** From time to time, the Commission may designate persons, in addition to the Secretary and the Auditor and Treasurer, having charge of, handling or having access to any records, funds or accounts or other Public Capital Improvements of the Authority, and the respective amounts of the official bonds of the Secretary and the Auditor and Treasurer and such other persons pursuant to Section 6505.1 of the Act.

**Section 3.05. Legal Advisor.** The City Attorney of the City of Modesto shall serve as legal advisor to the Authority.

**Section 3.06. Other Employees.** The Commission shall have the power to appoint and employ such other consultants and independent contractors as may be necessary for the purposes of this Agreement.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of an Agency when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

None of the officers, agents, or employees directly employed by the Commission shall be deemed, by reason of their employment by the Commission to be employed by any Member or, by reason of their employment by the Commission, to be subject to any of the requirements of the Members.

**Section 3.07. Assistant Officers.** The Commission may appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Commissioner) as the Commission shall from time to time deem appropriate.

## ARTICLE IV

### POWERS

**Section 4.01. General Powers.** The Authority shall exercise in the manner herein provided the powers common to each of the Members and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.04, including but not limited to the common power of eminent domain with respect to Public Capital Improvements.

As provided in the Act, the Authority shall be a public entity separate from the Members. The Authority shall have the power to finance the acquisition of Public Capital Improvements necessary or convenient for the operation of the Members, and to acquire Obligations of the Members.

**Section 4.02. Power to Issue Bonds.** The Authority shall have all of the powers provided in Article 4 of the Act (commencing with Section 6584), including the power to issue Bonds under the Bond Law.

**Section 4.03. Specific Powers.** The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any or all of the following:

- (a) to make and enter into contracts;
- (b) to employ agents or employees;
- (c) to acquire, construct, manage, maintain or operate any buildings, works or improvements;
- (d) to acquire, construct, hold and dispose of Public Capital Improvements, including the leasing of such Public Capital Improvements from and to the Members;
- (e) to sue and be sued in its own name;
- (f) to incur debts, liabilities or obligations, provided that no debt, liability or obligation shall constitute a debt, liability or obligation of any of the Members;
- (g) to apply for, accept, receive and disburse grants, loans and other aids from any agency of the United States of America or of the State;
- (h) to invest any money in the treasury pursuant to Section 6505.5 of the Act that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code of the State;

(i) to apply for letters of credit or other form of credit enhancement in order to secure the repayment of its Bonds and enter into agreements in connection therewith;

(j) to carry out and enforce all the provisions of this Agreement;

(k) to make and enter into Bond Purchase Agreements;

(l) to purchase Obligations issued by any Member; and

(m) to exercise any and all other powers as may be provided in the Bond Law.

**Section 4.04. Restrictions on Exercise of Certain Powers.** The powers of the Authority shall be exercised in the manner provided in the Act and in the Bond Law, and, except for those powers set forth in the Bond Law, shall be subject (in accordance with Section 6509 of the Act) to the restrictions upon the manner of exercising such powers that are imposed upon the City in the exercise of similar powers.

**Section 4.05. Obligations of Authority.** The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of any of the Members.

## ARTICLE V

### METHODS OF PROCEDURE; CREDIT TO MEMBERS

**Section 5.01. Assumption of Responsibilities By the Authority.** As soon as practicable after the date of execution of this Agreement, the Commissioners shall give notice (in the manner required by Section 2.04) of the organizational meeting of the Commission. At said meeting the Commission shall provide for its regular meetings as required by Section 2.04 and elect a Chairperson, Vice Chairperson and the Secretary.

**Section 5.02. Delegation of Powers.** Each of the Members hereby delegates to the Authority the power and duty to acquire, by lease, lease-purchase, installment sale agreements, or otherwise, such Public Capital Improvement necessary or convenient for the operation of the Members.

**Section 5.03. Credit to Members.** All accounts or funds created and established pursuant to any trust agreement or indenture to which the Authority is a party, and any interest earned or accrued thereon, shall inure to the benefit of the respective Members for which such funds or accounts were created.

## ARTICLE VI

### CONTRIBUTION: ACCOUNTS AND REPORTS: FUNDS

**Section 6.01. Contributions.** The Members may in the appropriate circumstance when required hereunder: (a) make contributions from their treasuries for the purposes set forth herein, (b) make payments of public funds to defray the cost of such purposes, (c) make advances of public funds for such purposes, such advances to be repaid as provided herein, or (d) use its personnel, equipment or property in lieu of other contributions or advances.

**Section 6.02. Accounts and Reports.** To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Auditor and Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement or indenture entered into with respect to the proceeds of any Bonds issued by the Authority. The books and records of the Authority in the hands of a trustee or the Auditor and Treasurer shall be open to inspection at all reasonable times by representatives of the Members. The Auditor and Treasurer of the Authority, within 180 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members to the extent such activities are not covered by the report of such trustee. The trustee appointed under any trust agreement or indenture shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust agreement or indenture. Said trustee may be given such duties in said trust agreement or indenture as may be desirable to carry out this Agreement.

**Section 6.03. Funds.** Subject to the applicable provisions of any trust agreement or indenture which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Auditor and Treasurer of the Authority shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

**Section 6.04. Administrative Expenses.** The Members shall pay their proportionate share (determined on the basis of a Member's percentage share of any financings completed by the Authority) of administrative expenses.

## ARTICLE VII

### TERM; DISPOSITION OF ASSETS

**Section 7.01. Term.** This Agreement shall become effective as of the date of execution hereof by the parties hereto, and shall continue in full force and effect so long as bonds of the Authority are outstanding or any lease agreements are outstanding between the Authority and a Member or Members (or between Members).

**Section 7.02. Disposition of Assets.** Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the parties hereto in such manner as shall be agreed upon by the parties.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

**Section 8.01. Notices.** Notices hereunder shall be in writing and shall be sufficient if delivered to:

City of Modesto  
801 11th Street  
Modesto, California 95354  
Attn: Finance Director

Industrial Development Agency  
of the City of Modesto  
801 11th Street  
Modesto, California 95354  
Attn: Chairperson

**Section 8.02. Section Headings.** All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

**Section 8.03. Consent.** Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

**Section 8.04. Law Governing.** This Agreement is made in the State under the constitution and laws of the State and is to be so construed.

**Section 8.05. Amendments.** This Agreement may be amended at any time, or from time to time, except as limited by contract with the holders of Bonds issued by the Authority or certificates of participation in payments to be made by the Authority or the Members or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all of the parties to this Agreement either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including without limitation addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

**Section 8.06. Enforcement by Authority.** The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.

**Section 8.07. Severability.** Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

**Section 8.08. Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective Members. None of the Members may assign any right or obligation hereunder without the written consent of the other Members.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, on the day and year set opposite the name of each of the parties.

CITY OF MODESTO

Dated: November 21, 1989


  
\_\_\_\_\_  
City Manager

ATTEST:

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

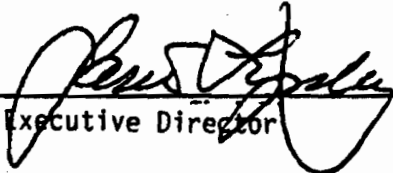
(SEAL)

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF MODESTO

Dated: November 21, 1989

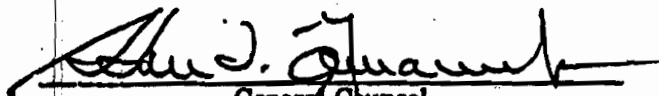
  
\_\_\_\_\_  
Executive Director

ATTEST:

  
\_\_\_\_\_  
Secretary

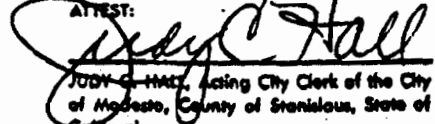
(SEAL)

Approved as to Form:

  
\_\_\_\_\_  
General Counsel

The foregoing is a correct copy of the original on file in this office which has not been revoked and is now in full force and effect.

ATTEST:

  
\_\_\_\_\_  
JUDY C. HALL, Acting City Clerk of the City of Modesto, County of Stanislaus, State of California.

**State of California**  
**Secretary of State**



I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

OCT 10 2006



A handwritten signature in cursive script, reading "Bruce McPherson".

BRUCE McPHERSON  
Secretary of State



State of California  
 March Fong Eu  
 Secretary of State

FILE NO. 1027

FILED  
 In the office of the Secretary of State  
 of the State of California

DEC 19 1989

*March Fong Eu*  
 MARCH FONG EU, Secretary of State

(Office Use Only)

NOTICE OF A JOINT POWERS AGREEMENT  
 (Government Code Section 6503.5 or 6503.7)

Instructions:

1. Complete and mail to: Secretary of State,  
 P.O. Box 704, Sacramento, CA 95812-0704 (916) 324-6778
2. Include filing fee of \$5.00
3. Do not include attachments, unless otherwise specified.

The name of the agency or entity created under the agreement and responsible for the administration of the agreement is \_\_\_\_\_

MODESTO PUBLIC FINANCING AUTHORITY

Mailing address: 801 11th Street, Modesto, California 95354

Provide a short title of the agreement if applicable: Joint Exercise of Powers Agreement

The public agencies party to the agreement are:

- (1) City of Modesto
- (2) Industrial Development Authority of the City of Modesto
- (3) \_\_\_\_\_

if more space is needed, continue on a separate sheet and attach it to this form.

The effective date of the agreement is December 5, 1989

Provide a condensed statement of the agreement's purpose or the powers to be exercised: \_\_\_\_\_

Financing Public Capital Improvements for the City of Modesto

*William H. Madison*

Signature  
 William H. Madison, Jones Hall Hill & White  
 Special Counsel  
 Typed Name and Title



**DEBRA BOWEN** | SECRETARY OF STATE | STATE OF CALIFORNIA  
BUSINESS PROGRAMS | SPECIAL FILINGS

1500 11th Street, 2nd floor | Sacramento, CA 95814 | P.O. Box 942877 | Sacramento, CA 94277-0001 | (916) 653-3984 | [www.sos.ca.gov](http://www.sos.ca.gov)

April 22, 2008

Stephanie Lopez, Secty  
Modesto Public Financing Authority  
P.O. Box 642  
Modesto Ca 95353

The purpose of this letter is to acknowledge the filing in this office of a Statement of Facts for **Modesto Public Financing Authority** pursuant to California Government Code Section 53051. This Statement of Facts was filed as of April 18th 2008.

For future updates blank forms can be downloaded from our website at [www.sos.ca.gov](http://www.sos.ca.gov).

Sincerely,

Special Filings Unit

**State of California**  
**Secretary of State**

**CERTIFICATE OF FILING**

I, DEBRA BOWEN, Secretary of State of the State of California hereby certify:

That on the 13th day of February, 1990, a Statement Of Facts Roster of Public Agencies Filing was filed in this office in accordance with Section 53051 of the Government Code of the State of California for the following:

**Modesto Public Financing Authority**

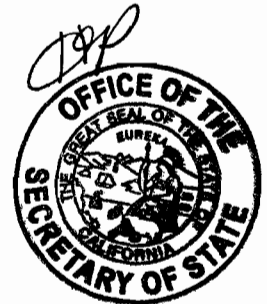
IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this  
22nd day of April 2008



*Debra Bowen*

**DEBRA BOWEN**  
Secretary of State

State of California  
Secretary of State



I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of   1   page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

APR 22 2008

DEBRA BOWEN  
Secretary of State



# State of California Secretary of State

## STATEMENT OF FACTS ROSTER OF PUBLIC AGENCIES FILING (Government Code Section 53051)

**FILED**  
In the office of the Secretary of State  
of the State of California  
**APR 18 2008**  
  
(Office Use Only)

Instructions:

1. Complete and mail to: Secretary of State,  
P.O. Box 942877, Sacramento, CA 94277-0001 (916) 653-3984
2. A street address must be given as the official mailing address or as  
the address of the presiding officer.
3. Complete addresses as required.
4. If you need additional space, please include information on an 8½ X 11 page.

New Filing  Update

Legal name of Public Agency: Modesto Public Financing Authority

Nature of Update: Change in Commissioners and Change of Secretary

County: Stanislaus

Official Mailing Address: P.O. Box 642, Modesto, California 95353 (physical address: 1010 Tenth Street)

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): Chairperson

Name: Jim Ridenour Address: P.O. Box 642, Modesto, California 95353

Secretary or Clerk (Indicate Title): Secretary

Name: Stephanie Lopez Address: P.O. Box 642, Modesto, California 95353

Members:

Name: Will O'Bryant (Vice Chairperson) Address: P.O. Box 642, Modesto, California 95353

Name: Dave Lopez (Member) Address: P.O. Box 642, Modesto, California 95353

Name: Brad Hawn (Member) Address: P.O. Box 642, Modesto, California 95353

Name: Janice Keating (Member) Address: P.O. Box 642, Modesto, California 95353

Name: Garrad Marsh (Member) Address: P.O. Box 642, Modesto, California 95353

Name: Kristin Olsen (Member) Address: P.O. Box 642, Modesto, California 95353

Date: April 15, 2008

Signature  
Stephanie Lopez, Secretary

Typed Name and Title

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CLOSING CERTIFICATE OF THE CITY

The undersigned, the Finance Director/Treasurer and City Clerk, respectively, of the City of Modesto (the "City"), a charter city and municipal corporation duly organized and existing under the laws of the State of California, hereby certify on behalf of the City, in connection with the \$47,625,000 City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates"), as follows:

1. The undersigned further certify that authorized officers of the City have executed the following documents on behalf of the City:
  - (a) the 2008 Supplemental Installment Purchase Contract (the "2008 Contract"), dated as of May 1, 2008, by and between the City and the Modesto Public Financing Authority (the "Authority");
  - (b) the Purchase Contract, dated May 1, 2008 (the "Purchase Contract"), by and among the City, the Authority and Banc of America Securities LLC, as Underwriter (the "Underwriter");
  - (c) the Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Standby Purchase Agreement"), among the City, the Authority and Bank of America, N.A., as Liquidity Facility Provider (the "Liquidity Facility Provider");
  - (d) the Custodian Agreement, dated as of May 1, 2008 (the "Custodian Agreement"), among the Liquidity Facility Provider, the City and The Bank of New York Trust Company, N.A., as Custodian;
  - (e) the Reimbursement Agreement (Reserve Fund Surety), dated as of May 1, 2008 (the "Reimbursement Agreement"), by and between the City and Assured Guaranty Corp., as 2008 Certificate Insurer;
  - (f) the Official Statement, dated May 29, 2008 (the "Official Statement"), relating to the Certificates;
  - (g) the International Swap Dealers Association, Inc. Master Agreement (Local Currency—Single Jurisdiction), dated as of May 29, 2008 (the "Swap Agreement"), by and between the Bank of America, N.A., as Swap Provider (the "Swap Provider") and the City;
  - (h) U.S. Municipal Counterparty Schedule to the Swap Agreement, dated as of May 29, 2008 (the "Schedule"), by and between the Swap Provider and the City;

- (i) the Credit Support Annex to the Schedule to the Swap Agreement, dated as of May 29, 2008 (the “CSA”), by and between the Swap Provider and the City; and
- (j) the Amended Confirmation of the Swap Provider, dated May 29, 2008 (the “Confirmation,” and together with the Swap Agreement, the Schedule and the CSA, the “Swap Documents”), accepted and confirmed by the City.

2. The undersigned further certify that the following persons were the duly appointed or elected, qualified and acting members of the City Council on May 13, 2008:

Name	Office
Jim Ridenour	Mayor
Will O’Bryant	Vice Mayor
Dave Lopez	Councilmember
Brad Hawn	Councilmember
Janice Keating	Councilmember
Garrad Marsh	Councilmember
Kristin Olsen	Councilmember

3. The undersigned further certify that:

(i) the representations and warranties of the City contained in (i) the Master Installment Purchase Contract, dated as of November 1, 1997 (the “Master Contract”), by and between the City and the Authority, (ii) the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the “1997 Contract,” and, together with the Master Contract, the 2008 Contract, the Purchase Contract, the Standby Purchase Agreement, the Custodian Agreement and the Reimbursement Agreement, the “City Documents”), by and between the City and the Authority, (iii) the Swap Documents, and (iv) the Purchase Contract, are accurate in all material aspects, as and if made on the date hereof;

(ii) the City Documents and the Swap Documents have been duly executed and delivered and each constitutes a valid and legally binding obligation of the City enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally and the application of equitable principles if equitable remedies are sought;

(iii) the resolution of the City, adopted on October 21, 1997, at a meeting of the City Council duly called, noticed and conducted, at which a quorum was present and acting throughout, a certified copy of which is attached as Exhibit A hereto (the “1997 City Resolution”), authorizing the execution, delivery and due performance of the Master Contract and 1997 Contract, and the resolution of the City, adopted on May 13, 2008, at a meeting of the City Council duly called, noticed and conducted, at which a quorum was present and acting throughout (the “2008 City Resolution” and, together with the 1997 City Resolution, the “City Resolutions”), authorizing the execution, delivery and due performance of the 2008 Contract, the Continuing Disclosure Agreement, the Purchase Contract and the Insurance Agreement, are in full force and effect at the date hereof and have not been amended, modified or supplemented;

(iv) the City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied on or prior to the date hereof;

(v) no “event of default,” “potential event of default” or “involuntary insolvency event” under, and as defined in, the City Documents or the Swap Documents, has occurred and is continuing as of the date hereof;



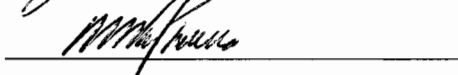

(vi) subsequent to the date of the Official Statement and on or prior to the date of such certificate, there has been no material adverse change in the condition (financial or otherwise) of the City or its water system, whether or not arising in the ordinary course of the operations of the City, as described in the Official Statement; and

(vii) except for statements regarding the Insurer, the Liquidity Bank and DTC and excluding the information contained in the Official Statement under the captions “CERTIFICATE INSURANCE,” “LIQUIDITY FACILITY,” “THE AUTHORITY” and “LITIGATION” (solely as it relates to the Authority), the Official Statement does not contain any untrue or misleading statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

Capitalized terms used herein not otherwise defined shall have the meanings ascribed thereto in the Official Statement.

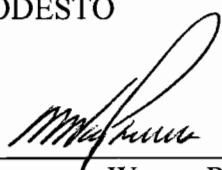
[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

4. The officers identified below are duly authorized by the City Council of the City to execute on behalf of the City, certain documents, certificates and agreements relating to the Certificates and that pursuant to such authority certain documents, certificates and agreements have been executed by such persons, and attested to by the signature of the City Clerk of the City, and, each of the undersigned by their signature confirms that the other signatures set forth below are genuine or an authorized facsimile signature:

<u>Name</u>	<u>Official Title</u>	<u>Signature</u>
Jim Ridenour	Mayor	
James E. Niskanen	Interim City Manager	
Wayne Padilla	Finance Director/Treasurer	
Stephanie Lopez	City Clerk	

Dated: May 30, 2008

CITY OF MODESTO

By:   
Wayne Padilla  
Finance Director/Treasurer

By:   
Stephanie Lopez  
City Clerk

EXHIBIT A

CERTIFICATE REGARDING CITY RESOLUTION


I, Stephanie Lopez, hereby certify that I am the City Clerk of the City of Modesto (the "City"), a charter city and municipal corporation duly organized under the Constitution and the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the City.

I hereby further certify that the attached resolution is a full, true and correct copy of Resolution No. 97-596, adopted at the regular meeting of the City Council of the City held on October 21, 1997, of which meeting all of the members of the City Council of the City had due notice and at which a quorum was present and acting throughout.

I hereby further certify that I have carefully compared the same with the original resolution so adopted at said meeting and that it is a full, true and correct copy of said resolution; and that said resolution has not been amended, modified or rescinded since the date of adoption and is now in full force and effect.

Dated: May 30, 2008

CITY OF MODESTO

By:  \_\_\_\_\_  
Stephanie Lopez  
City Clerk

*Clerk 14*

CITY OF MODESTO

RESOLUTION NO. 97-596

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MODESTO RELATING TO REFUNDING REVENUE CERTIFICATES OF PARTICIPATION (1997 WATER UTILITY SYSTEM REFINANCING PROJECT); APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER INSTALLMENT PURCHASE CONTRACT, A 1997 SUPPLEMENTAL INSTALLMENT PURCHASE CONTRACT, AN ESCROW AGREEMENT, A CONTINUING DISCLOSURE CERTIFICATE, A PURCHASE CONTRACT, AND APPROVING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT, IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS

WHEREAS, the City of Modesto is a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City");

WHEREAS, the Modesto Public Financing Authority (the "Authority") is authorized under the Modesto Public Financing Joint Exercise of Powers Agreement, dated as of December 5, 1989, by and between the City and the Industrial Development Authority of the City of Modesto, and the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4, Chapter 5, Division 7, Title 1 (commencing with Section 6584) of the California Government Code (the "Bond Pooling Act"), among other things, to purchase at public or negotiated sale certain obligations ("Obligations") issued by Members of the Authority and other public agencies and sell at public or negotiated sale such Obligations or issue and sell at public or negotiated sale bonds secured in whole or in part by such Obligations or by other revenues designed in such Obligations;

WHEREAS, in order to assist the City in the financing the acquisition, construction, installation of certain improvements to its municipal water utility system (the "1992 Project"), the City, the Authority and the Trustee (as defined below) caused the execution and delivery of \$25,065,000 in aggregate principal amount of Certificates of Participation (1992 Water System Improvement Project) (the "1992 Certificates") under and pursuant to a Trust Agreement, dated as of November 1, 1992, by and among the City, the Authority and the State Street Bank and Trust Company of California, N.A., as trustee (the "Trustee");

WHEREAS, in order to pay the purchase price of the 1992 Project the Authority and the City entered into an Installment Sale Agreement (the "Installment Sale Agreement"), dated as of

November 1, 1997, by and between the Authority and the City, pursuant to which the City would pay installment payments for the purchase price of the 1992 Project;

WHEREAS, the City and the Authority have determined that in order to achieve debt service savings it is in their best interest to provide for the prepayment of the Installment Sale Agreement through the deposit into an escrow fund of an amount, together with investment earnings thereon, which is sufficient to defease the 1992 Certificates;

WHEREAS, in order to implement the foregoing, the City and the Authority propose to execute and enter into a Master Installment Purchase Contract (the "Master Installment Purchase Contract") and a 1997 Supplemental Installment Purchase Contract (the "Supplemental Installment Purchase Contract"), whereby the City will sell the 1992 Project to the Authority, and the Authority in turn will sell the 1992 Project to the City, and the City will be obligated to make installment payments to the Authority for the purchase price therefor (hereinafter referred to as the "1997 Project");

WHEREAS, the City desires to approve the financing of the Project through the execution and delivery by the Trustee of Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project) (the "Certificates"), evidencing and representing proportionate interests of the owners thereof in installment payments to be made by the City, pursuant to a Trust Agreement (the "Trust Agreement"), proposed to be executed and delivered by the Authority and the Trustee;

WHEREAS, the City proposes to execute and deliver a Purchase Contract (the "Purchase Contract") with Lehman Brothers (the "Underwriter"), pursuant to which the Underwriter will purchase the Certificates for reoffering to the public, and to authorize the execution and distribution of a Preliminary Official Statement and an Official Statement pertaining to the Certificates; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MODESTO, AS FOLLOWS:

Section 1. Findings. The City Council hereby specifically finds and determines that the actions authorized hereby constitute and are with respect to the public affairs of the City and that the statements, findings and determinations of the City set forth above and in the preambles of the documents approved herein are true and correct and that the consummation of the transactions contemplated therein shall result in significant public benefits to the City in that the City expects to benefit from demonstrable savings in costs related to financing the 1997 Project.

Section 2. Master Installment Purchase Contract. The Master Installment Purchase Contract, proposed to be executed and entered into by and between the City and the Authority, in the form presented at this meeting and on file with the City Clerk, is hereby approved, and the City Manager or the Finance Director are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority the Master Installment Purchase Contract in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. Supplemental Installment Purchase Contract. The Supplemental Installment Purchase Contract, proposed to be executed and entered into by and between the City and the Authority, in the form presented at this meeting and on file with the City Clerk of the City, is hereby approved, and the City Manager or the Finance Director are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Authority the Supplemental Installment Purchase Contract in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the schedule of the installment payments to be contained in the Supplemental Installment Purchase Contract and to be attached as an exhibit thereto shall be determined by the City Manager or the Finance Director of the City upon the sale of the Certificates, but shall not exceed \$32,000,000 in aggregate principal amount, shall provide for installment payments not later than the final maturity of the 1992 Certificates, and shall result in a true interest cost not in excess of [eight] percent per annum.

Section 4. Escrow Agreement. The Escrow Agreement, proposed to be executed and entered into by and between the City, the Authority and State Street Bank and Trust Company of California, as escrow agent, in the form presented at this meeting and on file with the City Clerk, is hereby approved, and the City Manager or the Finance Director is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Escrow Agreement in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Purchase Contract. The Purchase Contract, proposed to be executed and entered into by and among the City, the Authority, and the Underwriter, in the form presented at this meeting and on file with the City Clerk, is hereby approved, and the City Manager or the Finance Director are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Underwriter the Purchase Contract in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. Official Statement. The Preliminary Official Statement, in the form presented at this meeting and on file with the City Clerk, is hereby approved. The City Manager or the Finance Director are hereby authorized and directed to cause the Preliminary Official Statement, in substantially said form, with such changes therein as such officers may require or approve, to be deemed final for purposes of Rule 15c2-12 of the Securities and Exchange Act of 1934 and to be distributed to potential purchasers of the Certificates. The City Manager or the Finance Director are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Official Statement in a final form approved by such officers, such

approval to be conclusively evidenced by the execution and delivery thereof, and to cause the distribution of the Official Statement in final form.

Section 7. Continuing Disclosure Certificate. The Continuing Disclosure Certificate, proposed to be executed and delivered by the City, in the form presented at this meeting and on file with the City Clerk, is hereby approved and the City Manager or the Finance Director are hereby authorized and directed for and in the name and on behalf of the City to execute and deliver the Continuing Disclosure Certificate in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 8. Attestations. The City Clerk is hereby authorized and directed to attest the signature of the City Manager and the Finance Director and to affix and attest the seal of the City, as may be required or appropriate in connection with the execution and delivery of the Certificates and the documents approved by this Resolution.

Section 9. Other Actions. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things (including the negotiating and obtaining of a municipal bond insurance policy or reserve fund surety bond with respect to the Certificates if the City Manager or Finance Director determine that such insurance policy or surety bond will result in savings to the City) and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Master Installment Purchase Contract, the Supplemental Installment Purchase Contract, the Escrow Agreement, the Continuing Disclosure Certificate, the Purchase Contract, the Preliminary Official Statement, the Official Statement, and the Certificates; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 10. Effective Date. This Resolution shall take effect immediately upon its passage.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 21st day of October, 1997, by Councilmember Friedman, who moved its adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich  
MICHAEL D. MILICH, City Attorney

~~JEAN ADAMS, City Clerk~~  
Jean Adams  
~~JEAN ADAMS, City Clerk~~



# MINUTES

## MODESTO CITY COUNCIL

City Council Chambers, City Hall  
801 11th Street  
Modesto, California

### MINUTES

COUNCIL MEETING OF TUESDAY, OCTOBER 21, 1997, AT 7:00 P.M.

Roll Call - Present: Councilmembers Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

Absent: None

Pledge of Allegiance to the Flag

Invocation: Rev. Ross Briles, Sherwood Bible Church

CONSENT ITEMS - ROLL CALL VOTE REQUIRED: Items 2, 4, 10, 11, 12, 13, 14, 15, 17, 18, 19, 22

ACTION: (Friedman/Dobbs, unan.)

### 1. ACKNOWLEDGEMENTS AND PRESENTATIONS

None.

### MINUTES

### CONSENT

2. Approval of the minutes of the regular City Council meeting of October 14, 1997.  
(Motion approving needed.)

ACTION: By motion (Friedman/Dobbs, unan.), minutes approved.  
(Clerk to handle)

### UNFINISHED BUSINESS

3. Councilmember Serpa excused due to conflict of interest.  
Final adoption of Ord. No. 3065-C.S. granting one year bus bench franchise extension to Computer Pathways, Inc.  
(Motion adopting needed.)

10/21/97

ACTION: By motion (Dobbs/Fisher, unan.; Serpa absent), final adoption of Ord. No. 3065-C.S. approved.  
(City Attorney to handle)

### CONSENT

4. Final adoption of Ord. No. 3066-C.S. amending the Modesto Municipal Code relating to speed limits.  
(Motion adopting needed.)

ACTION: By motion (Friedman/Dobbs, unan.), final adoption of Ord. No. 3066-C.S. approved.  
(City Attorney to handle)

### HEARINGS

Councilmember McClanahan excused due to conflict.

5. Hearing to consider the request of Jack R. Jones, on behalf of Modesto Garage Co., Inc. for a merger of Modesto Garbage Co., Inc. with united Waste Systems. (Continued from July 22, August 26, September 16, and October 7, 1997, City Council meetings.)

ACTION: Res. 97-588 adopted (Cogdill/Dobbs, majority; Fisher & Friedman, no; McClanahan, absent) approving merger  
(PMT to handle)

6. Hearing to consider an amendment to the Kiernan Business Park Specific Plan to allow indoor theaters in the Regional Commercial designation with a Planned Development Zone. (Paquet Development)  
(Continued from September 2, and October 7, 1997, City Council meetings.)

ACTION: Res. 97-589 adopted (Fisher/Serpa, unan.) denying application.  
(COO to handle)

7. Hearing to consider amending Section Ap 2-3-8 of the Zoning Map to rezone from Specific Plan Overlay Zone, SP-C, to Planned Development Zone, P-D(524), for development of a 16-screen theater and retail commercial center, property located on the north side of Pelandale Avenue, east of Sisk Road. (Paquet Development)  
(Continued from September 2, and October 7, 1997, City Council meetings.)

ACTION: Withdrawn by applicant. No action taken.

Councilmembers Dobbs & Fisher excused due to conflict.

8. Hearing to consider the proposed amendment to the Pelandale-Snyder Specific Plan to allow a phased development of Pelandale-Avenue, delete a collector street connection to Pelandale Avenue, and to modify or delete certain other development standards.

ACTION: Res. 97-590 adopted (Cogdill/McClanahan, majority; Serpa, no; Dobbs & Fisher, absent) approving amendment to Pelandale-Snyder Specific Plan.  
(COO to handle)

**NEW BUSINESS**

9. Consider adopting the Financing Plan for Pelandale-Snyder Specific Plan Area.  
(Resolution adopting Financing Plan needed.)

**ACTION:** Res. 97-591 adopted (Cogdill/McClanahan, majority; Serpa, no; Dobbs & Fisher, absent) approving Financing Plan. (COO to handle)

**BIDS**

**CONSENT**  
10. Consider authorizing call for bids for furnishing one van, three utility vehicles, one packer truck, three front end loaders and one tractor.  
(Suggested bid opening: November 24, 1997, at 11:00 a.m. Resolution authorizing bid call needed. Total estimated cost: \$558,000. Funds are budgeted.)

**ACTION:** Res. 97-592 adopted (Friedman/Dobbs, unan.) calling for bids to be opened on November 24, 1997 at 11:00 a.m. (Finance to handle)

**CONSENT**  
11. Consider accepting George Reed, Inc.'s contract for the Sisk Road widening project as complete and authorizing the City Clerk to file the Notice of Completion. (Original contract: \$78,870)  
(Resolution accepting the work as complete and authorizing the City Clerk to file the Notice of Completion needed. Final cost: \$89,996.60. Funds are budgeted.)

**ACTION:** Res. 97-593 adopted (Friedman/Dobbs, unan.) accepting work as complete and authorizing the City Clerk to file the Notice of Completion. (PMAT/Clerk to handle)

**CONSENT**  
12. Consider accepting Grover Landscaping Services' contract for the Chrysler 99 Neighborhood Park Phase I project as complete and authorizing the City Clerk to file the Notice of Completion. (Original contract: \$310,250.38)  
(Resolution accepting the work as complete and authorizing the City Clerk to file the Notice of Completion needed. Final cost: \$320,860.19. Funds are budgeted.)

**ACTION:** Res. 97-594 adopted (Friedman/Dobbs, unan.) accepting work as complete and authorizing the City Clerk to file the Notice of Completion. (PMAT/Clerk to handle)

**CONSENT**  
13. Consider rejecting all bids for the purchase of lawn mowing services.  
(Resolution rejecting all bids needed.)

**ACTION:** Res. 97-595 adopted (Friedman/Dobbs, unan.) rejecting all bids. (PAR to handle)

10/21/97

3

**CONSENT**

14. Consider approving the refunding of 1992 Water Certificates of Participation in an amount not to exceed \$32,000,000 and related documents, and authorizing related actions in connection therewith.  
(Resolution approving refunding and authorizing related actions needed.)

**ACTION:** Res. 97-596 adopted (Friedman/Dobbs, unan.) approving refunding and authorizing related actions. (Finance to handle)

**CONSENT**

15. Consider annual approval of City's Investment Policy.  
(Resolution approving Investment Policy needed.)

**ACTION:** Res. 97-597 adopted (Friedman/Dobbs, unan.) approving Investment Policy. (Finance to handle)

Councilmember McClanahan excused due to conflict of interest.

16. Consider approving amendments to Chapter 5 of Title V of the Modesto Municipal Code relating to solid waste; and consider approving amendments to Chapter 6 of Title XI of the Modesto Municipal Code relating to collections of Public Utilities Charges.  
(Introduction of two ordinances needed.)

**ACTION:** Ord. No. 3067-C.S. introduced (Fisher/Cogdill, unan.; McClanahan, absent).

Ord. No. 3068-C.S. introduced (Fisher/Cogdill, unan.; McClanahan, absent).

(PMAT to handle)

**CONSENT**

17. Consider accepting the "COPS MORE" grant in the amount of \$150,000; and consider amending the 1997-98 Budget to appropriate expenditures.  
(Resolution accepting grant needed, and resolution amending budget needed.)

**ACTION:** Res. 97-598 adopted (Friedman/Dobbs, unan.) accepting grant.

Res. 97-599 adopted (Friedman/Dobbs, unan.) amending budget.  
(Police to handle)

**CONSENT**

18. Consider excusing Councilmember Friedman from Council meeting of October 14, 1997, due to her attendance at the Annual League of California Cities Conference in San Francisco October 12 - October 14, 1997.  
(Motion excusing needed.)

**ACTION:** By motion (Friedman/Dobbs, unan.), excused Councilmember Friedman.

10/21/97

4

**CONSENT**

19. Consider authorizing City Manager to execute a consultant contract for outside legal services with Miller, Nelson & Briggs. (Resolution approving agreement needed.)

**ACTION:** Res. 97-600 adopted (Friedman/Dobbs, unan.) approving agreement. (City Mgr to handle)

20.

**ORAL COMMUNICATIONS**

Ted Cook commented on lost revenue.

**WRITTEN COMMUNICATIONS**

21. Letter from Mr. Pete Koif requesting the cancellation of the "Return of Investment" revenue source and adjustment of the Fiscal Year 1997-98 Budget.

**ACTION:** No action taken.

**CONSENT**

22. Letter of resignation from the Human Relations Commission from Paul A. Horn. (Resolution accepting resignation with regret needed.)

**ACTION:** Res. 97-601 adopted (Friedman/Dobbs, unan.) accepting resignation with regret.

23.

**MATTERS TOO LATE FOR THE AGENDA**

None.

**ADJOURNMENT**

Meeting adjourned at 9:54 p.m.

ATTEST: Jean Adams  
JEAN ADAMS, City Clerk

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

**TAX CERTIFICATE**

**THIS TAX CERTIFICATE** (the "**Tax Certificate**") is being executed by the City of Modesto (the "**City**"), a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State of California, in connection with the execution and delivery by City of its Water Refunding Revenue Certificates of Participation, 2008 Series A, in the aggregate principal amount of \$47,625,000 (the "**Certificates**"), evidencing and representing proportionate interests of the Owners thereof in certain payments (the "**2008 Payments**") to be made by the City to the Modesto Public Financing Authority (the "**Authority**").

**WHEREAS**, the City executed and delivered, on November 2, 2006, its \$46,275,000 aggregate principal amount of Water Certificates of Participation, 2006 Series A (the "**2006 Certificates**"), the proceeds of which, net of costs of issuance and a premium for a financial guaranty insurance policy, were used to finance certain costs of the acquisition and construction of various additions, betterments, extensions and improvements (collectively, the "**Project**") to the City's water system (the "**Water Utility System**"); and

**WHEREAS**, the City has determined to provide funds, through the issuance of the Certificates, together with certain other moneys, (i) to current refund the 2006 Certificates, by redeeming the 2006 Certificates on May 30, 2008, (ii) to fund the Parity Reserve Fund (the "**Parity Reserve Fund**"), which secures the payment of debt service with respect to the City's outstanding Refunding Revenue Certificates of Participation (1997 Water Utility System Refunding Project) (the "**1997 Certificates**") and the Certificates, (iii) to pay Assured Guaranty Corp. (the "**Insurer**") a premium (the "**Reserve Fund Premium**") to purchase a reserve fund financial guaranty insurance policy (the "**2008 Parity Reserve Fund Insurance Policy**") for the Parity Reserve Fund in an amount which, together with amounts currently on deposit in the Parity Reserve Fund with respect to the 2006 Certificates, is equal to the Reserve Fund Requirement, (iv) to pay the Insurer a premium (the "**Insurance Premium**," and together with the Reserve Fund Premium, the "**Premiums**") for a financial guaranty insurance policy (the "**Insurance Policy**") to secure the payment of debt service with respect to the Certificates, and (v) to pay certain costs related to the issuance of the Certificates (the "**Costs of Issuance**"); and

**WHEREAS**, the Internal Revenue Code of 1986, as amended (the "**Code**"), the Treasury Regulations (including final, temporary and proposed regulations) promulgated thereunder and the rulings with respect thereto impose certain limitations on the use and investment of proceeds of the Certificates and certain other moneys relating to the Certificates; and

**WHEREAS**, such provisions of the Code and the Treasury Regulations promulgated thereunder and the rulings with respect thereto set forth certain conditions under which the interest paid and to be paid with respect to the Certificates will be excluded from gross income for federal income tax purposes; and

**WHEREAS**, the City has determined to execute this Tax Certificate (including all exhibits hereto) in order to set forth certain terms and conditions relating to the use and investment of proceeds of the Certificates and of certain other moneys relating to the Certificates in order to assure that interest with respect to the Certificates will be excluded from gross income for federal income tax purposes;

**NOW, THEREFORE**, pursuant to Section 1.148-2(b)(2) of the Treasury Regulations, the City hereby certifies, covenants and agrees as follows:

#### **PART A. IN GENERAL**

Section 1. Purpose of Tax Certificate. The City is executing this Tax Certificate (including all exhibits hereto) with the understanding and acknowledgement that (a) Sidley Austin LLP (“**Special Counsel**”) will rely on the representations and certifications made in this Tax Certificate (including all exhibits hereto) in rendering its opinion that interest with respect to the Certificates is excluded from gross income for federal income tax purposes, and (b) the execution of this Tax Certificate is necessary to ensure that interest with respect to the Certificates is excluded from gross income for federal income tax purposes.

Section 2. Delivery of Certificates. The Certificates are being delivered on the date hereof to Banc of America Securities LLC, as the underwriter of the Certificates (the “**Underwriter**”), pursuant to a negotiated sale.

Section 3. Purpose of Financing. The Certificates evidence and represent proportionate interests of the Owners thereof in the 2008 Payments to be made by the City to the Authority pursuant to the terms of the Master Installment Purchase Contract, dated as of November 1, 1997 (the “**Master Contract**”), by and between the City and the Authority, as supplemented, including as supplemented by the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the “**2008 Supplemental Contract**”), by and between the City and the Authority (the Master Contract as so supplemented, the “**Contract**”). The Certificates are being executed and delivered pursuant to the Trust Agreement, dated as of May 1, 2008 (the “**2008 Trust Agreement**”), by and between the Authority and The Bank of New York Trust Company, N.A., as trustee (the “**Trustee**”). The proceeds of the certificates are expected to be used for the following purposes:

- (a) to current refund the 2006 Certificates;
- (b) to pay the Premium to the Insurer for the Insurance Policy to secure the payment of debt service with respect to the Certificates;
- (c) to pay the Reserve Fund Premium to the Insurer for the 2008 Parity Reserve Fund Insurance Policy for the Parity Reserve Fund, in an amount which, together with amounts on deposit in the Parity Reserve Fund with respect to the 2006 Certificates, is equal to the amount necessary to cause the balance on deposit therein to be equal to the reserve fund requirement with respect to the 1997 Certificates and the Certificates taken together (the “**Reserve Fund Requirement**”); and
- (d) to pay Costs of Issuance.

The City covenants to use the proceeds of the Certificates solely for the above-described purposes, unless the City receives an opinion of Special Counsel to the effect that a use other than those described above would not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Certificates. The individual maturity of the 2006 Certificates is set forth in Exhibit A hereto.

Section 4. Remarketing.

(a) The Certificates are subject to optional and mandatory tender for purchase pursuant to the terms and conditions set forth in the Trust Agreement. The Certificates will be remarketed pursuant to a remarketing agreement, dated as of May 1, 2008 (the “**Remarketing Agreement**”), between the City and Banc of America Securities LLC, as remarketing agent (the “**Remarketing Agent**”).

(b) In the event that the funds derived from the remarketing of Certificates under the Remarketing Agreement are not sufficient to pay the purchase price of such Certificates upon their tender for purchase, funds will be made available, subject to certain conditions, by Bank of America, N.A., as provider of the initial liquidity facility (the “**Liquidity Facility Provider**”) under the terms and conditions of the Liquidity Facility (the “**Liquidity Facility**”) established pursuant to the Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the “**Standby Purchase Agreement**”), between the City and the Liquidity Facility Provider. Unless terminated earlier or extended, the obligations of the Liquidity Facility Provider under the Liquidity Facility will expire on May 29, 2011.

Section 5. City Reliance on Other Parties. The expectations of the City concerning certain uses of proceeds derived from the sale of the Certificates and certain other moneys described herein and other matters are based in whole or in part upon computations performed by the Underwriter and Public Financial Management, Inc. (“**PFM**”), as financial advisor to the City with respect to the Certificates (the “**Financial Advisor**”), and upon representations of the Underwriter, the Financial Advisor, the Insurer and other parties set forth or referred to in this Tax Certificate and in the exhibits hereto. The City places good faith reliance on such computations and representations on the basis of the reputable business practices of and prior business dealings with such parties. The City is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of such computations or representations made in this Tax Certificate or in the exhibits hereto, including those representations made by the Underwriter, the Financial Advisor or the Insurer.

Section 6. Single Issue. All of the Certificates have been sold at substantially the same time, sold pursuant to the same plan of financing, and are reasonably expected to be paid from substantially the same source of funds (determined without regard to guarantees from unrelated parties). Accordingly, the Certificates are treated as a single issue of obligations for federal income tax purposes. No other governmental obligations have been, or will be, sold within 15 days of the Certificates pursuant to the same plan of financing that are reasonably expected to be paid from substantially the same source of funds (determined without regard to guarantees from unrelated parties).

Section 7. Definitions; Capitalized Terms. All capitalized terms used in this Tax Certificate and not specifically defined herein shall have the meanings given such terms in the Contract or the 2008 Trust Agreement.

**PART B. USE OF CERTIFICATE PROCEEDS AND THE PROJECT**

Section 1. Governmental Use of Proceeds and Project. The City represents the following with respect to the use of proceeds of the Certificates and the Project:

(a) In General. No more than 10% of the proceeds of the Certificates, the proceeds of the 2006 Certificates or the Project has, since the date of issuance of the 2006 Certificates through the date hereof, been used, or will be used, on and after the date hereof, in the aggregate for any activities that constitute a “**Private Use**” (as such term is defined in subsection (d) below). No more than 10% of the principal and interest with respect to the 2006 Certificates, under the terms thereof or any underlying arrangement, has been, since the date of execution and delivery of the 2006 Certificates and through the date hereof, been secured, or will, on and after the date hereof, be secured by any interest in property (including the Project) used for a Private Use or in payments in respect of property used for a Private Use, has been or will be derived from payments in respect of property, used for a Private Use.

(b) No Private Loan Financing. No more than the lesser of 5% of the proceeds of the Certificates or \$5,000,000 will be used to finance or refinance loans to any person other than to a state or local governmental unit (other than loans to finance any governmental tax or assessment of general application for a specific essential governmental function or loans that are used to acquire or carry Nonpurpose Investments (defined in Part D below)).

(c) No Disproportionate or Unrelated Use. No more than 5% of the proceeds of the 2006 Certificates and no more than 5% of the Project has, since the date of issuance of the 2006 Certificates and through the date hereof, been used, or will be used, on and after the date hereof, in the aggregate, for a Private Use that is unrelated or disproportionate (within the meaning of Section 141(b)(3)(B) of the Code) to the governmental use of the proceeds of the Certificates (an “**Unrelated or Disproportionate Use**”). No more than 5% of the principal and interest with respect to any of the 2006 Certificates or the Certificates has been or will be, under the terms of the Certificates or any underlying arrangement, directly or indirectly, secured by any interest in property, used or to be used for a Private Use that is an Unrelated or Disproportionate Use has been or will be derived from payments in respect of property, used or to be used for a Private Use that is an Unrelated or Disproportionate Use.

(d) Definition of Private Use. For purposes of this Tax Certificate, the term “**Private Use**” means any activity that constitutes a trade or business that is carried on by persons or entities other than state or local governmental entities (or instrumentalities thereof), and that any activity carried on by a person other than a natural person is treated as a trade or business. The leasing of property financed with the proceeds of the Certificates or the access of a person or entity other than a state or local governmental

unit (or an instrumentality thereof) to property or services on a basis other than as a member of the general public (“**General Public Use**”) will be treated as Private Use unless the City obtains an opinion of Special Counsel to the contrary. The use of property financed (or refinanced) with proceeds of the Certificates in a trade or business constitutes General Public Use only if the property is intended to be available and is in fact reasonably available for use on the same basis by natural persons not engaged in a trade or business. As of the date hereof, no portion of the facilities financed (or refinanced) with the proceeds of the Certificates is leased (or will be leased) by the City (or a related party or agent) to a person or entity other than a state or local governmental unit (or instrumentality thereof).

(e) Management and Service Contracts. With respect to management and service contracts, the determination of whether a particular use constitutes a Private Use under this Tax Certificate shall be determined on the basis of applying Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38 (collectively, “**Revenue Procedure 97-13**”). As of the date hereof, no portion of the proceeds derived from the sale of the Certificates is being used to finance or refinance property subject to contracts or other arrangements with persons engaged in a trade or business (other than state or local governmental units or instrumentalities thereof) that involves the management of property or the provision of services that do not comply with the standards of Revenue Procedure 97-13.

## **PART C. ARBITRAGE**

Section 1. Certificate Proceeds and Other Moneys. On the basis of the facts, estimates and circumstances in existence on the date hereof, the City reasonably expects the following with respect to the use of the proceeds of the Certificates and certain other moneys:

(a) Proceeds of the Certificates. The total proceeds to be derived by the City from the sale of the Certificates in the amount of \$47,471,079.37 (representing aggregate principal amount of the Certificates of \$47,625,000, less Underwriter’s discount of \$153,920.63), are expected to be needed and fully expended as follows:

(i) \$46,275,000.00 of said proceeds, together with \$11,841.26 contributed by the City, or a total of \$46,286,841.26, will be deposited to the 2006 Debt Service Fund, to pay the prepayment price of the 2006 Certificates on the date hereof;

(ii) \$826,615.80 of said proceeds, will be expended on the date hereof to pay the Insurance Premium;

(iii) \$36.57 of said proceeds will be deposited to the Parity Reserve Fund and, together with the \$1,834,515.50 on deposit from the proceeds of the 2006 Certificates and the 2008 Parity Reserve Fund Insurance Policy, will be sufficient to cause the balance the balance in, or credited to, the Parity Reserve Fund to be equal to the Reserve Fund Requirement;

(iv) \$62,475.38 of said proceeds will be expended on the date hereof to pay the premium Reserve Fund Premium; and

(v) \$306,951.62 of said proceeds will be deposited in the Costs of Issuance Fund established pursuant to the 2008 Trust Agreement, and used to pay Costs of Issuance (other than Underwriter's Discount) within one year of the date hereof.

(b) Parity Reserve Fund. There is on deposit in the Parity Reserve Fund, as of May 27, 2008, the sum of \$1,945,230.53. Of such amount, (i) \$1,834,515.50 will remain on deposit in the Parity Reserve Fund, and (ii) \$110,715.03 will be transferred to the Series 2008 Debt Service Fund, to be used to pay a portion of the first payment of interest due with respect to the Certificates.

Section 2. Improvement Fund. There is on deposit in the 2006 Project Account of the Improvement Fund for the Prior Certificates the sum of \$40,903,675. The City reasonably expects to proceed with due diligence to the completion of the Project on or before November 2009 and to have such amounts, together with investment earnings thereon, expended on the Project by such date.

Section 3. No Reimbursement. No portion of the proceeds of the Certificates are being used to reimburse the City for any expenditures paid by the City prior to the sale of the Certificates.

Section 4. Remarketing Fees. No portion of the fees paid and to be paid under the Remarketing Agreement for remarketing of the Certificates will be paid from proceeds derived from the sale of the Certificates or investment earnings thereon.

Section 5. 2006 Certificates. The City represents the following with respect to the 2006 Certificates:

(i) 2006 Certificate Proceeds. The 2006 Certificates were executed and delivered to provide funds to finance the cost of the Project. There are \$25,000,000.00 of unexpended proceeds of the 2006 Certificates. Such amounts will be applied in accordance with Section 2 above.

(ii) Purpose of Refunding. The refunding of the 2006 Certificates is being effected to enable the City to discontinue the use of auction rate securities as an inefficient means of borrowing and to replace credit enhancement provided by a bond insurer that has been downgraded since the time of issuance of the 2006 Certificates from AAA to AA by Fitch Ratings. Such replacement of credit enhancement is reasonably expected to provide near-term cash flow savings. The refunding of the 2006 Certificates does not involve a device employed to obtain a material financial advantage apart from eliminating credit enhancement and providing near-term cash flow savings.

(iii) Early Prepayment. The 2006 Certificates are prepayable at the option of the City on any Interest Payment Date immediately following the end of an Auction Period. The 2006 Certificates will be prepaid on May 30, 2008, at a prepayment price of

100.0% of the principal amount thereof plus interest accrued with respect thereto to such date. Such prepayment date is the first date on which the 2006 Certificates may be prepaid in accordance with the notice and deposit requirements of the Trust Agreement pursuant to which the 2006 Certificates were executed and delivered.

(iv) Transferred Proceeds. For purposes of this Tax Certificate, on May 30, 2008, which is the date that proceeds derived from the sale of the Certificates, are used to pay the outstanding principal of the 2006 Certificates (the “**Transfer Date**”) a portion of the proceeds of the 2006 Certificates, allocable to the 2006 Certificates, and investment earnings thereon that are unexpended on such dates will cease to be proceeds of the 2006 Certificates and will become transferred proceeds of the Certificates (the “**Transferred Proceeds**”). The amount that becomes Transferred Proceeds of the Certificates shall be equal to the then-unexpended proceeds of the 2006 Certificates, together with investment earnings thereon, multiplied by a fraction, (a) the numerator of which is equal to the amount of the 2006 Certificates discharged with proceeds of the Certificates on the Transfer Date, and (b) the denominator of which is equal to the total outstanding amount of the 2006 Certificates immediately prior to such discharge. Depending on the type and source of proceeds that become Transferred Proceeds, such amounts may be required to be invested at a yield not in excess of the yield on the Certificates and/or may become subject to the arbitrage rebate requirements as applied to the Certificates.

Section 6. No Sale or Disposition of the Project. The City will not sell or otherwise dispose of any portion of the Project refinanced with proceeds of the Certificates prior to the final maturity date of the Certificates of October 1, 2036.

Section 7. No Overburdening. The total proceeds derived by the City from the sale of the Certificates and anticipated investment earnings thereon do not exceed the total of the amounts necessary for the governmental purposes described above.

Section 8. Funds and Accounts. The following represents the flow of funds under the 2008 Trust Agreement:

(a) In General. The 2008 Trust Agreement and the Contract creates and establishes the following funds and accounts with respect to the Certificates:

(i) the 2008 Purchase Fund (including the Liquidity Facility Account, Remarketing Proceeds Account and the Authority Account therein);

(ii) the Water Utility System Revenue Fund (the “**Revenue Fund**”);

(iii) the Parity Obligation Payment Fund (the “**Parity Obligation Payment Fund**”), including the 2008 Supplemental Contract Payment Account therein;

(iv) the 2008 Debt Service Fund (the “**Debt Service Fund**”), including the 2008 Interest Account and the 2008 Principal Account (with the 2008 Prepayment Subaccount and the 2008 Sinking Fund Subaccount therein);

- (v) the Parity Reserve Fund;
- (vi) the Costs of Issuance Fund (the “**Costs of Issuance Fund**”); and
- (vii) the Rate Stabilization Fund (the “**Rate Stabilization Fund**”).

(b) Payment of Debt Service. Under the Contract, all Gross Revenues of the Water Utility System are to be deposited in the Revenue Fund and applied as provided in the Contract. Prior to each date on which principal or interest with respect to the Certificates is due, the City is required to transfer, from moneys in the Revenue Fund, the amount of principal of and interest due with respect to the Certificates, for deposit in the 2008 Supplemental Contract Payment Account within the Parity Obligation Payment Fund, for subsequent transfer to the Trustee for deposit in the Debt Service Fund for the payment of the Certificates. Revenues will exceed debt service on the Certificates during each payment period, and all amounts transferred from the Revenue Fund to the Parity Obligation Payment Fund will be from current Gross Revenues. The Debt Service Fund and the Parity Obligation Payment Fund and the Revenue Fund to the extent moneys in the Parity Obligation Payment Fund and the Revenue Fund are to be transferred to the Debt Service Fund (the “**Sinking Fund Portion of the Revenue Fund**”) will be used primarily to achieve a proper matching of revenues of the City and debt service on the Certificates within each Certificate Year. Such funds in the aggregate will be depleted during each Certificate Year, except for a reasonable carryover amount, if any, not to exceed the greater of (i) the earnings on such account for the immediately preceding Certificate Year, or (ii) 1/12th of the principal and interest payments with respect to the Certificates for the immediately preceding Certificate Year.

(c) 2008 Purchase Fund. The 2008 Purchase Fund will serve as the depository for the receipt of proceeds of remarketing of the Certificates and draws on the Liquidity Facility under the Standby Purchase Agreement for application to the purchase of tendered Certificates.

(d) Parity Reserve Fund. No deposit will be made to the Parity Reserve Fund from the proceeds of the Certificates. The Reserve Fund Requirement is defined in the Contract, as of any date of determination and excluding any Parity Obligations that are not Supplemental Contracts and the debt service thereon, the least of (a) 10% of the initial offering price to the public of the Parity Obligations as determined under the Code, (b) Maximum Annual Debt Service, or (c) 125% of Average Annual Debt Service, all as computed and determined by the City and specified in writing to the Trustee. The Underwriter and the Financial Advisor have advised the City, in their certificates attached hereto as Exhibit B and Exhibit C, respectively, that the existence of the Parity Reserve Fund in an amount equal to the Reserve Fund Requirement was a condition to the issuance of the Insurance Policy and was therefore a vital factor in marketing the Certificates, facilitated the marketing of the Certificates at an interest rate comparable to that of bonds and other obligations of a similar type and was not in excess of the amount considered necessary for such purpose. For this purpose, the term “**proceeds**” means the aggregate stated principal amount of the Certificates, unless there is more than a de minimis amount of original issue discount or premium (as defined in Section 1.148-1(b)

of the Treasury Regulations), in which case the term “**proceeds**” means the “**issue price**” of the Certificates (determined without regard to pre-issuance accrued interest). The term “**de minimis amount**” means an amount of discount or premium that does not exceed 2% of the stated redemption price at maturity, plus any original issue premium attributable exclusively to reasonable underwriter’s compensation.

(e) Rate Stabilization Fund. The City has created and established the Rate Stabilization Fund, to be held and invested by the City, for purposes of maintaining surplus revenues collected on behalf of the City. Moneys in the Rate Stabilization Fund are not pledged under the Contract to the payment, directly or indirectly, of debt service with respect to the Certificates. Moneys on deposit in the Rate Stabilization Fund may be used for any legal purpose, and there is no reasonable assurance that amounts therein or the investment earnings thereon would be available to pay debt service with respect to the Certificates if the City encounters financial difficulties.

(f) No Other Funds as Security. Other than the Debt Service Fund, the Sinking Fund Portion of the Revenue Fund and the Parity Reserve Fund, there are no funds or accounts established pursuant to the 2008 Trust Agreement, the Contract or otherwise, that are reasonably expected to be used to pay debt service with respect to the Certificates or to make payments to the Insurer or that are pledged as collateral for the Certificates (as reimbursement made to the holders of the Certificates) or the Insurance Policy and for which there is a reasonable assurance that amounts on deposit therein will be available to pay debt service with respect to the Certificates or to make payments to the Insurer if the City encounters financial difficulties.

(g) No Negative Pledges. There are no amounts held under any agreement to maintain amounts at a particular level for the direct or indirect benefit of the holders of the Certificates or guarantor of the Certificates, if any, excluding for this purpose amounts in which the City (or a substantial beneficiary) may grant rights that are superior to the rights of the holders of the Certificates or guarantor of the Certificates, if any, and amounts that do not exceed the reasonable needs for which they are maintained and as to which the required level is tested no more frequently than every six months and that may be spent without any substantial restriction other than a requirement to replenish the amount by the next testing date.

(h) Rebate Fund. The 2008 Supplemental Contract establishes a Rebate Fund to serve as the repository for moneys to be deposited thereto and paid to the United States in order to satisfy the requirement of Section 148(f) of the Code and Sections 1.148-0 through 1.148-10 and 1.150-1 and 1.150-2 of the Treasury Regulations promulgated thereunder, to pay a portion of the investment earnings on proceeds derived from the sale of the Certificates, the investment earnings thereon and other amounts considered to be proceeds of the Certificates, to the United States (the “**Rebate Requirement**”). Detailed guidelines regarding satisfaction of such requirements are set forth in Part D of this Tax Certificate. Moneys in the Rebate Fund are neither pledged to nor expected to be used to pay debt service with respect to the Certificates. Proceeds of the Certificates and investment earnings thereon are not expected to be held in the Rebate Fund.

Section 9. Investment of Proceeds. The proceeds derived from the sale of the Certificates and other amounts described in this Tax Certificate will be invested as follows:

(a) Costs of Issuance. Proceeds derived from the sale of the Certificates to be used to pay Costs of Issuance may be invested at an unrestricted yield until expended, for a period not to exceed one year from the date hereof. Investment earnings on such amounts may be invested at an unrestricted yield for a period not to exceed one year from the date of receipt, and thereafter will be invested at a yield not in excess of the yield on the Certificates or in Tax-Exempt Obligations (defined in Part D of this Tax Certificate).

(b) Insurance Policy. Proceeds derived from the sale of the Certificates to be applied to pay the premium for the Insurance Policy will be expended on the date hereof and will not be invested.

(c) Parity Reserve Fund. Amounts in the Parity Reserve Fund may be invested at an unrestricted yield to the extent that amounts on deposit in the Parity Reserve Fund, in the aggregate, do not exceed the least of (i) 10% of the amount of all obligations secured by such Parity Reserve Fund (as computed under Section 1.148-2(f)(2)(ii) of the Treasury Regulations), (ii) Maximum Annual Debt Service, and (iii) 125% of Average Annual Debt Service (the “**Reasonably Required Parity Reserve Fund Requirement**”). Amounts in excess of the Reasonably Required Reserve Fund Requirement shall be invested at a yield not in excess of the yield with respect to the Certificates plus 0.125% or in Tax-Exempt Obligations (defined in Part D of this Tax Certificate).

(d) Liquidity Facility Account of the 2008 Purchase Fund. Amounts deposited into the Liquidity Facility Account and the Remarketing Proceeds Account, if any, will be expended on the date of receipt and will not be invested.

(e) Payment of Debt Service. Amounts deposited in the Debt Service Fund and the Sinking Fund Portion of the Revenue Fund (collectively, the “**Bona Fide Debt Service Funds**”) may be invested at an unrestricted yield for a period not to exceed 13 months from the date of deposit of such amounts to such fund. Investment earnings on such amounts that are retained in such funds may be invested at an unrestricted yield for a period not to exceed one year from the date of receipt of the amount earned. Thereafter, such amounts shall be invested at a yield not in excess of the yield on the Certificates or in the Tax-Exempt Obligations (defined in Part D of this Tax Certificate).

(f) Minor Portion. Amounts described in this Section 9 that may not be invested at an unrestricted yield as described above may be invested at an unrestricted yield to the extent such amounts do not exceed the lesser of 5% of the sale proceeds of the Certificates or \$100,000 (the “**Minor Portion**”).

(g) Yield Restricted Moneys. Proceeds derived from the sale of the Certificates, and investment earnings thereon, that may not be invested at an unrestricted yield pursuant to this Section 9 will either (i) be invested at a yield not in excess of the yield on the Certificates plus 0.125%, or (ii) be invested in Tax-Exempt Obligations

(defined in Part D of this Tax Certificate). Other amounts described in this Section that may not be invested at an unrestricted yield will either (i) be invested at a yield not in excess of the yield on the Certificates, or (ii) be invested in Tax-Exempt Obligations (defined in Part D of this Tax Certificate).

(h) Replacement Proceeds. Replacement proceeds (as such term is defined in Section 1.148-1(c) of the Treasury Regulations) of the Certificates may be invested at an unrestricted yield for a period of 30 days beginning on the date on which the amounts are first treated as replacement proceeds and, thereafter, shall be invested at a yield not in excess of the yield on the Certificates or in Tax-Exempt Obligations (defined in Part D of this Tax Certificate).

(i) Applicable Definition of Materially Higher Yield for All Yield Restricted Nonpurpose Investments when Replacement Proceeds Are Present. Except as otherwise described in this Section 9, in the event that replacement proceeds arise during the term of the Certificates, then, after the expiration of the applicable periods during which amounts described in this Section 9 may be invested at an unrestricted yield, all amounts described in this Section 9 shall be invested at a composite yield not in excess of the yield on the Certificates or in Tax-Exempt Obligations (defined in Part D of this Tax Certificate).

(j) Rebate Fund. Amounts held in the Rebate Fund, to the extent funded with amounts other than proceeds derived from the sale of the Certificates and investment earnings thereon, may be invested without regard to yield.

Section 10. Yield Reduction Payments. Notwithstanding the provisions of Section 9 above that require the City to invest proceeds derived from the sale of the Certificates and investment earnings thereon at a yield not in excess of the yield on the Certificates, the yield on certain nonpurpose investments (described below) acquired with proceeds of the Certificates will not be considered to be higher than the applicable yield limitation described in Section 9 above if the City makes or causes to be made “**yield reduction payments**” to the United States at the time and in the amounts described in Section 1.148-5(c) of the Treasury Regulations. The Treasury Regulations provide seven situations in which amounts paid to the United States (including payments of rebatable arbitrage) are treated as payments for a nonpurpose investment that reduces the yield on that investment, as follows:

(a) nonpurpose investments that qualified for one of the temporary periods available for capital projects, restricted working capital expenditures, pooled financings, or investment proceeds;

(b) nonpurpose investments for variable yield bond issues for any computation period during which at least 5% of the value of the issue is represented by variable yield bonds;

(c) nonpurpose investments allocable to transferred proceeds of a current refunding issue to the extent necessary to reduce the yield on such investments to the yield required by Section 148(a) of the Code;

(d) nonpurpose investments allocable to transferred proceeds of an advance refunding issue to the extent the investment of the refunding escrow allocable to other proceeds of the issue cannot, with zero-yielding investments, meet the yield required by Section 148(a) of the Code;

(e) nonpurpose investments allocable to a reserve or replacement fund or a fund that is in excess of the sizing limits for a reasonably required reserve fund, but only to the extent that such amounts do not exceed 15% of the issue size or are not expected to pay debt service on the issue;

(f) nonpurpose investments allocable to replacement proceeds of a refunded issue as a result of the application of the universal cap to amounts in a refunding escrow; and

(g) nonpurpose investments allocable to certain permanent funds not treated as replacement proceeds by operation of the effective date rule of Section 1.148-11 (f) of the Treasury Regulations.

However, “**yield reduction payments**” may not be used to reduce the yield on investments in the case of an advance refunding issue, except with respect to any “**transferred proceeds**” (within the meaning of Section 1.148 9(c)(1)(ii) of the Treasury Regulations) of the Certificates and any amounts allocated to “**replacement proceeds**” of the 2006 Certificates as a result of the application of the “**universal cap**” (described in Section 12 below) as applied to amounts in a refunding escrow.

The City covenants to consult with Special Counsel prior to making any “**yield reduction payments**” pursuant to Section 1.148-5(c) of the Treasury Regulations.

Section 11. Yield. For purposes of this Tax Certificate, the term “**yield**” means as follows.

(a) In General. For purposes of calculating the yield on the Certificates, the term “**yield**” means that discount rate that, when used in computing the present value as of the first day of each computation period of all unconditionally payable payments of principal, interest and fees for qualified guarantees with respect to the Certificates and amounts reasonably expected to be paid as fees for qualified guarantees with respect to the Certificates allocable to such computation period, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Certificates as of the first day of such computation period. The yield on investments acquired with amounts described in Section 7 above and the yield on the Certificates will be calculated by the use of the same frequency interval of compounding interest. For purposes of calculating the yield on investments acquired with or allocated to the proceeds of the Certificates, the term “**yield**” means the discount rate that, when used in computing the present value as of the date the investment is first allocated to the proceeds of the Certificates of all unconditionally payable receipts from the investment, produces an amount equal to the present value of all unconditionally payable payments for the investment.

(b) Issue Price. For purposes of calculating the yield with respect to the Certificates, the issue price of the Certificates (as defined in Section 1273 of the Code) is equal to the initial offering price to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) at which a substantial amount (at least 10%) of the Certificates was sold. Thus, the issue price of the Certificates is \$47,625,000 (representing the aggregate principal amount of the Certificates), as shown in the certificate of the Underwriter attached hereto as Exhibit B.

(c) Computation Periods. Because the Certificates are treated as a variable yield issue, the yield on the Certificates is computed separately for each computation period. A computation period is the period between computation dates with respect to the Certificates. The City may treat the last day of any Certificate Year (as defined in Section 2 of Part D hereof) ending on or before May 30, 2013, as a computation date with respect to the Certificates. After the conclusion of the fifth Certificate Year, the City must consistently treat either the last day of each Certificate Year or the last day of each fifth Certificate Year as a computation date.

(d) Qualified Guarantee – Insurance Policy. For purposes of computing the yield on the Certificates, the premium paid to obtain the Insurance Policy from the Insurer on the date hereof is treated as additional interest with respect to the Certificates. Such premium will be allocated to the Certificates and to computation periods in a manner that properly reflects the proportionate credit risk for which the Insurer is compensated. In accordance with Section 1.148-4(f)(6)(ii) of the Treasury Regulations, for each Certificate Year in which the Insurance Policy is in effect, an equal amount of the premium (or for any short Certificate Year, a proportionate amount of the equal amount) will be treated as paid as of the beginning of that Certificate Year. The present value of the annual amounts must equal the premium, with present value computed as of the first day the Insurance Policy is in effect by using as the discount rate the yield on the Certificates determined without regard to the premium for the Insurance Policy or any other premium.

(i) Representations of the Financial Advisor. The Financial Advisor has advised in its certificate attached hereto as Exhibit C that the present value of the premium paid to obtain the Insurance Policy from the Insurer is less than the present value of the interest reasonably expected to be saved as a result of obtaining the Insurance Policy (using a hypothetical yield on the Certificates determined with regard to payment of the premium for the Insurance Policy) as the discount factor for such purpose. The Financial Advisor has further advised that, to the best of its knowledge, the premium paid to obtain the Insurance Policy from the Insurer on the date hereof was determined in arm's length negotiations and does not exceed a reasonable charge for the transfer of credit risk. As set forth in Exhibit B, the Underwriter represents that the issuance of the Insurance Policy was a vital factor in marketing of the Certificates and permitted the marketing of the Certificates at interest rates comparable to other bond issues of a similar type and purpose.

(ii) Representations of the Insurer. The Insurer has represented in its certificate attached hereto as Exhibit D that no portion of the premium paid to obtain the Insurance Policy represents an indirect payment of costs relating to the Certificates other than for the transfer of credit risk, and that the Insurer would not have issued the Insurance Policy in the absence of the funding of the Parity Reserve Fund with an amount necessary to cause the amount in the Parity Reserve Fund on the date hereof to be equal to the Reserve Fund Requirement. No portion of the premium paid to obtain the Insurance Policy is refundable upon the prepayment of the Certificates prior to their stated maturity or mandatory prepayment dates.

(e) Qualified Guarantee – Liquidity Facility. The Liquidity Facility was issued on its terms. For purposes of computing the yield on the Certificates, the fees paid and to be paid under the Standby Purchase Agreement to the Liquidity Facility Provider is treated as additional interest on the Certificates. Such fees will be allocated to the Certificates and to computation periods in a manner that properly reflects the proportionate credit risk for which the Liquidity Facility Provider is compensated. In accordance with Section 1.148-4(f)(6)(ii) of the Treasury Regulations, for each Bond Year in which the Liquidity Facility is in effect, an equal amount of the fees (or for any short Bond Year, a proportionate amount of the equal amount) for the Liquidity Facility will be treated as paid as of the beginning of that Bond Year. The present value of the annual amounts must equal the aggregate fees, with present value computed as of the first day the Liquidity Facility is in effect by using as the discount rate the yield on the Certificates determined without regard to the fees for the Liquidity Facility.

(i) Representations of the Financial Advisor and the Underwriter. The Financial Advisor and the Underwriter have advised in their certificates attached hereto as Exhibit C and Exhibit B, respectively, that the present value of the fees paid and to be paid to obtain the Liquidity Facility from the Liquidity Facility Provider under the Standby Purchase Agreement is less than the present value of the interest reasonably expected to be saved as a result of obtaining such Liquidity Facility (using a hypothetical yield on the Certificates determined with regard to payment of the fees paid and to be paid with regard to the Liquidity Facility, and assuming that each of the Certificates will bear interest at its initial interest rate) as the discount factor for such purpose. The Financial Advisor and the Underwriter have further advised in Exhibit C and Exhibit B, respectively, that, to the best of their knowledge, the fees paid and to be paid to obtain the Liquidity Facility from the Liquidity Facility Provider under the Standby Purchase Agreement on the date hereof were determined in arm's length negotiations and do not exceed a reasonable charge for the transfer of credit risk. For purposes of this subsection (e), fees for the transfer of credit risk include fees for a guarantor's overhead and other costs relating to the transfer of credit risk. As set forth in Exhibit C and Exhibit B, respectively, the Financial Advisor and the Underwriter represent that the issuance of the Liquidity Facility was a vital factor in marketing of the Certificates and permits the marketing of the Certificates at interest rates comparable to other bond issues of a similar type and purpose.

(ii) Representations of the Liquidity Facility Provider. The Liquidity Facility Provider has represented in its certificate attached hereto as Exhibit I that the fees paid and to be paid to obtain the Liquidity Facility do not include any payment for any direct or indirect services other than the transfer of risk for the remarketing of the Certificates under the Remarketing Agreement to the Liquidity Facility Provider. As set forth in the Standby Purchase Agreement, the Liquidity Facility unconditionally shifts all of the risk for remarketing of the Certificates under the Remarketing Agreement to the Liquidity Facility Provider. For purposes of the preceding sentence, commercially reasonable limitations based on credit risk, such as limitations on payment in the event of default by the primary obligor or the bankruptcy of a long-term credit guarantor do not cause a guarantee to be conditional. No portion of the fees paid and to be paid to obtain the Liquidity Facility is refundable upon the redemption of the Certificates prior to the expiration date of the Liquidity Facility.

(f) No Refund or Reduction. The City has not received and does not expect to receive any reduction in or refund of payments for the credit enhancement on the 2006 Certificates provided by the credit enhancers of such certificates as a result of the refunding of the 2006 Certificates.

(g) Qualified Hedge.

(i) General. Payments made or received by the City under a “**qualified hedge**” (as such term is defined in Treasury Regulation Section 1.148-4(h)(2)) relating to the all or a portion of the Certificates will be taken into account in determining the yield on the Certificates.

(ii) Swap Agreement Originally Entered into Before Issue Date of 2006 Certificates. The City and Bank of America, N.A. (the “**Swap Counterparty**”) entered into a swap agreement (the “**Original Swap Agreement**”) on September 27, 2006, in anticipation of the issuance of the 2006 Certificates. The Original Swap Agreement had an aggregate notional amount of \$46,275,000, equal to the original principal amount of the 2006 Certificates, and was evidenced by a Confirmation, dated as of September 27, 2006. The date of execution and delivery of the 2006 Certificates was November 2, 2006. On May 29, 2008, the City and the Swap Counterparty agreed to terminate the Original Swap Agreement pursuant to a letter agreement, dated May 29, 2008 (the “**Termination Agreement**”). The Termination Agreement provides, among other things, that \$964,926.00 of the termination payment that would otherwise have been payable by the City to the Swap Counterparty would be “**embedded**” in the fixed rate payable by the City under the Swap Agreement (the “**Embedded Termination Payment**”). In addition, the City is paying on June 2, 2008 \$63,524.80 (the “**Cash Termination Payment**”) in connection with the termination of the Original Swap Agreement. Both the Embedded Termination Payment and the Cash Termination Payment will be taken into account in calculating the yield on the Certificates (or, as applicable, the yield on the 2006 Certificates).

(iii) New Swap Agreement. On May 29, 2008, the City and the Swap Counterparty entered into a new swap agreement (the “**Swap Agreement**”) pursuant to, among other things, an ISDA Master Agreement and Schedule, dated as of May 29, 2008, and a Confirmation, dated May 29, 2008. The Swap Agreement has a notional amount of \$47,625,000 (the “**Notional Amount**”) and a termination date of October 1, 2036 (the “**Termination Date**”). Under the Swap Agreement the City will make payments to the Swap Counterparty based on a rate of 3.4747% (the “**Fixed Rate**”) applied to the Notional Amount, and, in exchange, the Swap Counterparty will make payments to the City based 63.7% of USD-LIBOR-BBA, with a designated maturity of one month, plus 0.154% (the “**Floating Rate**”) applied to the Notional Amount, all as more fully described in the Swap Agreement.

(iv) Swap Counterparty Certificate. In a certificate executed on the date hereof and attached hereto as Exhibit G, the Swap Counterparty has certified, among other things, that the Swap Agreement was negotiated in an arm's length transaction, that the Fixed Rate was determined without regard to the fact that the Swap Agreement may have been executed in connection with the issuance of tax-exempt obligations, that, other than the Embedded Termination Payment, amounts to be paid by the City under the Swap Agreement do not include any payment for underwriting or other services unrelated to the Swap Counterparty's performance of its obligations under the Swap Agreement, and that, had the Embedded Termination Payment not been embedded in the Fixed Rate, the fixed rate payable by the City under the Swap Agreement would have been 3.2963%.

(v) Swap Advisor Certificate. PFM Asset Management LLC, an affiliate of Public Financial Management, Inc., as swap advisor (the “**Swap Advisor**”), has provided certain certifications relating to the Swap Agreement, set forth in Exhibit H hereto, in which it confirms certain of the certifications and representations made by the Swap Counterparty and, in addition, sets forth its analysis supporting the “**correlation**” of the Floating Rate to the interest paid and to be paid with respect to the Certificates in order to support the integration of the Swap Agreement with the Certificates.

(vi) Qualified Hedge. The Swap Agreement is a qualified hedge under Section 1.148-4(h)(2) of the Treasury Regulations in that it satisfies each of the following requirements: (i) it is a contract that is entered into primarily to modify the City's risk of interest rate changes with respect to the Certificates and it does not contain a “**significant investment element**” (i.e., an expected rate of return), (ii) it is entered into with a provider that is not a related party with respect to the City, (iii) it covers, in whole or in part, all of one or more groups of substantially identical securities (i.e., a portion of the Certificates having the same interest rate, maturity and terms), (iv) it is based primarily on interest rate changes, (v) it does not hedge an amount larger than the City's risk with respect to interest changes on the Certificates, (vi) the payments received from the hedge provider under the contract correspond closely in time and amount to the specific interest payments being hedged on the Certificates, (vii) payments on the Swap Agreement do not

begin to accrue on a date earlier than the issue date of the hedged Certificates and do not accrue longer than the hedged interest payments on the hedged Certificates, (viii) payments to the Counterparty are reasonably expected to be made from the same source of funds that, absent the Swap Agreement, would be reasonably expected to be used to pay principal and interest with respect to the Certificates, and (ix) pursuant to Sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5)(iii) of the Treasury Regulations, the Swap Agreement has been identified by the City as a qualified hedge in a separate certificate, including specifically the hedge provider, the terms of the contract and the hedged bonds, the reasonably expected governmental purpose, issue price, maturity and issue date of the hedged bonds, the manner in which interest is reasonably expected to be computed and that Section 1.148-4(h)(5)(iii) applies. Further, the City will note the existence of the Swap Agreement on the Internal Revenue Service Form 8038-G relating to the Certificates that is to be filed with the Internal Revenue Service in accordance with Part E, Section 5, below.

(h) Investments to be Acquired at Market Price. Any investments acquired with amounts that may not be invested at an unrestricted yield pursuant to Section 9 of this Part C shall be purchased at prevailing market prices and will be limited to securities or obligations for which there is an established market or shall be United States Treasury Securities – State and Local Government Series (“SLGS”) or Tax-Exempt Obligations (defined in Part D of this Tax Certificate).

(i) Investment Contract. As of the date hereof, the City has not invested any proceeds of the Certificates pursuant to an investment contract (within the meaning of Section 1.148-1(b) of the Treasury Regulations). The City, however, reasonably expects to acquire an investment contract with portions of the proceeds of the Certificates and, in such event, the City and the provider of the investment contract will take all steps to comply with, and make certain representations in compliance with, Section 1.148-5(d) of the Treasury Regulations.

Section 12. Universal Cap. Notwithstanding any restrictions on the investment of proceeds of the Certificates and other amounts set forth in Section 9 of Part C of this Tax Certificate, proceeds of the Certificates and other amounts treated as proceeds of the Certificates are allocated and remain allocated to the Certificates, and are thereby subject to the restrictions contained in this Tax Certificate, only to the extent that the value of such proceeds does not exceed the value of the Certificates. This Section shall not apply to amounts on deposit in and allocable to the Bona Fide Debt Service Funds.

Section 13. No Replacement.

(a) In General. No portion of the proceeds of the Certificates will be used as a substitute for other funds that were otherwise to be used to pay the costs of acquisition and construction of the Project and that have been or will be used to acquire directly or indirectly securities or obligations or other investment property producing a yield in excess of the yield with respect to the Certificates.

(b) Safe Harbor Against Back-End Replacement Proceeds. In accordance with Section 1.148-1(c)(4)(i)(B) of the Treasury Regulations regarding the safe harbor against the creation of “**replacement proceeds**,” the average maturity of the Certificates does not exceed 120% of the average reasonably expected remaining economic life of the Project. For this purpose, less than 25% of the proceeds of the Certificates will be used to acquire land and, therefore, land has not been taken into account in determining the average economic lives of the Project.

Section 14. No Abusive Arbitrage Device. The City has not engaged and will not engage in any action that has the effect of (i) enabling the City to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage, and (ii) overburdening the tax-exempt bond market in that the City is not issuing more obligations, issuing obligations earlier, or allowing obligations to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Certificates, as provided in Section 1.148-10 of the Treasury Regulations.

Section 15. Covenants in the 2008 Supplemental Contract. The City has covenanted in Section 2.07 of the 2008 Supplemental Contract that it shall make no use of the proceeds derived from the sale of the Certificates or any other moneys that would cause the Certificates to be “**arbitrage bonds**” within the meaning of Section 148 of the Code.

#### **PART D. REBATE REQUIREMENT**

Section 1. In General. The City recognizes that Section 148(f) of the Code, which sets forth the Rebate Requirement, requires that an amount equal to the sum of (i) the excess of the aggregate amount earned on all Nonpurpose Investments (defined below) over the amount that would have been earned if such Nonpurpose Investments had a yield equal to the yield with respect to the Certificates, plus (ii) any income attributable to the excess described in (i), be paid to the United States Treasury. The City has covenanted in the 2008 Supplemental Contract to comply with the Rebate Requirement. Accordingly, the City covenants herein to comply with the Rebate Requirement, as set forth in Section 148(f) of the Code and the Treasury Regulations.

Section 2. Certificate Year. The City may select any date that is within one year of the date hereof as the day on which each Certificate Year ends. If the City does not select such a date before the earlier of (i) the final maturity date of the Certificates, or (ii) May 30, 2013, then for purposes of this Tax Certificate the term “**Certificate Year**” shall mean each one-year (or shorter) period ending on each November 1 until there are no outstanding Certificates.

Section 3. Nonpurpose Investments. The rules contained in this Part D relate to the requirement to comply with the provisions of Section 148(f) of the Code and the Treasury Regulations promulgated thereunder. The rules contained in this Part D shall apply to the investment of Gross Proceeds (as defined below) in any security, obligation, annuity contract or any other investment-type property (as such term is defined in Section 1.148-1(b) of the Treasury Regulations) that is not acquired to carry out the governmental purpose of the Certificates (“**Nonpurpose Investments**”).

Nonpurpose Investments shall not include Tax-Exempt Obligations (herein defined). For purposes of this Tax Certificate, the term “**Tax-Exempt Obligations**” shall include (i) obligations the interest on which is excludable from gross income for federal income tax purposes and not treated as an item of tax preference under Section 57(a)(5)(C) of the Code, (ii) stock in a regulated investment company to the extent that at least 95% of the income to the holder of the interest is excludable from gross income under Section 103 of the Code and is not treated as an item of tax preference under Section 57(a)(5)(C) of the Code, and (iii) demand deposit securities issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 CFR Part 344 (“**Demand Deposit SLGS**” and, together with Time Deposit SLGS, “**SLGS**”).

Section 4. Gross Proceeds. For purposes of this Tax Certificate, the term “**Gross Proceeds**” means:

- (a) proceeds derived from the sale of the Certificates;
- (b) amounts that are reasonably expected to be or are in fact used to pay debt service with respect to the Certificates, including amounts on deposit in the Bona Fide Debt Service Funds;
- (c) amounts pledged as security for the payment of debt service with respect to the Certificates;
- (d) amounts treated as “**transferred proceeds**” of the Certificates, within the meaning of Section 1.148-1(b) of the Treasury Regulations, if any;
- (e) amounts treated as “**replacement proceeds**” of the Certificates, within the meaning of Section 1.148-1(c) of the Treasury Regulations, if any; and
- (f) investment earnings on amounts described in subsections (a)-(e) above.

Section 5. Yield. The term “**yield**,” for purposes of complying with the Rebate Requirement, is to be calculated pursuant to Section 11 of Part C of this Tax Certificate. For purposes of calculating the yield on a Nonpurpose Investment, the purchase price will be the amount paid for such investment or, if different, the fair market value of such investment on the date it becomes Gross Proceeds.

Section 6. Market Price. For purposes of this Tax Certificate, the purchase price and disposition price of a Nonpurpose Investment will be the fair market value of the investment on an established market. Accordingly, a premium may not be paid to adjust the yield on an investment, a lower interest rate than is usually paid may not adjust the yield on an investment and no transaction may result in a smaller profit or larger loss than would have resulted if the transaction had been at arm’s-length and had the yield with respect to the Certificates not been relevant to either party. In no event shall the purchase price be increased by, or the disposition price be reduced by, brokerage or sales commissions, administrative expenses or similar expenses. However, pursuant to Section 1.148-5(e)(2) of the Treasury Regulations, certain “**qualified administrative costs**” may be taken into account in determining the yield on investments. Thus, such “**qualified administrative costs**” will be deemed to increase the

payments for, or decrease the receipts from, the investments. “**Qualified administrative costs**” are reasonable, direct, administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, record keeping, custody and similar costs. General overhead costs and similar indirect costs of the City such as employee salaries and office expenses and costs associated with computing arbitrage rebate are not qualified administrative costs.

(a) Certificate of Deposit. A certificate of deposit with a fixed interest rate, fixed principal payment schedule and a substantial penalty for early withdrawal will be deemed purchased for fair market value if the yield on the certificate of deposit is (i) not less than the yield on reasonably comparable direct obligations of the United States and (ii) not less than the highest yield published or posted by the provider on comparable certificates offered to the public.

(b) Guaranteed Investment Contracts. Investments pursuant to a guaranteed investment contract will be regarded as being made at fair market value if:

(i) The City makes a bona fide solicitation for a guaranteed investment contract that satisfies all of the following requirements:

(A) the bid specifications are in writing and are timely forwarded to potential providers;

(B) the bid specifications include all material terms that may directly or indirectly affect the yield or the cost of the guaranteed investment contract;

(C) 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 potential 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 issuance of the Certificates), and that the bid is not being submitted solely as a courtesy to the City or any other person for purposes of satisfying the requirements contained in Section 1.148-5(d)(6)(iii)(B)(1) or (2) of the Treasury Regulations;

(D) the terms of the bid specifications are commercially reasonable in that there is a legitimate business purpose for each term other than to increase the purchase price or reduce the yield of the guaranteed investment contract;

(E) the terms of the solicitation take into account the City’s reasonably expected deposit and drawdown schedule for the amounts to be invested;

(F) all potential providers have an equal opportunity to bid and no potential provider is given the opportunity to review other bids (i.e., a “**last look**”) before providing a bid; and

(G) at least three reasonably competitive providers are solicited for bids. A “**reasonably competitive provider**” is a provider that has an established industry reputation as a competitive provider of the type of the guaranteed investment contract of the type being purchased.

(ii) The City receives at least three bona fide bids on the guaranteed investment contract from providers that have no material financial interest in the execution and delivery of the Certificates. The following are deemed to have a material financial interest in the Certificates:

(A) the lead underwriter in a negotiated underwriting transaction until 15 days after the issue date of the issue;

(B) any entity acting as a financial advisor with respect to the purchase of the guaranteed investment contract at the time the bid specifications are forwarded to potential providers; and

(C) a provider that is a related party to a provider that has a material financial interest in the execution and delivery of the Certificates;

(iii) At least one of the three bids received by the City is from a reasonably competitive provider;

(iv) The winning bidder provides a certificate that lists all administrative costs that it is paying (or expects to pay) to third parties in connection with supplying the guaranteed investment contract;

(v) The City purchases the highest yielding guaranteed investment contract for which a bona fide bid was made (determined net of broker’s fees, if any); and

(vi) The City retains the following records until three years after the last outstanding Certificate is paid:

(A) a copy of the guaranteed investment contract;

(B) the receipt or other record amount actually paid by the City for the guaranteed investment contract, including a record of any administrative costs paid by the City, and the certification under paragraph (iv) hereof;

(C) 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

(D) the bid solicitation form and, if the terms of the guaranteed investment contract 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.

(c) Investments Traded on Established Market. For other investments traded on an established market, the fair market value of the investment will be the actual price at which the investments are sold by a willing seller to a willing buyer. When an actual transaction does not occur, the fair market price shall be the mean between the bid and asked prices for such obligations on the date the investment is deemed to become, or ceases to be, proceeds of the issue.

(d) Yield Restricted Amounts. Where amounts must be restricted to a certain yield and investments cannot be purchased on an established market or a bona fide fair market price cannot be established at a yield that does not exceed the maximum permissible yield, the City may acquire or hold tax-exempt securities, currency, or Time Deposit SLGS that yield no more than the maximum permissible yield. The City recognizes that Time Deposit SLGS are available at the Bureau of the Public Debt, and that, under current Treasury Department Regulations governing SLGS, Time Deposit SLGS may not be purchased until 7 calendar days after a subscription for them is tendered and received by the Bureau of the Public Debt (5 calendar days for subscriptions not in excess of \$10 million). Accordingly, the City will act promptly in subscribing for Time Deposit SLGS in the event it is determined that such restricted investments are necessary.

Section 7. Record Keeping. With respect to all Nonpurpose Investments, other than guaranteed investment contracts, acquired in any fund or account the City shall record or cause to be recorded the following information: (i) purchase date, (ii) purchase price, (iii) information establishing that the purchase price is the fair market value as of such date (e.g., the published quoted bid by a dealer in such an investment on the date of purchase), (iv) any accrued interest paid, (v) face amount, (vi) coupon rate, (vii) periodicity of interest payments, (viii) disposition price, (ix) any accrued interest received, and (x) disposition date. To the extent any investment becomes a Nonpurpose Investment by becoming Gross Proceeds after it was originally purchased, it shall be treated as if it were acquired at its fair market value at the time it becomes a Nonpurpose Investment.

Section 8. Retention of Records. Amounts determined to be required to be paid to the United States in compliance with the Rebate Requirement shall be paid to the United States in accordance with the rules set forth in the Treasury Regulations. Records of all determinations made hereunder shall be retained by the City until six years after the complete retirement of the Certificates.

Section 9. Bona Fide Debt Service Fund Exception. For purposes of complying with the Rebate Requirement, amounts earned on moneys in the Bona Fide Debt Service Funds shall not be taken into account for a Certificate Year if the gross earnings on moneys in the Bona Fide Debt Service Funds for such Certificate Year are less than \$100,000.

Section 10. Expenditure Exceptions. The Rebate Requirement will be considered satisfied if either the Six-Month Exception (set forth in subsection (a) below) is satisfied.

(a) Six-Month Exception. The Rebate Requirement will be considered satisfied if the following rule is met. The City reasonably expects to meet the Six-Month Exception set forth below since the Bonds constitute a current refunding of the 2006 Certificates. However, under Section 1.148-7(a)(3) of the Treasury Regulations, use of the Six-Month Exception is not mandatory. Accordingly, the City may apply the Rebate Requirement to the Certificates even though the Certificates otherwise satisfy the Six-Month Exception.

(i) In General. The Six-Month Exception will be treated as having been satisfied if (A) all Gross Proceeds of the Certificates are allocated to expenditures for the governmental purposes of the Certificates no later than the date that is six months after the date of execution and delivery of the Certificates, and (B) the Rebate Requirement is satisfied with respect to (1) amounts on deposit in the Parity Reserve Fund, (2) other Gross Proceeds that arise after six months from the date hereof but that are not reasonably anticipated to arise as of the date hereof, (3) repayment of any grants made with proceeds of the Certificates, and (4) sale or investment proceeds on payments under a purpose investment.

(ii) Gross Proceeds. For purposes of satisfying paragraph (i)(A) above, the term Gross Proceeds excludes (A) amounts on deposit in the Bona Fide Debt Service Funds, (B) amounts on deposit in the Parity Reserve Fund, (C) other Gross Proceeds that arise after six months from the date hereof but that are not reasonably anticipated to arise as of the date hereof, (D) repayment of any grants made with proceeds of the Certificates, and (E) sale or investment proceeds on payments under any purpose investment.

(iii) Additional Six Months for Non-Private Activity Bonds. The Six-Month Exception will be treated as satisfied if, in addition to satisfying paragraph (i)(B) of this subsection (a), all Gross Proceeds of the Certificates are expended as provided in paragraph (i)(A) of this subsection (a) except for an amount of Gross Proceeds that does not exceed 5% of the proceeds of the Certificates and such unexpended amount of Gross Proceeds is expended within one year from the date of execution and delivery of the Certificates.

Section 11. Engagement of Experts. The City covenants that it will, at least one month prior to the end of each Certificate Year, engage a firm competent to perform the calculations necessary to comply with the Rebate Requirement, as set forth in Section 148(f) of the Code and the Treasury Regulations.

Section 12. Survival of Defeasance. Notwithstanding anything in this Tax Certificate to the contrary, the Rebate Requirement shall survive the defeasance or payment in full of the Certificates.

## **PART E. OTHER MATTERS**

Section 1. No Pooled Financing Bonds. No portion of the proceeds derived from the execution and delivery of the Certificates will be used, directly or indirectly, to make or finance loans to two or more ultimate borrowers. None of the Costs of Issuance with respect to the Certificates is contingent upon the occurrence of events subsequent to the date of execution and delivery of the Certificates, and 95% of the Costs of Issuance will be paid within six months of the date hereof. No portion of the proceeds of the 2006 Certificates were used, directly or indirectly, to make or finance loans to two or more ultimate borrowers. None of the costs of issuance with respect to the 2006 Certificates was contingent upon the occurrence of events subsequent to the date of issuance of the 2006 Certificates, and 95% of the costs of issuance with respect to the issue of which the 2006 Certificates are a part were paid within six months of the issue dates of such issue.

Section 2. No Hedge Bonds. The 2006 Certificates satisfied the rules of Section 149(g) of the Code in that (i) the 2006 Certificates qualified for the three-year temporary period set forth in Section 1.148-2(e)(2) of the Treasury Regulations, and (ii) no more than 50% of the net sale proceeds of the 2006 Certificates was invested in Nonpurpose Investments at a substantially guaranteed yield for four years or more. Therefore, the Certificates satisfy the rules of Section 149(g) of the Code.

Section 3. No Federal Guarantee. The City will not directly or indirectly use or permit the use of any proceeds of the Certificates or any other funds of the City, or take or omit to take any action, that would cause the Certificates to be considered “**federally guaranteed**” within the meaning of Section 149(b) of the Code. The City has not entered into, nor will the City enter into, any (i) long-term service contracts with any federal governmental agency, (ii) service contracts with any federal governmental agency under terms that are materially different from the terms of any contracts with any persons other than federal government agencies, and (iii) leases of property to any federal government agency, that would cause the Certificates to be considered “**federally guaranteed**” within the meaning of Section 149(b) of the Code.

Section 4. Change in Use. The City represents, warrants and covenants that the facilities financed with the proceeds of the Certificates will be used for governmental purposes of the City, unless an opinion of Special Counsel is received with respect to permitting any proposed change in use of the Project.

Section 5. Information Reporting. The City certifies that the information required by Section 149(e) of the Code and set forth in Internal Revenue Service Form 8038-G relating to the Certificates, as set forth in Exhibit F attached hereto, reflects its reasonable expectations with respect to the Certificates and the proceeds thereof as of the date of this Tax Certificate. Said Form 8038-G shall be filed at the Internal Revenue Service Center, Ogden, Utah 84201 no later than the 15<sup>th</sup> day of the second calendar month following the close of the calendar year quarter in which the Certificates are issued.

Section 6. Retention of Records. The City covenants to maintain all records relating to the Certificates and the use and expenditure of the proceeds of the Certificates, as more specifically set forth below.

(a) Types of Records Required to be Retained. The records that must be retained include, but are not limited to, the following:

(i) General. All legal and closing documents relating to the Certificates, including indentures, trust agreements, resolutions, public notices, tax certificates, opinions of counsel (issued at the time of closing or subsequently), amendments to the foregoing documents and any and all documents included in the transcript with respect to the Certificates.

(ii) Expenditure of Gross Proceeds.

(A) Documents evidencing the expenditure of proceeds from the sale of the Certificates and investment earnings thereon and the specific assets financed with such proceeds, including any declarations of official intent to reimburse expenditures, feasibility studies, projected draw schedules, requisitions and closing flow of funds memoranda;

(B) Documents setting forth all funds and accounts relating to the Certificates, including debt service funds, reserve funds, sinking funds and pledged funds, and any agreements with respect thereto;

(C) Documents pertaining to the investment of the Gross Proceeds of the Certificates, including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received from the investment of proceeds, projected investment income calculations expected to be received from the investment of proceeds, guaranteed investment contracts, rebate calculations, credit enhancement, swap transactions and verification reports;

(iii) Disposition Proceeds. Documents, if any, evidencing the sale or other disposition of the financed property; and

(iv) Economic Life Data. Documents supporting the economic life of the assets financed and refinanced with proceeds of the Certificates;

(v) Allocations. Documents evidencing any allocations with respect to the Gross Proceeds of the Certificates,

(vi) Use of Financed Assets; Private Security or Payment.

(A) Documents evidencing the use and ownership of the property financed and refinanced with proceeds of the Certificates,

including contracts (leases, management contracts, service contracts and otherwise) with for the use and ownership of such property; and

(B) Documents evidencing sources of payment or security for the Certificates, including liquidity covenants and negative covenants, and any agreements with respect thereto.

(vii) Tax Returns and Related Information. IRS Form 8038-G, 8038-T and 8038-R, as applicable, and information relating to the pricing of the Certificates, yield calculations, weighted average maturity calculations, other information included in the 8038 statistics report, verification reports and arbitrage rebate reports.

(viii) Required Retention Periods. The City covenant to retain the above described records for the following applicable periods until the date that is six years after the complete retirement of the Certificates.

(b) Nonpurpose Investments. With respect to all Nonpurpose Investments acquired in any fund or account in connection with the Certificates, the following information will be recorded and retained: (i) purchase date, (ii) purchase price, (iii) information establishing that the purchase price is the fair market value as of such date (e.g., the published quoted bid by a dealer in such an investment on the date of purchase), (iv) any accrued interest paid, (v) face amount, (vi) coupon rate, (vii) periodicity of interest payments, (viii) disposition price, (ix) any accrued interest received, and (x) disposition date.

(c) Form of Records. The City covenants that all records will be kept in a manner that ensures complete access thereto for the applicable above described period either in hard copy or electronic format. If the records are kept in electronic format, compliance is necessary with the requirements of Revenue Procedure 97-22, 1997-1 C.B. 652, which provides guidance for maintaining books and records by using an electronic storage system that either images their hardcopy books and records or transfers their computerized books and records to an electronic storage media (e.g., an electronic data compression system).

(d) Failure to Retain Records. The City acknowledges that a failure to maintain material records required to be retained by this Section may result in the loss of the exclusion of interest on the Certificates from gross income for federal tax purposes, could cause additional arbitrage rebate to be owed and could impact a conduit borrower's entitlement to take certain deductions.


Section 7. City to Execute Tax Certificate. The undersigned is an authorized representative of the City and is acting for and on behalf of the City in executing this Tax Certificate. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

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Section 8. Amendment. Notwithstanding any provision of this Tax Certificate, the City may amend this Tax Certificate and thereby alter any actions allowed or required by this Tax Certificate if such amendment is based on a written opinion of nationally recognized bond counsel.

Dated: May 30, 2008

CITY OF MODESTO

By:   
\_\_\_\_\_  
Wayne Padilla  
Finance Director/Treasurer

## LIST OF EXHIBITS

Exhibit A	2006 Certificates
Exhibit B	Certificate of the Underwriter
Exhibit C	Certificate of the Financial Advisor
Exhibit D	Certificate of the Insurer
Exhibit E	Swap Identification Certificate
Exhibit F	Form 8038-G
Exhibit G	Swap Provider Certificate
Exhibit H	Swap Certificate of PFM Asset Management LLC
Exhibit I	Certificate of Liquidity Facility Provider

**EXHIBIT A****2006 CERTIFICATES**

<u>Maturity Date (October 1)</u>	<u>Principal Amount</u>	<u>Redemption Date</u>	<u>Redemption Price</u>
2036	\$46,275,000.00	May 30, 2008	100%

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

**CERTIFICATE OF THE UNDERWRITER**

This Certificate is furnished by Banc of America Securities LLC, as underwriter (the “**Underwriter**”) of the \$47,625,000 aggregate principal amount of City of Modesto, California, Water Refunding Revenue Certificates of Participation, 2008 Series A (the “**Certificates**”), executed and delivered for the benefit of the City of Modesto (the “**City**”), to establish the initial offering price of the Certificates to the public for purposes of establishing the “**issue price**” of the Certificates within the meaning of Section 1273 of the Internal Revenue Code of 1986, as amended (the “**Code**”), to establish the average maturity of the Certificates, within the meaning of Section 147(b) of the Code, and with respect to certain other matters.

Capitalized terms used and not defined herein are as defined in the Tax Certificate to which this certification is attached.

The undersigned DOES HEREBY CERTIFY as follows:

A. Issue Price.

1. The Underwriter reasonably expected on May 29, 2008, which is the date on which the Underwriter agreed to purchase the Certificates (the “**Sale Date**”), that the Certificates would be sold to the general public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) at the initial offering price of the Certificates (the “**Initial Public Offering Price**”), as set forth on the cover of the Official Statement with respect to the Certificates, dated May 29, 2008. The Initial Public Offering Price is set forth in Schedule 1 attached hereto.

2. The Underwriter has made a bona fide offering of all of the Certificates to the general public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) at prices not in excess of the Initial Public Offering Price. The aggregate initial public offering price of all of the Certificates is \$47,625,000 (representing the aggregate initial principal amount of the Certificates).

3. The Underwriter first sold, as of the Sale Date, at least 10% of the aggregate principal amount of the Certificates to the general public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) at prices not in excess of the Initial Public Offering Price.

4. The Initial Public Offering Price does not exceed the fair market value of the Certificates as of the Sale Date.

5. The Underwriter's discount was determined independently of the fact that an affiliate of the Underwriter is acting as counterparty to the City with respect to an interest rate swap, and there was no reduction in the amount of the Underwriter's discount as a result of the fact that such affiliate is acting as counterparty with respect to such swap agreement.

B. Average Maturity.

1. The sum of the product of the Initial Offering Price and the number of years from May 30, 2008, to the maturity date of the Certificates (or earlier date of mandatory sinking fund redemption), divided by the aggregate Initial Offering Price, is 20.8812 years, as shown on the attached Schedules 1 and 2. The Underwriter is familiar with the calculation of the "**average maturity**" of the Certificates as such term is used in Section 147(b) of the Code.

C. Liquidity Facility.

1. The present value of the sum of (x) the fees paid and to be paid to obtain the Liquidity Facility (the "**Liquidity Fees**"), (y) plus the fees paid to the Liquidity Facility Provider's counsel in connection with its service with regard to the Series 2008A Liquidity Facility (the "**Bank Counsel Fees**") is less than the present value of the interest reasonably expected to be saved as a result of having the Liquidity Facility, using the yield on the Certificates (taking into account the Liquidity Fees and the Bank Counsel Fees) as the discount factor for this purpose.

2. The Liquidity Fees and the Bank Counsel Fees were determined in arm's-length negotiations. The Liquidity Fees and the Bank Counsel Fees represent a commercially reasonable charge for the transfer of credit risk. Such charges do not include any direct or indirect payment for a cost, risk or other element that is not customarily borne by liquidity providers of tax-exempt bonds in transactions in which the liquidity provider has no involvement other than as liquidity provider. No non-guarantee services are being provided by the Bank.

3. The Underwriter's discount was determined independently of the Liquidity Facility Fees and the Bank Counsel Fees, and there was no reduction in the amount of the Underwriter's Discount as a result of the fact that the Liquidity Facility Provider is providing the Liquidity Facility.

D. Insurance Policy.

1. The present value of the premiums paid on the date hereof to Assured Guaranty Corp. (the "**Insurer**") to obtain the Insurance Policy with respect to the Certificates (the "**Insurance Policy**") and a surety policy to fund a portion of the Parity Reserve Fund (the "**Surety Policy**") is less than the present value of the interest reasonably expected to be saved as a result of having the Insurance Policy and the Surety Policy, using the yield on the Certificates (taking into account the payment of the premiums for the Insurance Policy and the Surety Policy) as the discount factor for purposes of computing such present value.

2. The premiums paid to obtain the Insurance Policy and the Surety Policy were determined in arm's-length negotiations.

3. The premiums paid to obtain the Insurance Policy and the Surety Policy represent a commercially reasonable charge for the transfer of credit risk. To the best of our knowledge, such premiums do not include any direct or indirect payment for a cost, risk or other element that is not customarily borne by guarantors of tax-exempt bonds in transactions in which the guarantor has no involvement other than as guarantor, and no non-guarantee services are being provided by the Insurer.

4. The issuance of the Insurance Policy and the Surety Policy by the Insurer was a vital factor in marketing the Certificates and permitted the marketing of the Certificates at interest rates comparable to other bond issues of a similar type and purpose.

E. Parity Reserve Fund.


The existence and funding of the Parity Reserve Fund in an amount equal to the Reserve Fund Requirement (as defined in the Contract), including the funding of a portion of the Parity Reserve Fund with the Surety Policy, was a condition to obtaining the Insurance Policy and was therefore a vital factor in marketing the Certificates, facilitated the marketing of the Certificates at an interest rate comparable to that of bonds and other obligations of a similar type and is not in excess of the amount considered necessary for such purpose.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

The undersigned recognizes that the representations set forth above will be relied upon by the City of Modesto in making certain of the representations set forth in the Tax Certificate and by Sidley Austin LLP, Special Counsel, in rendering its opinion that the interest on the Certificates is not includable in the gross income of the owners thereof for federal income tax purposes.

Dated: May 30, 2008

BANC OF AMERICA SECURITIES LLC

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

**SCHEDULE 1  
TO EXHIBIT B**

**Initial Public Offering Prices**

<u>Maturity Date (October 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Price</u>
2036	\$47,625,000	1.45%	100%

**SCHEDULE 2  
TO EXHIBIT B**

**Average Maturity Calculation**

Delivery Date: 05/30/08

First Principal Payment Date: 10/01/08

<i>Year</i>	<i>Principal</i>	<i>Price (%)</i>	<i>Price (\$)</i>	<i>Term</i>	<i>Dollar-Years</i>
2008	\$290,000	100.000%	\$290,000.00	0.336111	\$97,472.19
2009	\$285,000	100.000%	\$285,000.00	1.336111	\$380,791.64
2010	\$285,000	100.000%	\$285,000.00	2.336111	\$665,791.64
2011	\$285,000	100.000%	\$285,000.00	3.336111	\$950,791.64
2012	\$310,000	100.000%	\$310,000.00	4.336111	\$1,344,194.41
2013	\$310,000	100.000%	\$310,000.00	5.336111	\$1,654,194.41
2014	\$340,000	100.000%	\$340,000.00	6.336111	\$2,154,277.74
2015	\$340,000	100.000%	\$340,000.00	7.336111	\$2,494,277.74
2016	\$365,000	100.000%	\$365,000.00	8.336111	\$3,042,680.52
2017	\$365,000	100.000%	\$365,000.00	9.336111	\$3,407,680.52
2018	\$395,000	100.000%	\$395,000.00	10.336111	\$4,082,763.85
2019	\$395,000	100.000%	\$395,000.00	11.336111	\$4,477,763.85
2020	\$395,000	100.000%	\$395,000.00	12.336111	\$4,872,763.85
2021	\$425,000	100.000%	\$425,000.00	13.336111	\$5,667,847.18
2022	\$450,000	100.000%	\$450,000.00	14.336111	\$6,451,249.95
2023	\$2,300,000	100.000%	\$2,300,000.00	15.336111	\$35,273,055.30
2024	\$2,410,000	100.000%	\$2,410,000.00	16.336111	\$39,370,027.51
2025	\$2,515,000	100.000%	\$2,515,000.00	17.336111	\$43,600,319.17
2026	\$2,595,000	100.000%	\$2,595,000.00	18.336111	\$47,582,208.05
2027	\$2,705,000	100.000%	\$2,705,000.00	19.336111	\$52,304,180.26
2028	\$2,810,000	100.000%	\$2,810,000.00	20.336111	\$57,144,471.91
2029	\$2,945,000	100.000%	\$2,945,000.00	21.336111	\$62,834,846.90
2030	\$3,055,000	100.000%	\$3,055,000.00	22.336111	\$68,236,819.11
2031	\$3,185,000	100.000%	\$3,185,000.00	23.336111	\$74,325,513.54
2032	\$3,295,000	100.000%	\$3,295,000.00	24.336111	\$80,187,485.75
2033	\$3,430,000	100.000%	\$3,430,000.00	25.336111	\$86,902,860.73
2034	\$3,570,000	100.000%	\$3,570,000.00	26.336111	\$94,019,916.27
2035	\$3,705,000	100.000%	\$3,705,000.00	27.336111	\$101,280,291.26
2036	\$3,870,000	100.000%	\$3,870,000.00	28.336111	\$109,660,749.57
	<u>\$47,625,000</u>		<u>\$47,625,000.00</u>		<u>\$994,467,286.38</u>

Average Maturity 20.8812

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

**CERTIFICATE OF THE FINANCIAL ADVISOR**

This Certificate is furnished by Public Financial Management, Inc., as financial advisor (the “**Financial Advisor**”) to the City of Modesto, California (the “**City**”) with respect to the issuance of the City’s \$47,625,000 aggregate principal amount of City of Modesto, California, Water Refunding Revenue Certificates of Participation, 2008 Series A (the “**Certificates**”), for purposes of establishing certain matters.

Capitalized terms used and not defined herein are as defined in the Tax Certificate to which this certification is attached.

A. Insurance Policy.

1. The present value of the premiums paid on the date hereof to Assured Guaranty Corp. (the “**Insurer**”) to obtain the Insurance Policy with respect to the Certificates (the “**Insurance Policy**”) and a surety policy to fund a portion of the Parity Reserve Fund (the “**Surety Policy**”) is less than the present value of the interest reasonably expected to be saved as a result of having the Insurance Policy and the Surety Policy, using the yield on the Certificates (taking into account the payment of the premiums for the Insurance Policy and the Surety Policy) as the discount factor for purposes of computing such present value.

2. The premiums paid to obtain the Insurance Policy and the Surety Policy were determined in arm’s-length negotiations.

3. The premiums paid to obtain the Insurance Policy and the Surety Policy represent a commercially reasonable charge for the transfer of credit risk. To the best of our knowledge, such premiums do not include any direct or indirect payment for a cost, risk or other element that is not customarily borne by guarantors of tax-exempt bonds in transactions in which the guarantor has no involvement other than as guarantor, and no non-guarantee services are being provided by the Insurer.

B. Liquidity Facility.

1. The present value of the sum of (x) the fees paid and to be paid to obtain the Liquidity Facility (the “**Liquidity Fees**”), (y) plus the fees paid to the Liquidity Facility Provider’s counsel in connection with its service with regard to the Series 2008A Liquidity Facility (the “**Bank Counsel Fees**”) is less than the present value of the interest reasonably expected to be saved as a result of having the Liquidity Facility, using the yield on the

Certificates (taking into account the Liquidity Fees and the Bank Counsel Fees) as the discount factor for this purpose.

2. The Liquidity Fees and the Bank Counsel Fees were determined in arm's-length negotiations. The Liquidity Fees and the Bank Counsel Fees represent a commercially reasonable charge for the transfer of credit risk. Such charges do not include any direct or indirect payment for a cost, risk or other element that is not customarily borne by liquidity providers of tax-exempt bonds in transactions in which the liquidity provider has no involvement other than as liquidity provider. No non-guarantee services are being provided by the Bank.

C. Parity Reserve Fund.

The existence and funding of the Parity Reserve Fund in an amount equal to the Reserve Fund Requirement (as defined in the Contract), including the funding of a portion of the Parity Reserve Fund with the Surety Policy, was a condition to obtaining the Insurance Policy and was therefore a vital factor in marketing the Certificates, facilitated the marketing of the Certificates at an interest rate comparable to that of bonds and other obligations of a similar type and is not in excess of the amount considered necessary for such purpose.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

The undersigned recognizes that the representations set forth above will be relied upon by the City of Modesto in making certain of the representations set forth in the Tax Certificate and by Sidley Austin LLP, Special Counsel, in rendering its opinion that the interest on the Certificates is not includable in the gross income of the owners thereof for federal income tax purposes.

Dated: May 30, 2008

PUBLIC FINANCIAL MANAGEMENT, INC.

By: 

\_\_\_\_\_  
Peter Miller  
Managing Director

**CERTIFICATE OF THE INSURER**

(Please see attached.)



ENDURING FINANCIAL STRENGTH™  
AAA S&P • Aaa Moody's • AAA Fitch

### Financial Guaranty Insurance Policy

Issuer:	City of Modesto, California	Policy No.:	D-2008-461
Obligations:	\$47,625,000 Water Refunding Revenue Certificates of Participation 2008 Series A	Premium:	\$826,615.80
		Effective Date:	May 30, 2008

Assured Guaranty Corp., a Maryland corporation ("Assured Guaranty"), in consideration of the payment of the Premium and on the terms and subject to the conditions of this Policy (which includes each endorsement hereto), hereby unconditionally and irrevocably agrees to pay to the trustee (the "Trustee") or the paying agent (the "Paying Agent") for the Obligations (as set forth in the documentation providing for the issuance of and securing the Obligations) for the benefit of the Holders, that portion of the Insured Payments which shall become Due for Payment but shall be unpaid by reason of Nonpayment.

Assured Guaranty will make such Insured Payments to the Trustee or the Paying Agent on the later to occur of (i) the date applicable principal or interest becomes Due for Payment, or (ii) the Business Day next following the day on which Assured Guaranty shall have Received a completed Notice of Nonpayment. If a Notice of Nonpayment by Assured Guaranty is incomplete or does not in any instance conform to the terms and conditions of this Policy, it shall be deemed not Received, and Assured Guaranty shall promptly give notice to the Trustee or the Paying Agent. Upon receipt of such notice, the Trustee or the Paying Agent may submit an amended Notice of Nonpayment. The Trustee or the Paying Agent will disburse the Insured Payments to the Holders only upon receipt by the Trustee or the Paying Agent, in form reasonably satisfactory to it of (i) evidence of the Holder's right to receive such payments, and (ii) evidence, including without limitation any appropriate Instruments of assignment, that all of the Holder's rights to payment of such principal or interest Due for Payment shall thereupon vest in Assured Guaranty. Upon and to the extent of such disbursement, Assured Guaranty shall become the Holder of the Obligations, any appurtenant coupon thereto and right to receipt of payment of principal thereof or interest thereon, and shall be fully subrogated to all of the Holder's right, title and interest thereunder, including without limitation the right to receive payments in respect of the Obligations. Payment by Assured Guaranty to the Trustee or the Paying Agent for the benefit of the Holders shall discharge the obligation of Assured Guaranty under this Policy to the extent of such payment.

This Policy is non-cancelable by Assured Guaranty for any reason. The Premium on this Policy is not refundable for any reason. This Policy does not insure against loss of any prepayment premium or other acceleration payment which at any time may become due in respect of any Obligation, other than at the sole option of Assured Guaranty, nor against any risk other than Nonpayment.

Except to the extent expressly modified by any endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Avoided Payment" means any amount previously distributed to a Holder in respect of any Insured Payment by or on behalf of the Issuer, which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder. "Business Day" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or Assured Guaranty are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York or in the State of Maryland. "Due for Payment" means (i) when referring to the principal of an Obligation, the stated maturity date thereof, or the date on which such Obligation shall have been duly called for mandatory sinking fund redemption, and does not refer to any earlier date on which payment is due by reason of a call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless Assured Guaranty in its sole discretion elects to make any principal payment, in whole or in part, on such earlier date) and (ii) when referring to interest on an Obligation, the stated date for payment of such interest. "Holder" means, in respect of any Obligation, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Obligation to payment of principal or interest thereunder, except that Holder shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Obligations. "Insured Payments" means that portion of the principal of and interest on the Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment. Insured Payments shall not include any additional amounts owing by the Issuer solely as a result of the failure by the Trustee or the Paying Agent to pay such amount when due and payable, including without limitation any such additional amounts as may be attributable to penalties or to interest accruing at a default rate, to amounts payable in respect of indemnification, or to any other additional amounts payable by the Trustee or the Paying Agent by reason of such failure. "Nonpayment" means, in respect of an Obligation, the failure of the Issuer to have provided sufficient funds to the Trustee or the Paying Agent for payment in full of all principal and interest Due for Payment on such Obligation. It is further understood that the term "Nonpayment" in respect of an Obligation includes any Avoided Payment. "Receipt" or "Received" means actual receipt or notice of or, if notice is given by

Page 1 of 2  
Policy No.: D-2008-461  
Form FG001 (05/07)

**Assured Guaranty Corp.**

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100info@assuredguaranty.com  
fax 212 581 3268

www.assuredguaranty.com

overnight or other delivery service, or by certified or registered United States mail, by a delivery receipt signed by a person authorized to accept delivery on behalf of the person to whom the notice was given. Notices to Assured Guaranty may be mailed by registered mail or personally delivered or telecopied to it at 1325 Avenue of the Americas, New York, New York 10019, Telephone Number: (212) 974-0100, Facsimile Number: (212) 581-3268, Attention: Risk Management Department - Public Finance Surveillance, with a copy to the General Counsel, or to such other address as shall be specified by Assured Guaranty to the Trustee or the Paying Agent in writing. A Notice of Nonpayment will be deemed to be Received by Assured Guaranty on a given Business Day if it is Received prior to 12:00 noon (New York City time) on such Business Day; otherwise it will be deemed Received on the next Business Day. "Term" means the period from and including the Effective Date until the earlier of (i) the maturity date for the Obligations, or (ii) the date on which the Issuer has made all payments required to be made on the Obligations.

At any time during the Term of this Policy, Assured Guaranty may appoint a fiscal agent (the "Fiscal Agent") for purposes of this Policy by written notice to the Trustee or the Paying Agent, specifying the name and notice address of such Fiscal Agent. From and after the date of Receipt of such notice by the Trustee or the Paying Agent, copies of all notices and documents required to be delivered to Assured Guaranty pursuant to this Policy shall be delivered simultaneously to the Fiscal Agent and to Assured Guaranty. All payments required to be made by Assured Guaranty under this Policy may be made directly by Assured Guaranty or by the Fiscal Agent on behalf of Assured Guaranty. The Fiscal Agent is the agent of Assured Guaranty only, and the Fiscal Agent shall in no event be liable to the Trustee or the Paying Agent for any acts of the Fiscal Agent or any failure of Assured Guaranty to deposit, or cause to be deposited, sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, Assured Guaranty hereby waives, in each case for the benefit of the Holders only, all rights and defenses of any kind (including, without limitation, the defense of fraud in the inducement or in fact or any other circumstance that would have the effect of discharging a surety, guarantor or any other person in law or in equity) that may be available to Assured Guaranty to deny or avoid payment of its obligations under this Policy in accordance with the express provisions hereof. Nothing in this paragraph will be construed (i) to waive, limit or otherwise impair, and Assured Guaranty expressly reserves, Assured Guaranty's rights and remedies, including, without limitation: its right to assert any claim or to pursue recoveries (based on contractual rights, securities law violations, fraud or other causes of action) against any person or entity, in each case, whether directly or acquired as a subrogee, assignee or otherwise, subsequent to making any payment to the Trustee or the Paying Agent, in accordance with the express provisions hereof, and/or (ii) to require payment by Assured Guaranty of any amounts that have been previously paid or that are not otherwise due in accordance with the express provisions of this Policy.

This Policy (which includes each endorsement hereto) sets forth in full the undertaking of Assured Guaranty with respect to the subject matter hereof, and may not be modified, altered or affected by any other agreement or instrument, including, without limitation, any modification thereto or amendment thereof. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. This Policy will be governed by, and shall be construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, Assured Guaranty has caused this Policy to be affixed with its corporate seal, to be signed by its duly authorized officer, and to become effective and binding upon Assured Guaranty by virtue of such signature.

ASSURED GUARANTY CORP.

By: 

Gordon Murray  
Director

Signature attested to by:

  
Counsel

NOTICE OF NONPAYMENT

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019  
Attention: Risk Management Department - Public Finance Surveillance and General Counsel

The undersigned, [a duly authorized officer of [TRUSTEE][PAYING AGENT]] (the "Trustee" or the "Paying Agent"), hereby certifies to Assured Guaranty Corp. ("Assured Guaranty") with reference to Financial Guaranty Insurance Policy No. \_\_\_\_\_ (the "Policy"), that:

(i) The deficiency with respect to the Insured Payment that is Due for Payment and unpaid by reason of Nonpayment on [insert applicable payment date] is \$[insert applicable amount] (the "Deficiency Amount").

(ii) The [Trustee][Paying Agent] is making a claim under the Policy for the Deficiency Amount.

(iii) The [Trustee][Paying Agent] agrees that, following payment by Assured Guaranty made with respect to the Deficiency Amount which is the subject of this Notice of Nonpayment, it will (a) cause such amounts to be applied directly to the payment of the applicable Insured Payment; (b) insure that such funds are not applied for any other purpose; and (c) cause an accurate record of such payment to be maintained with respect to the appropriate Insured Payment(s), the corresponding claim on the Policy, and the proceeds of such claim.

(iv) The [Trustee][Paying Agent], on behalf of the Holders, hereby assigns to Assured Guaranty all rights of the [Trustee][Paying Agent] and the Holders with respect to the Obligations to the extent of any payments under the Policy, including without limitation any amounts due to the Holders in respect of securities law violations arising from the offer and/or sale of the Obligations; provided, that payments to Assured Guaranty in respect of the foregoing assignment shall in all cases be subject to and subordinate to the rights of the Holders to receive all payments in respect of the Obligations. The foregoing assignment is in addition to, and not in limitation of, rights of subrogation otherwise available to Assured Guaranty in respect of such payments. The [Trustee][Paying Agent][Holder] shall take such action and deliver such instruments as may be reasonably requested or required by Assured Guaranty to effectuate the purpose or provisions of this paragraph (iv).

(v) The [Trustee][Paying Agent], on its behalf and on behalf of the Holders, hereby appoints Assured Guaranty as agent and attorney-in-fact for the [Trustee][Paying Agent] and each such Holder in any legal proceeding with respect to the Obligations. The [Trustee][Paying Agent] hereby agrees that, so long as Assured Guaranty shall not be in default in its payment obligations under the Policy, Assured Guaranty may at any time during the continuation of any proceeding by or against the Issuer under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including, without limitation, (A) all matters relating to any claim in connection with an Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment made with respect to the Obligations (a "Preference Amount"), (B) the direction of any appeal of any order relating to any Preference Amount at the expense of Assured Guaranty but subject to reimbursement as provided in the documentation providing for the issuance of and securing the Obligations, if any, and (C) the posting of any surety, supersedeas or performance bond pending any appeal. In addition, the [Trustee][Paying Agent] hereby agrees that Assured Guaranty shall be fully subrogated to, and the [Trustee][Paying Agent] on its behalf and on behalf of each Holder, hereby delegates and assigns, to the fullest extent permitted by law, the rights of the [Trustee][Paying Agent] and each Holder in the conduct of any Insolvency Proceeding, including without limitation all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

(vi) Payment should be made by credit to the following account:

\_\_\_\_\_  
\_\_\_\_\_

Capitalized terms used in this Notice of Nonpayment and not otherwise defined herein shall have the respective meanings ascribed thereto in the Policy.

This Notice of Nonpayment may be revoked at any time by written notice of such revocation by the [Trustee][Paying Agent][Holder] to the Assured Guaranty.

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.**

IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Nonpayment as of the \_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_.

[TRUSTEE/PAYING AGENT]

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

# ASSURED GUARANTY

ENDURING FINANCIAL STRENGTH™  
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## Endorsement to Financial Guaranty Insurance Policy (California Insurance Guaranty Association)

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Issuer: City of Modesto, California Policy No. D-2008-461

Obligations: \$47,625,000 Water Refunding Revenue Effective Date: May 30, 2008  
Certificates of Participation, 2008 Series  
A

Notwithstanding the terms and provisions contained in the Policy, it is further understood that the insurance provided by the Policy to which this endorsement is attached and of which it forms a part is not covered by the California Insurance Guaranty Association, established pursuant to the laws of the State of California (California Insurance Code, Article 15.2).

Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language, the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.

ASSURED GUARANTY CORP.

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

Gordon Murray  
Director

Signature attested to by   
\_\_\_\_\_

Counsel

Form E-CA001 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 874 0100  
fax 212 561 3268

info@assuredguaranty.com

www.assuredguaranty.com

# ASSURED GUARANTY

ENDURING FINANCIAL STRENGTH™  
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## Endorsement to Financial Guaranty Insurance Policy (California Business Day)

Issuer: City of Modesto, California Policy No. D-2008-461

Obligations: \$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A Effective Date: May 30, 2008

Notwithstanding the terms and provisions contained in the Policy, the Policy to which this endorsement is attached and of which it forms a part is hereby amended to provide that the term "Business Day" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or Assured Guaranty are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York, the State of Maryland or the State of California.

It is further understood the Policy to which this endorsement is attached and of which it forms a part is hereby amended to provide that a Notice will be deemed to be Received on a given Business Day if it is Received prior to 12:00 noon (Pacific Standard time) on such Business Day; otherwise it will be deemed Received on the next Business Day.

Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language, the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.

ASSURED GUARANTY CORP.

By: 

Gordon Murray  
Director

Signature attested to by 

Counsel

Form E-CA002 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3288

info@assuredguaranty.com

www.assuredguaranty.com

**Endorsement to Financial Guaranty Insurance Policy  
(California Governing Law)**

Issuer: City of Modesto, California Policy No. D-2008-461

Obligations: \$47,625,000 Water Refunding Revenue Effective Date: May 30, 2008  
Certificates of Participation, 2008 Series  
A

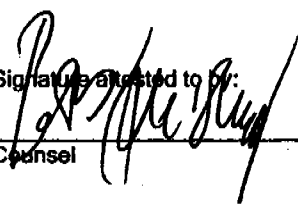
Notwithstanding the terms and provisions contained in the Policy, it is further understood that the insurance provided by the Policy to which this endorsement is attached and of which it forms a part shall be governed by, and shall be construed in accordance with, the laws of the State of California.

Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.

ASSURED GUARANTY CORP.

By:   
Gordon Murray  
Director

Signature attested to by:  
  
Counsel

Form E-CA003 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

**SWAP IDENTIFICATION CERTIFICATE**

This certificate is being furnished by the City of Modesto (the “**City**”) in connection with the identification by the City of a restructured swap agreement (the “**Swap**”), hereinafter described, for purposes of satisfying the identification requirements of Section 1.148-4(h)(2)(vii) of the Treasury Regulations for treatment of the Swap as a “**qualified hedge**,” which would enable the City to take into account payments made or received by the City under the Swap, pursuant to Section 1.148-4(h)(1) of the Treasury Regulations, in determining the yield on certain 2008 Certificates hereinafter described.

1. On September 27, 2006, the City entered into a swap agreement (the “**Original Swap**”), having a notional amount of \$46,275,000 and a termination date of October 1, 2036, with Bank of America, N.A. (the “**Counterparty**”). The Original Swap was evidenced by a Confirmation, dated September 27, 2006, and became effective on November 2, 2006. Under the Original Swap, the City has made payments to the Counterparty based on application of a fixed rate of 3.480% to the notional amount of the Original Swap, and the Counterparty has made payments to the City based on application of 63.7% of One-Month USD LIBOR-BBA plus 0.154% to the notional amount of the Original Swap. The Original Swap was identified in a certificate of the City, dated September 27, 2006, as being a qualified hedge with respect to certain water revenue certificates of participation, in the aggregate principal amount of \$46,275,000, executed and delivered for the benefit of the City on November 2, 2006 (the “**2006 Certificates**”).

2. On the date hereof, the City and the Counterparty have terminated the Original Swap and, in place thereof, the City and the Counterparty have entered into a modified swap agreement (the “**Modified Swap**”), having a notional amount of \$47,625,000 and a termination date of October 1, 2036, and evidenced by a Confirmation, dated as of May 30, 2008.

3. Under the Modified Swap, the City will make payments to the Counterparty based on application of a fixed rate of 3.4747% to the notional amount of the Modified Swap, and the Counterparty will make payments to the City based on 63.7% of USD-LIBOR-BBA plus 0.154% to the notional amount of the Modified Swap. On May 30, 2008, there will be executed and delivered for the benefit of the City certain \$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A (the “**2008 Certificates**”). The 2008 Certificates will have an issue price of \$47,625,000.00 and a final maturity date of October 1, 2036. The notional amount of the 2008 Certificates and the notional amount of the Modified Swap are expected to be the same throughout the term of the 2008 Certificates and the term of the Modified Swap.

4. The 2008 Certificates will bear interest at a variable rate and will allow holders to tender their 2008 Certificates upon a certain amount of notice to the City. The 2008 Certificates are intended to be variable rate debt instruments within the meaning of Section 1.1275-5 of the Treasury Regulations. The proceeds of the 2008 Certificates will be used to current refund the 2006 Certificates. Payments under the Modified Swap will closely correspond in time to interest payments with respect to the 2008 Certificates.

5. The Modified Swap is being entered into primarily to modify the City's risk of interest rate changes with respect to the 2008 Certificates.

6. In connection with the termination of the Original Swap, there would otherwise have been a termination payment due and owing by the City to the Counterparty. A portion of such termination payment will be paid by the City to the Counterparty on June 2, 2008, but a portion of such termination payment has not been so paid and has instead been built in to the fixed rate on the Modified Swap described in paragraph 3 above. The City will separately obtain a representation from the Counterparty as to the "**on-market**" fixed rate that would have applied to the Modified Swap had the entire amount of the above-described termination payment been paid by the City to the Counterparty, and had no portion of such termination payment been instead built in to the fixed rate on the Modified Swap.

7. Aside from treating the relief to the City from making a portion of the above-described termination payment as "**deemed payment**" from the Counterparty to the City, no amount is being paid by the Counterparty to the City, or by the City to the Counterparty, in connection with the City's entering into the Modified Swap with the Counterparty.


8. The Modified Swap is not expected to be terminated or otherwise closed substantially contemporaneously with the execution and delivery of the 2008 Certificates. Accordingly, Section 1.148-4(h)(5)(iii) applies to the Modified Swap.

9. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Confirmation.

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Dated: May 29, 2008

CITY OF MODESTO

By:   
\_\_\_\_\_  
Wayne Padilla  
Finance Director/Treasurer

**FORM 8038-G**

**(Please see item number 21 of this transcript.)**

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

**SWAP PROVIDER CERTIFICATE**

**\$47,625,000**  
**City of Modesto**  
**Water Refunding Revenue Certificates of Participation**  
**2008 Series A (the "Certificates")**

**CERTIFICATE OF BANK OF AMERICA, N.A.**  
**AS SWAP COUNTERPARTY**

This certificate is being delivered by Bank of America, N.A. (the "**Swap Counterparty**"), as counterparty to an interest rate swap entered into by the City of Modesto (the "**City**") and the Swap Counterparty under an ISDA Master Agreement and Schedule, dated as of May 29, 2008, and a Confirmation, dated May 29, 2008 (collectively, the "**Swap Agreement**"), with an effective date (the "**Effective Date**") of May 30, 2008.

The City and the Counterparty entered into a swap agreement (the "**Original Swap Agreement**") on September 27, 2006. The City informed the Swap Counterparty that the Original Swap Agreement was executed in anticipation of the issuance of certain certificates of participation to be executed and delivered for the benefit of the City (the "**2006 Certificates**"). The Original Swap Agreement had an aggregate notional amount of \$46,275,000, and was evidenced by a Confirmation, dated as of September 27, 2006. The date of execution and delivery of the 2006 Certificates was November 2, 2006, on which date the Original Swap Agreement became effective.

The City has informed the Swap Counterparty that on the date hereof, the Certificates are being executed and delivered to current refund and retire all of the outstanding 2006 Certificates. On May 29, 2008, the City and the Swap Counterparty agreed to terminate the Original Swap Agreement pursuant to a letter agreement, dated May 29, 2008 (the "**Termination Agreement**"). The Termination Agreement provides, among other things, that \$1,082,203.68 of the termination payment that would otherwise have been payable by the City to the Swap Counterparty would be "embedded" in the fixed rate payable by the City under the Swap Agreement (the "**Embedded Termination Payment**").

The Swap Agreement has a termination date of October 1, 2036 (the "**Termination Date**"). Under the Swap Agreement, absent an early termination event, (i) the City will make payments to the Swap Counterparty based on a rate of 3.4747% (the "**Fixed Rate**") applied to the Notional Amount, and, in exchange, (ii) the Swap Counterparty will make payments to the City based 63.7% of USD-LIBOR-BBA with a designated maturity of one month ("**One-Month LIBOR**") plus 0.154% (the "**Floating Rate**") applied to the same Notional Amount, all as more fully described in the Swap Agreement.

The Swap Counterparty has been advised by the City that the City is entering into the Swap Agreement to provide a hedge against interest rate changes with respect to the Certificates. The Swap Counterparty understands that payments made and received with respect to the Swap

Agreement may be taken into account in calculating the yield on the Certificates pursuant to Section 1.148-4(h) of the Treasury Regulations.

In connection with the foregoing, the Swap Counterparty represents as follows:

(1) The Swap Agreement was negotiated in an arm's length transaction. The Fixed Rate was determined without regard to the fact that the Swap Agreement may have been executed in connection with the issuance of tax-exempt bonds.

(2) Other than the Embedded Termination Payment, amounts to be paid by the City under the Swap Agreement do not include any payment for underwriting or other services unrelated to the Swap Counterparty's performance of its obligations under the Swap Agreement.

(4) Other than the Embedded Termination Payment and the Up-Front Payment (hereinafter defined), no payments have been or are expected to be made by the Swap Counterparty to the City or by the City to the Swap Counterparty in connection with the Swap Agreement except as set forth in the Swap Agreement. The City is paying \$63,524.80 in connection with the termination of the Original Swap Agreement. The City is paying \$8,600.00 in connection with the execution of the Swap Agreement (the "Up-Front Payment").

(5) Neither the Swap Counterparty nor any of its affiliates has made or expects to make any payments to third parties for the benefit of the City in connection with the Swap Agreement.

(6) If the Embedded Termination Payment of \$1,082,203.68 (deemed paid by the Swap Counterparty to the City), net of the Up-Front Payment of \$8,600.00 (paid by the City to the Swap Counterparty), were not embedded in the Fixed Rate, the fixed rate payable by the City under the Swap Agreement would have been 3.2963%.

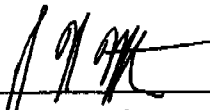
The certifications and information set forth herein are provided for information purposes only, and, except as expressly set forth herein, are not intended for use by any party other than the City and Sidley Austin LLP, as Special Counsel. Any rate or valuation described herein may not necessarily reflect the Swap Counterparty's internal bookkeeping or any single theoretical model-based valuation for the Swap Agreement. In particular, certain factors, including, for example, the notional amount of a transaction, credit spreads, underlying volatility, costs of carry and use of capital and profit may substantially affect the value of any specific transaction, and our conclusions may differ significantly from the estimates available from other sources.

The Swap Counterparty understands that the certifications and information set forth herein will be relied upon by the City in making certain of the representations in a tax certificate executed by the City in connection with the issuance of the Certificates, and the Swap Counterparty further understands that Sidley Austin LLP, as Special Counsel, may rely upon this the certifications and information set forth herein, among other things, in providing its opinion with respect to the exclusion from gross income of the interest on the Certificates pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Notwithstanding the foregoing, the Swap Counterparty makes no representation as to the legal sufficiency of the

matters set forth herein. The undersigned is certifying only as to facts in existence on the date hereof. Nothing herein represents the undersigned's interpretation of any laws; in particular the regulations under Section 148 of the Code or the application of any laws to these facts. The certifications set forth herein are not to be used, circulated, quoted or otherwise referred to for any other purpose without the express written consent of undersigned.

Dated: May 30, 2008

**BANK OF AMERICA, N.A.**

By:   
Name: **Roger Heintzelman**  
Title: **Principal**

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

**SWAP CERTIFICATE OF PFM ASSET MANAGEMENT LLC**

**\$47,625,000**  
**City of Modesto**  
**Water Refunding Revenue Certificates of Participation**  
**2008 Series A**

**CERTIFICATE OF PFM ASSET MANAGEMENT LLC**

This certificate is being delivered by PFM Asset Management LLC, an affiliate of Public Financial Management, Inc., which acts as financial advisor to the City of Modesto (the "City"), in connection with the execution and delivery for the benefit of the City of the above-captioned certificates of participation (the "Certificates") and the execution of a revised swap agreement (the "Swap Agreement") between the City and Bank of America, N.A., as counterparty (the "Counterparty").

We understand that the City and the Counterparty entered into a swap agreement (the "Original Swap Agreement") with respect to certain certificates of participation executed and delivered for the benefit of the City (the "2006 Certificates") on November 2, 2006. The Original Swap Agreement had an aggregate notional amount of \$46,275,000, and was evidenced by a Confirmation, dated as of September 27, 2006, and was entered into in anticipation of the execution and delivery of the 2006 Certificates.

On the date hereof, the Certificates are being executed and delivered to current refund and retire all of the outstanding 2006 Certificates. On May 29, 2008, the City and the Counterparty agreed to terminate the Original Swap Agreement pursuant to a letter agreement, dated May 29, 2008 (the "Termination Agreement"). The Termination Agreement provides, among other things, that (i) the "negative mark-to-market" amount, which would otherwise have been payable by the City to the Counterparty, would be "embedded" in the fixed rate payable by the City under the Swap Agreement (hereinafter, the "Embedded Termination Amount"), and (ii) the amount representing "net" accrued interest on the Original Swap Agreement would be settled and paid by the City to the Counterparty on May 30, 2008. The negative mark-to-market amount of the Original Swap Agreement is \$980,128.00 (excluding net accrued interest), and the net accrued interest on the Original Swap Agreement is \$63,524.80.

The Swap Agreement has an aggregate notional amount of \$47,625,000, equal to the aggregate principal amount of the Certificates. The Swap Agreement is evidenced by a Confirmation, dated as of May 29, 2008 (the "2008 Confirmation").

A. 25-Basis-Point Correlation

1. You have asked us to determine whether the average of the floating rate on the Swap Agreement (the "Floating Rate") and the average of the Proxy Rates, for the Testing Period (hereinafter defined), differ by more than 25 basis points (0.25%).

2. For purposes of this analysis, we have used as proxy rates (the "Proxy Rates") the interest rates paid on the Sacramento County Sanitation District's Financing Authority Subordinate Lien Revenue Bonds, 2000 Series C (the "Proxy Bonds"). The Proxy Rates reflect

securities that have characteristics similar to the Bonds in that they are (A) secured by an irrevocable letter of credit from Bank of America, N.A., (B) reset weekly, and (C) bear interest that is excluded from gross income for federal income tax purposes and exempt from California personal income taxation. We believe that the Proxy Rates provide a reasonable approximation of the Proxy Rates of the Bonds had they been outstanding during the Testing Period.

3. We selected as a testing period (the "Testing Period") the period beginning on May 4, 2005, and ending on May 29, 2008, which period is greater than three years, in order to provide a statistically significant sample size. The Testing Period was not selected to affect the comparison of the average of the Floating Rate and the average of the Proxy Rates.

4. We calculated the average of the Proxy Rates for the Testing Period and the average of the Floating Rate for the Testing Period. We then calculated the difference between the two averages. We found that the difference between the two averages is less than 25 basis points (0.25%) for the Testing Period.

5. Based on (i) our knowledge of the One-Month LIBOR, (ii) historical weekly rates on the Proxy Bonds, (iii) historical One-Month LIBOR rates, (iv) the computations described herein, (v) historical market conditions during the Testing Period, and (vi) our experience as advisors in the municipal swap market, we believe it can be reasonably expected that the difference between the average of the Floating Rate and the average of the Proxy Rates, for the Testing Period, would not have exceeded 25 basis points (0.25%) had the Bonds been outstanding during the Testing Period. This expectation is predicated on historical market relationships and no assurance can be given that actual future results will conform to present expectations.

#### B. Embedded Termination Amount

The Embedded Termination Amount of \$980,128.00 represents the "mark-to-market" valuation of the Original Swap Agreement (excluding net accrued interest) as of the date on which the Original Swap Agreement was terminated in accordance with the Termination Agreement.

#### C. On-Market Rate on Fixed Leg of Swap Agreement

1. Based on the Termination Agreement and the pricing of the Swap Agreement, there is a deemed "acquisition payment" embedded in the rate on the fixed leg of the Swap. In addition, the aggregate notional amount of the Swap Agreement is greater than the aggregate notional amount of the Original Swap Agreement by \$1,350,000. Since generally on-market rates are lower currently than they were at the time of execution of the Original Swap Agreement, we understand from the Counterparty that the rate on the \$1,350,000 increase in notional amount was "blended" accounted for in the overall rate on the Swap Agreement.

2. We further understand that Special Counsel has advised the City that the on-market rate should be the "mid-market" rate as of 9:00 AM ET on the date hereof.

3. Based on the foregoing, we have determined that the on-market mid-market rate for the fixed leg of the Swap Agreement is 3.313%.

D. Arm's Length Nature and Fair Pricing of Swap Agreement

1. The Swap Agreement was negotiated at arm's length between the City and the Counterparty.

2. The Fixed Rate is an on-market, fair market value rate, comparable to what we believe the Counterparty would have quoted to other persons to enter into a reasonably comparable interest rate swap, taking into full account the size, terms and conditions of the Swap Agreement, and with an entity similarly situated to the City, including taxable business corporations and tax-exempt issuers, taking into account the security and sources of payment provided for payments to the Counterparty, the risk profile of the such entity, structuring, and other terms inherent under the Swap Agreement.

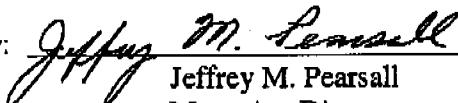
3. No portion of the amounts paid or payable by the City pursuant to the Swap Agreement constitutes compensation for services (including underwriting and similar services) unrelated to the Counterparty's performance under the Swap Agreement to the best of our knowledge.

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We understand that the representations contained herein may be relied upon by the City in making certain of the representations contained in its Tax Certificate executed by it in connection with the execution and delivery of the Certificates. and further understand that Sidley Austin LLP, as Bond Counsel, may rely upon this certificate, among other things, in providing its opinion with respect to the exclusion from gross income of the interest with respect to the Certificates pursuant to Section 103(a) of the Code.

Dated: May 30, 2008

**PFM ASSET MANAGEMENT LLC**

By:   
\_\_\_\_\_  
Jeffrey M. Pearsall  
Managing Director

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

**CERTIFICATE OF LIQUIDITY FACILITY PROVIDER**

This Certificate is furnished by Bank of America, N.A. (the “**Liquidity Facility Provider**”) to the Modesto Public Financing Authority (the “**Authority**”) and the City of Modesto (the “**City**”) with respect to the City’s \$47,625,000 principal amount of Water Refunding Revenue Certificates of Participation, 2008 Series A (the “**Certificates**”) for certain tax purposes with regard to the Internal Revenue Code of 1986, as amended (the “**Code**”). Capitalized terms used and not defined herein are as defined in the Tax Certificate to which this certification is attached (the “**Tax Certificate**”).

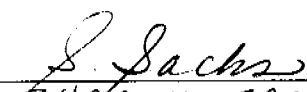
The undersigned DOES HEREBY CERTIFY as follows:

1. The Liquidity Facility issued with regard to the Certificates pursuant to the Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the “**Standby Purchase Agreement**”), by and among the Authority, the City and the Liquidity Facility Provider, imposes a secondary liability that transfers credit risk to the Liquidity Facility Provider, as more fully set forth in the Standby Purchase Agreement.
2. The Liquidity Facility Provider does not reasonably expect to make any payments pursuant to the terms of the Liquidity Facility.
3. Other than the fees paid in connection with issuance of the Liquidity Facility under the Standby Purchase Agreement, the Liquidity Facility Provider and any related parties will not use any proceeds of the Certificates.
4. The fees paid in connection with issuance of the Liquidity Facility under the Standby Purchase Agreement were determined as a result of arm’s-length negotiations.
5. The fees paid in connection with issuance of the Liquidity Facility under the Standby Purchase Agreement do not include any payment for any direct or indirect service other than the transfer of the credit risk.
6. No portion of the fees paid in connection with the Standby Purchase Agreement is refundable upon redemption of the Certificates prior to the end of the respective period to which such fees relate. Unless terminated earlier or unless extended, the obligations of the Liquidity Facility Provider under the Liquidity Facility will expire on May 30, 2011.

The undersigned recognizes that the representations set forth above will be relied upon by the City in making certain of the representations set forth in the Tax Certificate and by Sidley Austin LLP, Bond Counsel, in rendering their opinion that the interest on the Certificates is not includable in the gross income of the owners thereof for federal income tax purposes.

Dated: May 29, 2008

BANK OF AMERICA, N.A.,  
as Liquidity Facility Provider

By:   
Name: SHARON SACKS  
Title: VICE PRESIDENT

# Acknowledgement Copy – Please Return with Rec'd Date

**8038-G**  
 (Rev. November 2000)  
 Department of the Treasury  
 Internal Revenue Service

## Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)  
 ▶ See separate instructions.

OMB No. 1545-0720

**Caution: If the issue price is under \$100,000, use Form 8038-GC.**

**Part I Reporting Authority** If Amended Return, check here

<b>1</b> Issuer's name <b>Modesto Public Financing Authority</b>	<b>2</b> Issuer's employer identification number <b>94 : 6000374</b>
<b>3</b> Number and street (or P.O. box if mail is not delivered to street address) <b>PO Box 642</b>	Room/suite <b>4</b> Report number <b>3 01</b>
<b>5</b> City, town, or post office, state, and ZIP code <b>Modesto, California 95353</b>	<b>6</b> Date of issue <b>May 30, 2008</b>
<b>7</b> Name of issue <b>Water Refunding Revenue Certificates of Participation, 2008 Series A</b>	<b>8</b> CUSIP number <b>607804 AB7</b>
<b>9</b> Name and title of officer or legal representative whom the IRS may call for more information <b>Wayne Padilla, Auditor and Treasurer</b>	<b>10</b> Telephone number of officer or legal representative <b>( 209 ) 577-5371</b>

**Part II Type of Issue (check applicable box(es) and enter the issue price)** See instructions and attach schedule

<b>11</b> <input type="checkbox"/> Education	<b>11</b>
<b>12</b> <input type="checkbox"/> Health and hospital	<b>12</b>
<b>13</b> <input type="checkbox"/> Transportation	<b>13</b>
<b>14</b> <input type="checkbox"/> Public safety	<b>14</b>
<b>15</b> <input type="checkbox"/> Environment (including sewage bonds)	<b>15</b>
<b>16</b> <input type="checkbox"/> Housing	<b>16</b>
<b>17</b> <input type="checkbox"/> Utilities	<b>17</b>
<b>18</b> <input checked="" type="checkbox"/> Other. Describe ▶ <b>Refinancing and financing the costs of certain public facilities</b>	<b>18</b> <b>47,625,000.00</b>
<b>19</b> If obligations are TANS or RANS, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
<b>20</b> If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

**Part III Description of Obligations.** Complete for the entire issue for which this form is being filed.

(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
<b>21</b> <b>10/01/2036</b>	<b>\$ 47,625,000.00</b>	<b>\$ 47,625,000.00</b>	<b>20.8812</b> years	<b>VR %</b>

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

<b>22</b> Proceeds used for accrued interest	<b>22</b>
<b>23</b> Issue price of entire issue (enter amount from line 21, column (b))	<b>23</b> <b>47,625,000.00</b>
<b>24</b> Proceeds used for bond issuance costs (including underwriters' discount)	<b>24</b> <b>460,872.25</b>
<b>25</b> Proceeds used for credit enhancement	<b>25</b> <b>889,091.18</b>
<b>26</b> Proceeds allocated to reasonably required reserve or replacement fund	<b>26</b> <b>36.57</b>
<b>27</b> Proceeds used to currently refund prior issues	<b>27</b> <b>46,275,000.00</b>
<b>28</b> Proceeds used to advance refund prior issues	<b>28</b>
<b>29</b> Total (add lines 24 through 28)	<b>29</b> <b>47,625,000.00</b>
<b>30</b> Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	<b>30</b> <b>0.00</b>

**Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)**

<b>31</b> Enter the remaining weighted average maturity of the bonds to be currently refunded	<b>20.8889</b> years
<b>32</b> Enter the remaining weighted average maturity of the bonds to be advance refunded	<b>N/A</b> years
<b>33</b> Enter the last date on which the refunded bonds will be called	<b>05/30/08</b>
<b>34</b> Enter the date(s) the refunded bonds were issued	<b>11/02/06</b>

**Part VI Miscellaneous**

<b>35</b> Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	<b>35</b>
<b>36a</b> Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	<b>36a</b>
<b>b</b> Enter the final maturity date of the guaranteed investment contract	
<b>37</b> Pooled financings: <b>a</b> Proceeds of this issue that are to be used to make loans to other governmental units	<b>37a</b>
<b>b</b> If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer and the date of the issue	
<b>38</b> If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box <input type="checkbox"/>	
<b>39</b> If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>	
<b>40</b> If the issuer has identified a hedge, check box <input checked="" type="checkbox"/>	

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

**Sign Here** **Wayne Padilla, Auditor and Treasurer**  
 \_\_\_\_\_  
 Signature of issuer's authorized representative Date Type or print name and title





**Blanket Issuer Letter of Representations**  
[To be Completed by Issuer]

City of Modesto

[Name of Issuer]

March 14, 1996  
[Date]

Attention: Underwriting Department — Eligibility  
**The Depository Trust Company**  
55 Water Street; 50th Floor  
New York, NY 10041-0099

Ladies and Gentlemen:

This letter sets forth our understanding with respect to all issues (the "Securities") that Issuer shall request be made eligible for deposit by The Depository Trust Company ("DTC").

To induce DTC to accept the Securities as eligible for deposit at DTC, and to act in accordance with DTC's Rules with respect to the Securities, Issuer represents to DTC that Issuer will comply with the requirements stated in DTC's Operational Arrangements, as they may be amended from time to time.

Note:

Schedule A contains statements that DTC believes accurately describe DTC, the method of effecting book-entry transfers of securities distributed through DTC, and certain related matters.

Very truly yours,

City of Modesto

(Issuer)

By:

Kevin Ripper  
(Authorized Officer's Signature)

Kevin Ripper  
Finance Director

(Typewrite Name & Title)

1012 "I" Street, 4th Floor

(Street Address)

Modesto, CA 95350

(City)

(State)

(Zip)

(209) 577-5370

(Phone Number)

Received and Accepted:

THE DEPOSITORY TRUST COMPANY

By:

[Signature]

## SCHEDULE A

### **SAMPLE OFFERING DOCUMENT LANGUAGE DESCRIBING BOOK-ENTRY-ONLY ISSUANCE**

(Prepared by DTC—bracketed material may be applicable only to certain issues)

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Security certificate will be issued for [each issue of] the Securities, [each] in the aggregate principal amount of such issue, and will be deposited with DTC. [If, however, the aggregate principal amount of [any] issue exceeds \$200 million, one certificate will be issued with respect to each \$200 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such issue.]

2. DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission.

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Securities with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

[6. Redemption notices shall be sent to Cede & Co. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.]

7. Neither DTC nor Cede & Co. will consent or vote with respect to Securities. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Principal and interest payments on the Securities will be made to DTC. DTC's practice is to credit Direct Participants' accounts on payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Agent, or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to DTC is the responsibility of the Issuer or the Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

[9. A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to the [Tender/Remarketing] Agent, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to the [Tender/Remarketing] Agent. The requirement for physical delivery of Securities in connection with a demand for purchase or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records.]

10. DTC may discontinue providing its services as securities depository with respect to the Securities at any time by giving reasonable notice to the Issuer or the Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Security certificates are required to be printed and delivered.

11. The Issuer may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered.

12. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.

**WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A**

**Evidencing and Representing a Proportionate Interest of the Owner Hereof  
in 2008 Payments to be made by the  
City of Modesto  
to the  
Modesto Public Financing Authority**

Unless this certificate is presented by an authorized representative of The Depository Trust Company a New York corporation ("DTC"), to the Trustee or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. R-1

\$47,625,000

Interest Rate	Certificate Payment Date	Dated Date	CUSIP
Variable	October 1, 2036	May 30, 2008	607804 AB7

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: FORTY SEVEN MILLION SIX HUNDRED TWENTY FIVE THOUSAND DOLLARS

THIS IS TO CERTIFY that the registered owner set forth above of this Water Refunding Revenue Certificate of Participation, 2008 Series A (this "Certificate"), is the owner of a proportionate interest in the 2008 Payments (as that term is defined in the Trust Agreement hereinafter mentioned) made under and pursuant to that certain Master Installment Purchase Contract executed and entered into as of November 1, 1997, as heretofore supplemented and as supplemented by that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008, each by and between the City of Modesto, a charter city and municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") and the Modesto Public Financing Authority, a joint exercise of powers agency duly organized and existing under and by virtue of the laws of the State of California (the "Authority") (which Master Installment Purchase Contract as so supplemented is referred to herein as the "Contract"), all of which rights in the 2008 Payments have been assigned by the Authority to The Bank of New York Trust Company, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, or any other bank or trust company which may at any time be substituted in place of the original trustee as provided in the Trust Agreement hereinafter mentioned (the "Trustee"). Capitalized terms

used in this Certificate but not otherwise defined shall have the meanings assigned to them in the Trust Agreement.

The registered owner of this Certificate is entitled to receive, subject to the terms of the Contract and any right of prepayment prior thereto hereinafter provided for, on the Certificate Payment Date set forth above, upon surrender of this Certificate on such Certificate Payment Date or on the date of prepayment prior thereto at the corporate trust office of the Trustee, the principal sum set forth above, representing the registered owner's proportionate share of the 2008 Payments constituting principal installments with respect to Certificates becoming due and payable on such Certificate Payment Date or on the date of prepayment prior thereto, and to receive an interest installment on such principal installment on each Interest Payment Date to the respective Certificate Payment Date or date of prepayment prior thereto. While this Certificate is in a Daily Mode or a Weekly Mode, the Interest Payment Date shall be the first Business Day of the month. Payment of interest evidenced by this Certificate shall be made to the person appearing on the registration books of the Trustee as the Owner thereof as of the close of business on the applicable Record Date, such interest to be payable on each Interest Payment Date by the Trustee (i) by check mailed on such Interest Payment Date to such Owner's address as it appears on the registration books of the Trustee at the close of business on the Record Date or (ii) by wire transfer to any Owner of at least \$1,000,000 aggregate principal amount of Certificates according to the written instructions provided by such Owner on or prior to the applicable Record Date to the Trustee, which written instructions shall remain in effect until revised by such Owner by an instrument in writing delivered to the Trustee. Interest evidenced by this Certificate shall accrue from and including the Interest Accrual Date immediately preceding the date of authentication hereof, or, if such date of authentication shall be an Interest Accrual Date, from such Interest Accrual Date or, if such date of authentication shall be prior to the second Interest Accrual Date, from the Delivery Date.

This Certificate is one of the duly authorized certificates of participation aggregating \$47,625,000, which have been executed by the Trustee under and pursuant to the provisions of a Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), between the Authority and the Trustee. Copies of the Trust Agreement are on file at the corporate trust office of the Trustee in San Francisco, California and reference is hereby made to the Trust Agreement and to any and all amendments thereof and supplements thereto for a description of the covenants and pledges securing the 2008 Payments and the Certificates, for the nature, extent and manner of enforcement of such covenants and pledges, for the rights and remedies of the registered owners of the Certificates with respect thereto and for the other conditions and terms upon which the Certificates are executed and delivered thereunder.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto, but no such amendment shall (1) extend the Certificate Payment Date of this Certificate, or change the payment dates of, or reduce the rate of interest or principal or prepayment premium, if any, evidenced and represented hereby, without the express written consent of the registered owner hereof, or (2) reduce the percentage of Certificates required for the written consent to any amendment, or (3) modify any rights or obligations of the Trustee without its prior written assent thereto.

The Certificates are delivered as fully registered Certificates in Authorized Denominations. This Certificate is being issued initially in a Weekly Mode and so long as this Certificate shall remain in a Weekly Mode, this Certificate shall bear interest at a Weekly Rate determined by the provisions of the Trust Agreement.

As provided in and subject to the terms and conditions of the Trust Agreement, the Certificates may, from time to time, be changed from a Weekly Mode to a Daily Mode, a Flexible Mode, a Term Rate Mode or a Fixed Rate Mode.

Except in the event of serialization of the Certificates in accordance with the provisions of the Trust Agreement, the Certificates are subject to mandatory prepayment from Sinking Fund Payments prior to their Maturity Date, in part by lot, on October 1 of each year on and after October 1, 2008, in accordance with the schedule set forth below upon notice as provided in the Trust Agreement, from and in the amount of the principal installment of the 2008 Payments due and payable on such dates, at a prepayment price equal to the sum of the principal amount evidenced and represented thereby plus accrued and unpaid interest evidenced and represented thereby to the Prepayment Date, without a prepayment premium.

Sinking Fund Payments

Mandatory Sinking Fund Payment Date (October 1)	Sinking Fund Payment	Mandatory Sinking Fund Payment Date (October 1)	Sinking Fund Payment
2008	\$290,000	2023	\$2,300,000
2009	285,000	2024	2,410,000
2010	285,000	2025	2,515,000
2011	285,000	2026	2,595,000
2012	310,000	2027	2,705,000
2013	310,000	2028	2,810,000
2014	340,000	2029	2,945,000
2015	340,000	2030	3,055,000
2016	365,000	2031	3,185,000
2017	365,000	2032	3,295,000
2018	395,000	2033	3,430,000
2019	395,000	2034	3,570,000
2020	395,000	2035	3,705,000
2021	425,000	2036	3,870,000
2022	450,000		

Additionally, if any portion of this Certificate has been optionally prepaid as described in the succeeding paragraph, the amounts of such Sinking Fund Payments shall be reduced as directed by the Authority, or if not so directed, proportionately in increments of Authorized Denominations by the principal amount evidenced and represented by all such Certificates so optionally prepaid.

Each Certificate in a Daily Mode or a Weekly Mode shall be subject to prepayment at the option of the Authority, in whole or in part, in Authorized Denominations on any Business Day, at a prepayment price equal to 100% of the principal amount thereof, plus, accrued interest, if any, to the Prepayment Date, without premium.

Notice of prepayment of any Certificate selected for prepayment shall be given by first-class mail not less than 30 days nor more than 60 days before the prepayment date to the registered owner hereof, subject to and in accordance with provisions of the Trust Agreement with respect thereto. If notice of prepayment has been duly given and money for the payment of the prepayment price is held by the Trustee, then this Certificate shall, on the prepayment date designated in such notice, become due and payable, and from and after the date so designated interest evidenced and represented by this Certificate shall cease to accrue, and the registered owner of this Certificate shall have no rights with respect hereto except to receive payment of the prepayment price hereof.

This Certificate is transferable on the books to be kept for that purpose at the above-mentioned office of the Trustee by the registered owner hereof in person or by his duly authorized attorney upon payment of the charges provided in the Trust Agreement and upon surrender of this Certificate for cancellation accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Trustee, and thereupon a new Certificate or Certificates of the same Certificate Payment Date evidencing and representing a like aggregate principal amount in Authorized Denominations will be delivered to the transferee. This Certificate may be exchanged at the above-mentioned office of the Trustee upon payment of the charges provided in the Trust Agreement for a like aggregate principal amount of Certificates of the same Certificate Payment Date of other Authorized Denominations. The Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of the interest and principal evidenced and represented hereby and for all other purposes, whether this Certificate shall be overdue or not, and the Trustee shall not be affected by any notice or knowledge to the contrary; and payment of the interest and principal and prepayment premium, if any, evidenced and represented by this Certificate shall be made only to such registered owner, which payments shall be valid and effectual to satisfy and discharge liability on this Certificate to the extent of the sum or sums so paid.

The Certificates each evidence and represent a proportionate interest in the 2008 Payments in an amount equal to the aggregate principal amount of Certificates originally executed and delivered by the Trustee pursuant to the Trust Agreement and enjoy the benefits of a security interest in the moneys held in the funds established pursuant to the Trust Agreement, subject to the provisions of the Trust Agreement permitting the disbursement thereof for or to the purposes and on the conditions and terms set forth therein. The obligation of the City to make the 2008 Payments is a special obligation of the City payable solely from the Gross Revenues of the Water Utility System as provided in the Contract, and does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction. The City may incur other obligations payable on a parity with the 2008 Payments in accordance with the Contract.

The Trustee has no obligation or liability to the Certificate owners for the payment of the interest or principal or the prepayment premiums, if any, evidenced and represented by the

Certificates; but rather the Trustee's sole obligations are to administer, for the benefit of the City and the Certificate owners, the various funds established under the Trust Agreement.

No member, officer or employee of the Authority shall be individually or personally liable for the payment of the interest or principal or prepayment premiums, if any, evidenced and represented by the Certificates by reason of their delivery, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by applicable provisions of law or hereby.

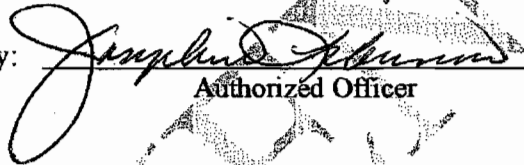
The Trust Agreement prescribes the manner in which it may be discharged and after which the Certificates shall no longer be secured by or entitled to the benefits of the Trust Agreement.

SPECIMEN

IN WITNESS WHEREOF, this Certificate has been executed by the manual signature of an authorized signatory of the Trustee as of the date below.

EXECUTION DATE: May 30, 2008

THE BANK OF NEW YORK TRUST  
COMPANY, N.A.,  
as Trustee

By:   
Authorized Officer

SPECIMEN

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Taxpayer Identification Number: \_\_\_\_\_) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

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

Note: The signature to this Assignment must correspond with the name as written on the face of the Certificate in every particular, without alteration or enlargement or any change whatever.

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

Notice: Signature must be guaranteed by an eligible guarantor institution.

SPECIMEN

## STATEMENT OF INSURANCE

Assured Guaranty Corp. (“Assured Guaranty”), a Maryland-domiciled insurance company, has delivered its financial guaranty insurance policy (the “Policy”) with respect to the scheduled payments of principal of and interest on this Certificate to The Bank of New York Trust Company, N.A., as paying agent on behalf of the holders of the Certificates (the “Paying Agent”). Such Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from Assured Guaranty or the Paying Agent. All payments required to be made under the Policy shall be made in accordance with the provisions thereof. The owner of this Certificate acknowledges and consents to the subrogation rights of Assured Guaranty as more fully set forth in the Policy.

SPECIMEN

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE OF THE TRUSTEE

The undersigned, The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), does hereby certify as follows:

1. This Certificate is being provided in connection with the execution and delivery of the City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates") executed and delivered pursuant to that certain Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Modesto Public Financing Authority (the "Authority") and the Trustee.

2. The Trustee is a national banking association duly organized and validly existing under the laws of the United States of America.

3. The Trustee has full corporate trust powers and authority to serve as Trustee under the Trust Agreement and to perform its obligations and duties under the Trust Agreement and the Trust Agreement has been executed by a duly authorized officer of the Trustee.

4. The Certificates have been duly executed and delivered by the Trustee.

5. The Trustee's action in serving as Trustee under the Trust Agreement is in full compliance with, and does not conflict with, any applicable law or governmental regulation currently in effect, and does not conflict with or violate any contract to which the Trustee is a party or any administrative or judicial decision by which the Trustee is bound.

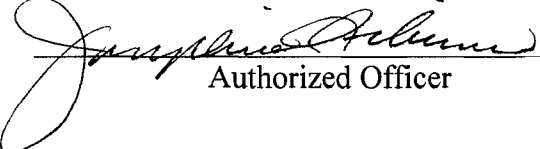
6. The Trustee acknowledges receipt of the amount of \$46,286,841.26, which the Trustee will deposit in the 2006 Debt Service Fund on May 30, 2008, to pay the interest due with respect to, together with the prepayment price of, the 2006 Certificates.

Capitalized terms used herein not otherwise defined shall have the meanings ascribed thereto in the Trust Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Dated: May 30, 2008

THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as Trustee

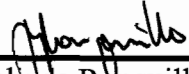
By:  \_\_\_\_\_  
Authorized Officer

**THE BANK OF NEW YORK TRUST COMPANY, N. A.**  
**SECRETARY'S CERTIFICATE**

I do hereby certify that:

- (i) I am the duly elected Assistant Secretary of The Bank of New York Trust Company, N. A., a national banking association (the "N.A.");
- (ii) Attached hereto as Exhibit "A" is a true, correct copy of Signing Authorities extracts from by-laws of the N.A. adopted by action of the Board of Directors of the N.A. and presently in effect;
- (iii) Attached hereto as Exhibit "B" is a list of the persons who, as of the date hereof, are certain duly elected officers of the N.A., which lists sets forth the title of each such officer next to his or her typed name, with which officers I am personally familiar; and

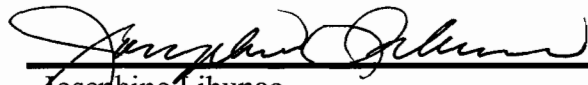
IN WITNESS WHEREOF, I have hereunto executed this Certificate as Assistant Secretary of the N.A. and affixed the seal of the N.A, this **30th day of May, 2008.**

  
\_\_\_\_\_  
Rosalinda Ronquillo, Assistant Secretary  
The Bank of New York Trust Company, N.A.

(Corporate Seal)

I hereby certify that as of the date hereof that Rosalinda Ronquillo is the duly elected Assistant Secretary of The Bank of New York Trust Company, N.A. and that the signature which appears on the foregoing pages is the signature of Rosalinda Ronquillo and that it is a signature with which I am personally familiar and do certify as to its authenticity.

Dated: May 30, 2008

  
\_\_\_\_\_  
By: Josephine Libunao  
Title: Vice President

**Extracts from By-Laws**  
**Of**  
**The Bank of New York Trust Company, N.A.**  
**As Amended Through January 20, 2005**

**ARTICLE V**  
**SIGNING AUTHORITIES**

Section 5.1 Real Property. Real property owned by the Association in its own right shall not be deeded, conveyed, mortgaged, assigned or transferred except when duly authorized by a resolution of the Board. The Board may from time-to-time authorize officers to deed, convey, mortgage, assign or transfer real property owned by the Association in its own right with such maximum values as the Board may fix in its authorizing resolution.

Section 5.2. Senior Signing Powers. Subject to the exception provided in Section 5.1, the President and any Executive Vice President is authorized to accept, endorse, execute or sign any document, instrument or paper in the name of, or on behalf of, the Association in all transactions arising out of, or in connection with, the normal course of the Association's business or in any fiduciary, representative or agency capacity and, when required, to affix the seal of the Association thereto. In such instances as in the judgment of the President, or any Executive Vice President may be proper and desirable, any one of said officers may authorize in writing from time-to-time any other officer to have the powers set forth in this section applicable only to the performance or discharge of the duties of such officer within his or her particular division or function. Any officer of the Association authorized in or pursuant to Section 5.3 to have any of the powers set forth therein, other than the officer signing pursuant to this Section 5.2, is authorized to attest to the seal of the Association on any documents requiring such seal.

Section 5.3. Limited Signing Powers. Subject to the exception provided in Section 5.1, in such instances as in the judgment of the President or any Executive Vice President, may be proper and desirable, any one of said officers may authorize in writing from time-to-time any other officer, employee or individual to have the limited signing powers or limited power to affix the seal of the Association to specified classes of documents set forth in a resolution of the Board applicable only to the performance or discharge of the duties of such officer, employee or individual within his or her division or function.

Section 5.4. Powers of Attorney. All powers of attorney on behalf of the Association shall be executed by any officer of the Association jointly with the President, any Executive Vice President, or any Managing Director, provided that the execution by such Managing Director of said Power of Attorney shall be applicable only to the performance or discharge of the duties of said officer within his or her particular division or function. Any such power of attorney may, however, be executed by any officer or officers or person or persons who may be specifically authorized to execute the same by the Board of Directors.

Section 5.5. Auditor. The Auditor or any officer designated by the Auditor is authorized to certify in the name of, or on behalf of the Association, in its own right or in a fiduciary or representative capacity, as to the accuracy and completeness of any account, schedule of assets, or other document, instrument or paper requiring such certification.

## SIGNING AUTHORITY RESOLUTION

### Pursuant to Article V, Section 5.3 of the By-Laws

RESOLVED that, pursuant to Section 5.3 of the By-Laws of the Association, authority be, and hereby is, granted to the President or any Executive Vice President, in such instances as in the judgment of any one of said officers may be proper and desirable, to authorize in writing from time-to-time any other officer, employee or individual to have the limited signing authority set forth in any one or more of the following paragraphs applicable only to the performance or discharge of the duties of such officer, employee or individual within his or her division or function:

(A) All signing authority set forth in paragraphs (B) through (I) below except Level C which must be specifically designated.

(B1) Individuals authorized to accept, endorse, execute or sign any bill receivable; certification; contract, document or other instrument evidencing, embodying a commitment with respect to, or reflecting the terms or conditions of, a loan or an extension of credit by the Association; note; and document, instrument or paper of any type, including stock and bond powers, required for purchasing, selling, transferring, exchanging or otherwise disposing of or dealing in foreign currency, derivatives or any form of securities, including options and futures thereon; in each case in transactions arising out of, or in connection with, the normal course of the Association's business.

(B2) Individuals authorized to endorse, execute or sign any certification; disclosure notice required by law; document, instrument or paper of any type required for judicial, regulatory or administrative proceedings or filings; and legal opinions.

(C1) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in excess of \$100,000,000 with single authorization for all transactions.

(C2) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in excess of \$100,000,000\*.

(C3) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in an amount up to \$100,000,000.

(C4) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check

certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in an amount up to \$10,000,000.

(C5) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in an amount up to \$5,000,000.

(C6) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in an amount up to \$1,000,000.

(C7) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in an amount up to \$250,000.

(C8) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in an amount up to \$50,000.

(C9) Authority to accept, endorse, execute or sign or effect the issuance of any cashiers, certified or other official check; draft; order for payment of money; check certification; receipt; certificate of deposit; money transfer wire; and internal transfers resulting in a change of beneficial ownership; in each case, in an amount up to \$5,000.

\*Dual authorization is required by any combination of senior officer and/or Sector Head approved designee for non-exempt transactions.  
Single authorization required for exempt transactions.

(D1) Authority to accept, endorse, execute or sign any contract obligating the Association for the payment of money or the provision of services in an amount up to \$1,000,000.

(D2) Authority to accept, endorse, execute or sign any contract obligating the Association for the payment of money or the provision of services in an amount up to \$250,000.

(D3) Authority to accept, endorse, execute or sign any contract obligating the Association for the payment of money or the provision of services in an amount up to \$50,000.

(D4) Authority to accept, endorse, execute or sign any contract obligating the Association for the payment of money or the provision of services in an amount up to \$5,000.

(E) Authority to accept, endorse, execute or sign any guarantee of signature to assignments of stocks, bonds or other instruments; certification required for transfers and deliveries of stocks, bonds or other instruments; and document,

instrument or paper of any type required in connection with any Individual Retirement Account or Keogh Plan or similar plan.

(F) Authority to accept, endorse, execute or sign any certificate of authentication as bond, unit investment trust or debenture trustee and on behalf of the Association as registrar and transfer agent.

(G) Authority to accept, endorse, execute or sign any bankers acceptance; letter of credit; and bill of lading.

(H) Authority to accept, endorse, execute or sign any document, instrument or paper of any type required in connection with the ownership, management or transfer of real or personal property held by the Association in trust or in connection with any transaction with respect to which the Association is acting in any fiduciary, representative or agency capacity, including the acceptance of such fiduciary, representative or agency account.

(I1) Authority to effect the external movement of free delivery of securities and internal transfers resulting in changes of beneficial ownership.

(I2) Authority to effect the movement of securities versus payment at market or contract value.

(J) Authority to either sign on behalf of the Association or to affix the seal of the Association to any of the following classes of documents: Trust Indentures, Escrow Agreements, Pooling and Servicing Agreements, Collateral Agency Agreements, Custody Agreements, Trustee's Deeds, Executor's Deeds, Personal Representative's Deeds, Other Real Estate Deeds for property not owned by the Association in its own right, Corporate Resolutions, Mortgage Satisfactions, Mortgage Assignments, Trust Agreements, Loan Agreements, Trust and Estate Accountings, Probate Petitions, responsive pleadings in litigated matters and Petitions in Probate Court with respect to Accountings, Contracts for providing customers with Association products or services.

(N) Individuals authorized to accept, endorse, execute or sign internal transactions only, (i.e., general ledger tickets); does not include the authority to authorize external money movements, internal money movements or internal free deliveries that result in changes of beneficial ownership.

**RESOLVED**, that any signing authority granted pursuant to this resolution may be rescinded by the President or any Executive Vice President and such signing authority shall terminate without the necessity of any further action when the person having such authority leaves the employ of the Association.

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

I, the undersigned, Barbara J. Parrish, Assistant Secretary of The Bank of New York Trust Company, N.A., a national banking association organized under the laws of the United States (the "Association") and located in the State of California, DO HEREBY CERTIFY that the following individuals are duly appointed and qualified Officers of the Association:

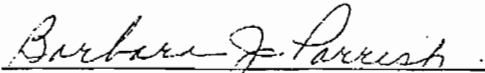
<u>Officer</u>	<u>Title</u>	<u>Signing Authority</u>
Michael K. Klugman	President	X (Senior)
Frank P. Sulzberger	Managing Director	X (Senior)
Maria E. Allison	Vice President	A, C1, J
Eladia Burgos	Vice President	A, C2, J
Milly P. Canessa	Vice President	A, C2, J
Gregory B. Chenail	Vice President	A, C2, J
Sandee Collazo	Vice President	A, C1, J
Gregory G. Cross	Vice President	A, C2, J
Robert J. Dunn	Vice President & Assistant Secretary	A, C1, J
Teresa R. Fructuoso	Vice President	A, C2, J
Evelyn T. Furukawa	Vice President & Assistant Secretary	A, C1, J
Mark A. Golder	Vice President	A, C2, J
Mark Krietemeyer	Vice President & Assistant Secretary	A, C2, J
Mary D. Lee	Vice President	A, C2, J
Philip A. Lewis	Vice President	A, C2, J
Josephine Libunao	Vice President	A, C2, J
Carol J. Nelson	Vice President & Assistant Secretary	A, C1, J
Jacqueline M. Nowak	Vice President	A, C2, J
Linda G. Ojeda	Vice President & Assistant Secretary	A, C1, J
Teresa Petta	Vice President	A, C2, J
Lisa Stroud	Vice President	A, C2, J
Deborah Young	Vice President	A, C2, J
Melonee Young	Vice President	A, C2, J
Patricia Cronin	Assistant Vice President	A, C3, J
Priscilla R. Dedoro	Assistant Vice President	A, C4, J
Kathleen L. Graves	Assistant Vice President	A, C3, J
Kathleen Gylland	Assistant Vice President	A, C3, J
Patrick Matanane	Assistant Vice President	A, C4, J
Marina Meza	Assistant Vice President	A, C3, J
Melinda Murrell	Assistant Vice President	A, C4, J
Aurora Y. Quiazon	Assistant Vice President	A, C4, J
Gloria Ramirez	Assistant Vice President	A, C3, J
Rosalinda Ronquillo	Assistant Vice President & Assistant Secretary	A, C4, J
Perry Tobe	Assistant Vice President	A, C3, J
Johanna K. Tokunaga	Assistant Vice President	A, C4, J
Raymond Torres	Assistant Vice President	A, C3, J

Fe R. Tuzon	Assistant Vice President	A, C4, J
Gonzalo Urey	Assistant Vice President	A, C4, J
Kristine Casipit	Assistant Treasurer	A, C3, J
Christopher Davy	Assistant Treasurer	A, C4, J
Christina Garchitorena	Assistant Treasurer	A, C3, J
Rena Kajita	Assistant Treasurer	A, C3, J
Tina Kiani	Assistant Treasurer	A, C3, J
Aaron Masters	Assistant Treasurer	A, C3, J
Helen B. McNulty	Assistant Treasurer	A, C4, J
Teresa Perea Moreno	Assistant Treasurer	A, C3, J
Ryan M. Pollihan	Assistant Treasurer	A, C3, J
Gene Romaine	Assistant Treasurer	A, C3, J
Fanny Chen	Assistant Treasurer	A, C3, J

I further certify that as of this date they have been authorized to sign on behalf of the Association in discharging or performing their duties in accordance with the senior and limited signing powers provided under Article V, Sections 5.2 and 5.3 of the By-Laws of the Association and the paragraphs indicated above of the signing authority resolution of the Board of Directors of the Association.

Attached hereto are true and correct copies of excerpts of the By-Laws of the Association and the signing authority resolution, which have not been amended or revised since January 20, 2005 and are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of The Bank of New York Trust Company, N.A. this 28<sup>th</sup> day of November 2007.

  
 Barbara J. Parrish, Assistant Secretary

**REMARKETING AND INTEREST SERVICES AGREEMENT**

This REMARKETING AND INTEREST SERVICES AGREEMENT, dated as of May 1, 2008 (the "Remarketing Agreement"), by and between MODESTO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California (the "Issuer"), and BANC OF AMERICA SECURITIES LLC, a Delaware limited liability company, as remarketing agent (the "Remarketing Agent");

W I T N E S S E T H:

WHEREAS, the Issuer has authorized the execution and delivery of the Water Refunding Revenue Certificates of Participation, 2008 Series A in the aggregate principal amount of \$47,625,000 (the "Certificates"), pursuant to the provisions of a Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Issuer and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), the proceeds of which will be used to (1) refinance certain additional additions, betterments, extensions and improvements to the City of Modesto's water system and (2) pay the costs of executing and delivering the Certificates and to pay the premium for a reserve fund financial guaranty insurance policy that will be credited to the debt service reserve fund for the Parity Obligations; and

WHEREAS, contemporaneously with the execution and delivery of the Certificates, the Issuer will enter into a Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Liquidity Facility") with Bank of America, N.A., as liquidity facility provider (the "Liquidity Facility Provider") for the purpose of providing funds for the payment of the purchase price of Certificates that are subject to optional or mandatory tender for purchase and not remarketed by the Remarketing Agent; and

WHEREAS, the Certificates are subject to both optional and mandatory tender for purchase by the holders thereof and to remarketing, all as provided in the Trust Agreement; and

WHEREAS, the Certificates are more fully described in the Official Statement, dated May 29, 2008, (the "Official Statement") prepared in connection with the initial purchase and sale of the Certificates; and

WHEREAS, the Issuer has requested that the Remarketing Agent act as its agent under the Trust Agreement to perform certain services as provided herein and in accordance with the Trust Agreement, including, without limitation, the remarketing of Certificates tendered for purchase and the setting of the interest rate on the Certificates, and the Remarketing Agent is willing to accept such appointment and perform such services on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for and in consideration of the covenants herein made, and upon the terms and subject to the conditions herein set forth, the parties hereto agree as follows:

Section 1. Definitions. All capitalized terms used herein and not otherwise herein defined shall have the meanings ascribed to them in the Trust Agreement and, if so not defined therein, the Official Statement.

Section 2. Appointment of Remarketing Agent. Pursuant to the Trust Agreement and this Remarketing Agreement, the Issuer hereby appoints the Remarketing Agent as its designee with respect to the Certificates, and the Remarketing Agent hereby accepts such appointment, with such duties as described herein and in the Trust Agreement.

Section 3. Remarketing of Certificates.

(a) The Remarketing Agent hereby agrees to perform the duties and obligations, and only such duties and obligations, as are expressly imposed upon it as Remarketing Agent herein and under the Trust Agreement and, except as otherwise provided in and subject to the limitations set forth in the Trust Agreement, agrees to use its reasonable best efforts to remarket the Certificates as set forth in the Trust Agreement, as agent for the Issuer and not as principal. The Remarketing Agent may at any time and from time to time seek to obtain an Opinion of Counsel satisfactory to the Remarketing Agent concerning the effect that any action or inaction contemplated by the Remarketing Agent may have on the excludability of interest income on the Certificates from gross income for federal income tax purposes under the Code. The Remarketing Agent may rely on and act in accordance with any such Opinion of Counsel.

It is understood and agreed upon by the parties hereto that the Remarketing Agent is only acting hereunder as the agent of the Issuer, and not as principal, insofar as the purchase of Certificates is concerned, and is only obligated to use its reasonable best efforts to remarket the Certificates. The Remarketing Agent is not and shall not be deemed to be acting as an underwriter for the Certificates and is in no way obligated hereunder to advance its own funds to purchase the Certificates. The foregoing shall in no way be deemed to limit the responsibilities and obligations of the Liquidity Facility Provider to advance funds under the Liquidity Facility for the purchase of Certificates that cannot be remarketed.

(b) The Remarketing Agent shall have no duty to act hereunder to the extent the Remarketing Agent is not required to perform its obligations under the Trust Agreement and shall have no duty to act under the Trust Agreement to the extent it is not required to perform its obligations hereunder. The Remarketing Agent may for its own account or as broker or agent for others deal in Certificates and may do anything any other Certificateholder may do to the same extent as if the Remarketing Agent were not serving as such. The Remarketing Agent may execute and perform any of its duties hereunder or under the Trust Agreement through agents, attorneys, employees or co remarketing agents and shall not be responsible for the misconduct or negligence of any agent, attorney, employee or co remarketing agent appointed with due care.

(c) The Remarketing Agent shall not be required to remarket any Certificates if, subsequent to their date of execution and delivery:

(i) Any representation of the Issuer made or incorporated by reference herein shall prove to have been untrue, incorrect, incomplete or misleading in any material

respect and, in the reasonable opinion of the Remarketing Agent, the marketability of the Certificates is materially and adversely affected thereby;

(ii) A default by the Issuer in the observance or performance of any covenant or agreement contained in this Remarketing Agreement shall have occurred and be continuing;

(iii) Legislation shall have been enacted by the United States Congress, or a decision by any court of the United States, including the Tax Court, shall have been rendered, or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States or any branch thereof, including the Internal Revenue Service, or any other governmental agency shall have been made or proposed, with respect to federal taxation upon interest received on obligations of the general character of the Certificates, or an Event of Taxability or a Determination of Taxability shall have occurred or other action or events shall have transpired that (A) may have the purpose or effect, directly or indirectly, of making interest with respect to the Certificates subject to inclusion in gross income for federal income tax purposes, or (B) in the reasonable opinion of the Remarketing Agent, materially and adversely affects the marketability of the Certificates;

(iv) Any legislation, ordinance, rule or regulation shall have been enacted by any governmental body, department or agency of the State or any decision by any court of competent jurisdiction within the State shall have been rendered that in the reasonable opinion of the Remarketing Agent materially and adversely affects the marketability of the Certificates;

(v) Any legislation shall have been enacted, any decision by a court of the United States shall have been rendered or any stop order, ruling, regulation or official statement by or on behalf of the Securities and Exchange Commission or other governmental agency shall have been made to the effect that the Certificates or the Trust Agreement are not exempt from registration, qualification or other requirements of the Securities Act of 1933, as amended, the Trust Indenture Act of 1939, as amended or other federal securities laws;

(vi) Any legislation shall have been enacted, any decision by a court of the United States shall have been rendered or any ruling, regulation or official statement by or on behalf of, the Comptroller of the Currency or the Federal Reserve Board or other governmental agency shall have been made that would render the Remarketing Agent's activities hereunder illegal or subject it to registration or licensing to which it is not now subject;

(vii) Any event shall have occurred or condition shall exist (including without limitation insufficient coverage under the Liquidity Facility of principal, premium, if any, or interest payable on the Certificates while in any particular Mode as may be required by the Trust Agreement, any material adverse change in the financial condition of the Liquidity Facility Provider, the expiration of the Liquidity Facility or the issuance of a Alternate Liquidity Facility) that, in the reasonable opinion of the Remarketing Agent,

materially and adversely affects the marketability of the Certificates or the liquidity or security therefor; or

(viii) Any event shall have occurred, or information shall have become known which, in the reasonable judgment of the Remarketing Agent, makes untrue in any material adverse respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; or

(ix) In the reasonable opinion of the Remarketing Agent the marketability of the Certificates has been affected because (A) additional material restrictions not in force as of their date of execution and delivery shall have been imposed upon trading in securities generally by any governmental authority or by a national securities exchange, (B) any Event of Default exists under the Trust Agreement, (C) a general banking moratorium shall have been established by federal or State authorities, or (D) war or an outbreak of hostilities or other national or international calamity or crisis shall have occurred or escalated to such a magnitude as in the reasonable opinion of the Remarketing Agent to have a materially adverse effect on the marketability of the Certificates.

Section 4. Determination of Modes. The Remarketing Agent shall determine the per annum interest rate with respect to the Certificates in accordance with the Trust Agreement and shall provide notice thereof to the parties, in the manner and at the times set forth in the Trust Agreement.

Section 5. Remarketing Agent Compensation. With respect to Certificates bearing interest at a Weekly Rate or a Flexible Rate, the Issuer agrees to pay to the Remarketing Agent continuing remarketing and tender agent fees computed as 0.06% per annum of the outstanding principal amount of the Certificates. Such fees shall be payable in arrears on each July 1 until the first July 1 succeeding payment in full of the Certificates, commencing July 1, 2008. The fee shall be deemed earned in full upon receipt by the Remarketing Agent, and no portion shall be refundable for any reason, including, without limitation, termination of this Remarketing Agreement. The Remarketing Agent reserves the right to periodically review and possibly revise the remarketing and tender agent fees payable by the Issuer hereunder based on prevailing market conditions related to the remarketing of the Certificates and other comparable securities. The Issuer also agrees to reimburse the Remarketing Agent for all reasonable out of pocket expenses incurred by it in connection herewith, including, without limitation, fees and disbursements of counsel to the Remarketing Agent.

For the services of the Remarketing Agent in connection with the remarketing of Certificates upon the adjustment of the Certificates to a Fixed Rate (the "Fixed Rate Conversion Date"), the Issuer shall pay to the Remarketing Agent a fee to be mutually agreed upon by the Issuer and the Remarketing Agent no later than the date the Issuer first notifies the Trustee and the Liquidity Facility Provider of its intention to convert the Certificates to a Fixed Rate. In the event the Issuer and the Remarketing Agent are unable to agree upon a fee, the Remarketing

Agent shall be under no obligation to use its reasonable best efforts to remarket the Certificates upon such conversion to a Fixed Rate.

Section 6. Resignation or Removal of Remarketing Agent.

(a) The Remarketing Agent may resign and be discharged of its duties and obligations hereunder and under the Trust Agreement and may be removed of all or a portion of its duties and obligations hereunder and under the Trust Agreement in the manner and at the times specified in the Trust Agreement. Upon the resignation or removal of the Remarketing Agent, the Issuer shall appoint a successor Remarketing Agent in accordance with the Trust Agreement.

(b) Notwithstanding the foregoing, with prior written notice to (but without the consent of) the Issuer, the Trustee, the Liquidity Facility Provider and the Certificateholders, the Remarketing Agent may assign or transfer any or all of its rights and obligations as remarketing agent hereunder and under the Trust Agreement to any other direct or indirect wholly owned subsidiary of BankAmerica Corporation so long as such subsidiary meets the qualifications for a Remarketing Agent set forth in the Trust Agreement and is otherwise permitted to perform such obligations under all applicable federal and state banking and securities laws, rules and regulations.

Section 7. Representations and Warranties of the Issuer. The Issuer represents and warrants to the Remarketing Agent that (i) each of the Issuer's representations and warranties contained in the Purchase Contract, dated May 29, 2008, among Banc of America Securities LLC, as underwriter, the Authority and the City of Modesto (the "Purchase Contract"), the Liquidity Facility and the Trust Agreement is true and correct as of the date hereof and is hereby made to the Remarketing Agent as if set forth herein and (ii) the Issuer is in compliance with all terms, covenants and conditions of the Purchase Contract, the Liquidity Facility and the Trust Agreement and each other agreement or document relating to the Certificates to which it is a party.

Section 8. Representations and Warranties of the Remarketing Agent. The Remarketing Agent represents and warrants to the Issuer that (i) it meets the requirements set forth in section 3.12 of the Trust Agreement and (ii) this Remarketing Agreement has been duly authorized, executed and delivered by the Remarketing Agent, and, assuming due authorization, execution and delivery by the Issuer, the Remarketing Agreement constitutes a legal, valid and binding agreement of the Remarketing Agent enforceable in accordance with its respective terms, subject to laws relating in bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought.

Section 9. Disclosure Covenants.

(a) In the event that the Remarketing Agent, in connection with the remarketing of the Certificates, is required to comply with Rule 15c2 12, as amended (the "Rule"), of the Securities and Exchange Commission, the Issuer agrees to take all actions as are necessary at that time to comply with the provisions of the Rule.

(b) The Issuer hereby approves the use and distribution of the Official Statement (including any amendments, modifications and supplements thereto) and all exhibits and appendices thereto and documents incorporated therein by reference and all other documents provided by the Issuer to the Remarketing Agent for use in the remarketing of the Certificates. The Issuer agrees to cause the Remarketing Agent to be furnished with as many copies of the Official Statement and all exhibits and appendices thereto and documents incorporated by reference therein as the Remarketing Agent may reasonably request. The Issuer further agrees to furnish the Remarketing Agent with such other information as the Issuer deems necessary or as the Remarketing Agent may reasonably request from time to time in connection with the remarketing of the Certificates in accordance with the terms hereof, including, but not limited to, upon the Remarketing Agent's request, the Issuer's (a)(i) prompt notification to the Remarketing Agent in writing of the circumstances and details of any event or condition known to the Issuer relating to or affecting the Issuer or the Certificates or any document or agreement related to the Certificates or executed in connection with the execution and delivery or original purchase and sale thereof shall occur which might affect the accuracy or completeness of any statement of a material fact contained in the Official Statement or any exhibit or appendix thereto or document incorporated by reference therein or any other materials or information furnished by the Issuer to the Remarketing Agent in connection with the remarketing or sale of any Certificate hereunder or, alternatively, (ii) written confirmation that no event or condition referenced in (a)(i) exists at the time of the Remarketing Agent's request and (b), if in the opinion of the Issuer, the Remarketing Agent or their respective counsel, any event or condition referenced in (a)(i) requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer will forthwith prepare and furnish to the Remarketing Agent (at the expense of the Issuer) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Remarketing Agent) which will amend or supplement the Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

Section 10. Additional Covenants. The Issuer will cooperate with the Remarketing Agent, and the Issuer will pay all costs and expenses incurred by the Remarketing Agent (a) in obtaining and maintaining a rating on the Certificates by one of the national rating agencies so long as such a rating is reasonably deemed necessary by the Remarketing Agent in its sole discretion in order to remarket the Certificates at the lowest interest cost to the Issuer and (b) in the qualification of the Certificates for offering and sale and the determination of the eligibility of the Certificates for investment under the laws of such jurisdictions as the Remarketing Agent shall designate and will use its reasonable best efforts to continue such qualification in effect so long as required for the remarketing of the Certificates by the Remarketing Agent, provided that neither the Issuer nor the Issuer shall be required to take any action which would subject it to general service of process or to qualify as a foreign corporation in any jurisdiction where it is not now so subject.

Section 11. Failures by Purchasers. The Remarketing Agent shall not be liable to the Issuer or the Liquidity Facility Provider on account of the failure of any person to whom the Remarketing Agent has remarketed a Certificate to pay for such Certificate or deliver any document in respect of such remarketing. If there is such a failure, the Remarketing Agent will

use its reasonable best efforts to remarket such Certificate to a substitute purchaser on the terms set forth herein and in the Trust Agreement.

Section 12. Notices.

(a) Any notice, request, direction, designation, consent, acknowledgment, certification, appointment, waiver or other communication required or permitted hereunder must be in writing except as expressly provided otherwise.

(b) Except as otherwise provided herein, any notice or other communication shall be sufficiently given and deemed given when (i) delivered by hand, (ii) sent by a nationally recognized overnight courier, (iii) mailed by first-class mail, postage prepaid, or, (iv) unless specifically prohibited under the terms of the Trust Agreement, by telecopy under the provisions of this Remarketing Agreement, addressed as follows:

If to the Trustee:

The Bank of New York Trust Company, N.A.  
555 Kearny Street, Suite 600  
San Francisco, CA 94108  
Attention: Corporate Trust  
Telephone No.: (415) 263-2418  
Facsimile No.: (415) 399-1647

If to the Remarketing Agent:

Banc of America Securities LLC  
Hearst Tower  
214 N. Tryon Street  
NC1-027-14-01  
Charlotte, North Carolina 28255-0001  
Attention: Municipal Trading and Underwriting  
Facsimile Number: (704) 388-0393

with a copy to:

Banc of America Securities LLC  
Atlanta Plaza Building  
600 Peachtree Street, N.E., 9th Floor  
Atlanta, Georgia 30308  
Attention: Corporate Tax-Exempt Finance  
Facsimile Number: (404) 607-6484

If to the Issuer:

Modesto Public Financing Authority  
c/o City of Modesto  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, CA 95353  
Attention: Auditor and Treasurer  
Telephone No.: (209) 577-5371  
Facsimile No.: (209) 571-5880

If to the Liquidity Facility Provider:

Regarding credit matters:

Bank of America, N.A.  
CA9-193-13-17  
333 South Hope Street, 13th Floor  
Los Angeles, California 90071  
Telephone No.: 213-621-7131  
Facsimile No.: 213-621-3607  
Attention: Government Credit Products

Regarding operational matters:

Bank of America, N.A.  
101 South Marengo Ave., 5th Floor  
CA9-702-05-69  
Pasadena, California 91101  
Attention: Client Credit Services  
Telephone No.: (626) 666-2321  
Facsimile No.: (626) 666-8069

If to the 2008 Certificate Insurer:

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019  
Attention: General Counsel  
Facsimile: (212) 581-3268

Assured Guaranty  
1325 Avenue of the Americas  
New York, New York 10019  
Attention: Risk Management Department - Public Finance Surveillance  
Facsimile: (212) 581-3268

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses to which or means by which, subsequent notices, certificates, requests or other communications shall be sent.

Section 13. Governing Law. **THIS REMARKETING AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.**

Section 14. Counterparts. This Remarketing Agreement may be executed in several counterparts, each of which shall be an original and all of which, when taken together, shall constitute but one and the same instrument.

Section 15. Binding Effect. This Remarketing Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, except that the Issuer may not assign any of its rights or obligations hereunder without the consent of the Remarketing Agent.

Section 16. Termination. This Remarketing Agreement shall terminate (except as to rights to any fees, expenses and costs payable and rights to indemnity or contribution, which shall survive any termination) on the earlier of (a) the removal or resignation of the Remarketing Agent pursuant to Section 6 hereof, (b) payment in full of the Certificates, or (c) the Fixed Rate Conversion Date.

Section 17. Miscellaneous.

(a) Nothing herein shall be construed to make any party hereto an employee of the other or to establish any fiduciary relationship among the Issuer and the Remarketing Agent except as expressly provided herein.

(b) Subject to prior written consent of the 2008 Certificate Insurer, this Remarketing Agreement may be amended from time to time only by an instrument in writing executed by all the parties hereto; provided however that Section 5 of this Agreement may be amended without prior written consent of the 2008 Certificate Insurer.

(c) The headings contained herein are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Remarketing Agreement.

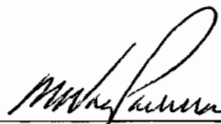
(d) If any one or more of the covenants, provisions or agreements contained in this Remarketing Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, provisions and agreements shall in no way affect the validity or effectiveness of the remainder of this Remarketing Agreement, and this Remarketing Agreement shall continue in full force to the fullest extent permitted by law.

(e) All of the representations, warranties and covenants made in this Remarketing Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any party hereto, (ii) delivery of and any payment for any Certificates hereunder, or (iii) termination or cancellation of this Remarketing Agreement..

(f) No covenant, agreement or obligation contained in this Remarketing Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee, member or agent of the Issuer in his or her individual capacity, and neither the directors of the Issuer nor any official thereof executing this Remarketing Agreement shall be liable personally on this Remarketing Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Remarketing Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed in their respective names by their duly authorized officers as of the day and year first above written.

MODESTO PUBLIC FINANCING AUTHORITY

By:  \_\_\_\_\_  
Auditor and Treasurer

BANC OF AMERICA SECURITIES LLC


By: \_\_\_\_\_  
Principal

IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed in their respective names by their duly authorized officers as of the day and year first above written.

MODESTO PUBLIC FINANCING AUTHORITY

By: \_\_\_\_\_  
Auditor and Treasurer

BANC OF AMERICA SECURITIES LLC

By:  \_\_\_\_\_  
Principal

\$47,625,000  
CITY OF MODESTO, CALIFORNIA  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE OF THE REMARKETING AGENT

The undersigned, an authorized officer of Banc of America Securities LLC (the "Remarketing Agent"), hereby certifies that to the best of his knowledge, the information included in the Official Statement pertaining to the above-captioned Certificates dated May 29, 2008 under the caption "REMARKETING" is true and correct in all material respects.

Dated: May 30, 2008

BANC OF AMERICA SECURITIES LLC

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

Its: \_\_\_\_\_



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STANDBY CERTIFICATE PURCHASE AGREEMENT

among

MODESTO PUBLIC FINANCING AUTHORITY,

CITY OF MODESTO,

and

BANK OF AMERICA, N.A.

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Dated as of May 1, 2008

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Relating to

\$47,625,000.00

City of Modesto

Water Revenue Refunding Certificates of Participation, 2008 Series A

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## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1	DEFINITIONS .....2
1.01	Definitions .....2
1.02	Incorporated of Certain Definitions by Reference ..... 11
1.03	Construction..... 11
SECTION 2	PURCHASE COMMITMENT; FEES ..... 11
2.01	Commitment to Purchase Certificates ..... 11
2.02	Bank Certificates; Rights of Bank Certificateholders ..... 11
2.03	Method of Purchasing..... 12
2.04	Reduction and Termination of Commitment..... 13
2.05	Sale of Bank Certificates. .... 13
2.06	Fees ..... 14
2.07	Compensation for Increased Costs. .... 15
2.08	Term-Out Payments; Increase in Amount of 2008 Payments. .... 17
2.09	Interest Component of Draws..... 17
2.10	Bank Records..... 17
SECTION 3	BANK RATE ..... 18
3.01	Bank Certificates to Bear Interest at Bank Rate. .... 18
3.02	Payments..... 19
SECTION 4	REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY AND THE CITY ..... 19
4.01	Representations of the Authority ..... 19
4.02	Representations of the City..... 22
SECTION 5	COVENANTS OF THE AUTHORITY AND THE CITY ..... 24
5.01	Covenants of the Authority..... 24
5.02	Covenants of the City ..... 27
SECTION 6	CONDITIONS PRECEDENT..... 30
6.01	Conditions to Bank’s Entering Into Agreement ..... 30
6.02	Obligation to Purchase..... 32
SECTION 7	EVENTS OF DEFAULT; TERMINATION EVENTS AND REMEDIES ..... 32
7.01	Events of Default ..... 32
7.02	Remedies. .... 34
SECTION 8	MISCELLANEOUS ..... 35
8.01	Other Matters..... 35
8.02	Governing Law ..... 36
8.03	Severability ..... 37

Table of Contents (cont.)

	<u>Page</u>
8.04	Counterparts.....37
8.05	Expenses .....37
8.06	Indemnification.....37
8.07	Term of the Agreement.....38
8.08	Enforcement by Trustee; Third Party Beneficiaries .....38
8.09	Notice.....38
8.10	Obligations Absolute .....39
8.11	Holidays.....40
8.12	Survival.....40
8.13	Liability of the Bank.....40
8.14	Bank Information.....41
8.15	Extension of Bank Purchase Period.....41

Table of Contents (cont.)

Page

Exhibits

Exhibit A.....	Form of Notice of Bank Purchase (Liquidity Purchase)
Exhibit B.....	Form of Notice of Bank Purchase (Mandatory Purchase)
Exhibit C.....	Form of Request for Extension
Exhibit D.....	Form of Custodian Agreement

This STANDBY CERTIFICATE PURCHASE AGREEMENT dated as of May 1, 2008 among the MODESTO PUBLIC FINANCING AUTHORITY, a California joint exercise of powers entity (the "Authority"), the CITY OF MODESTO, a California municipal corporation and charter city (the "City"), and BANK OF AMERICA, N.A., a national banking association (including its successors, the "Bank").

W I T N E S S E T H:

WHEREAS, the Authority and the City have heretofore entered into a Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), as supplemented by the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Supplemental Contract"), under and pursuant to which the Authority agreed to assist the City by refinancing certain additions, betterments, extensions and improvements to the water utility system of the City (the "1997 Project" as defined therein); and

WHEREAS, the City is obligated to make certain payments to the Authority under the 1997 Supplemental Contract (the "1997 Payments"), and all rights to receive such payments have been assigned by the Authority to State Street Bank and Trust Company of California, N.A., as succeeded by The Bank of New York Trust Company, N.A., as successor trustee for the owners of the Refunding Revenue Certificates of Participation (1997 Water Utility Refinancing Project); and

WHEREAS, the Authority and the City have heretofore entered into the 2006 Supplemental Installment Purchase Contract, dated as of November 1, 2006 (the "2006 Supplemental Contract", under and pursuant to which the Authority agreed to assist the City by financing certain additions, betterments, extensions and improvements to the water utility system of the City (the "2006 Project" as defined therein); and

WHEREAS, the City is obligated to make certain payments to the Authority under the 2006 Supplemental Contract (the "2006 Payments"), and all rights to receive such payments have been assigned by the Authority to The Bank of New York Trust Company, N.A., as successor trustee for the owners of the Water Revenue Certificates of Participation 2006 Series A; and

WHEREAS, the Authority and the City, concurrently with the execution and delivery of the Trust Agreement (as defined below), are executing and delivering a 2008 Supplemental Installment Purchase Contract dated as of May 1, 2008 (the "2008 Supplemental Contract" and collectively with the Master Contract, the 1997 Supplemental Contract, and the 2006 Supplemental Contract, the "Contract"), under and pursuant to which the Authority has agreed to assist the City in refinancing the 2006 Project as described in the 2008 Supplemental Contract (the "2008 Project" as defined therein); and

WHEREAS, the City is obligated to make certain payments to the Authority under the 2008 Supplemental Contract (the "2008 Payments"), and all rights to receive such payments are being assigned by the Authority to The Bank of New York Trust Company, N.A., as trustee (the

“Trustee”) for the owners of the Water Revenue Refunding Certificates of Participation, 2008 Series A (the “2008 Certificates”) pursuant to the Trust Agreement dated as of May 1, 2008 (the “Trust Agreement”) between the Authority and the Trustee; and

WHEREAS, the Authority and the City, concurrently with the execution and delivery of the Trust Agreement, are executing and delivering a 2008 Supplemental Installment Purchase Contract dated as of May 1, 2008 (the “2008 Supplemental Contract” and collectively with the Master Contract, the 1997 Supplemental Contract, and the 2006 Supplemental Contract, the “Contract”), under and pursuant to which the Authority has agreed to assist the City in refinancing the 2006 Project as described in the 2008 Supplemental Contract (the “2008 Project” as defined therein); and

WHEREAS, the payment of the principal of and interest on the Certificates (including Bank Certificates, as hereinafter defined) is to be insured by a financial guaranty insurance policy (together with any and all riders and endorsements thereto, the “Bond Insurance Policy”) to be issued by Assured Guaranty Corp., a Maryland-domiciled insurance company (the “Bond Insurer”), in favor of the holders of the Certificates (including the Bank); and

WHEREAS, the Certificates are subject to purchase from time to time at the option of the owner thereof and are required to be purchased in certain events; and in order to further assure the availability of funds for the payment of the purchase price therefor, the Authority has provided for the remarketing of such Certificates and, to the extent such remarketing may not be successful, for the purchase of such Certificates by the provider of a liquidity facility, such provider initially being the Bank under the terms hereof.

NOW, THEREFORE, in consideration of the respective agreements contained herein, the parties hereto agree as follows:

## SECTION 1 DEFINITIONS

1.01 Definitions. The following terms have the meanings indicated below or in the referenced Section of this Agreement, unless the context shall clearly indicate otherwise:

“Agreement” means this Standby Certificate Purchase Agreement, as amended, modified and supplemented from time to time.

“Alternate Credit Facility” has the meaning assigned to that term in the Trust Agreement.

“Alternate Liquidity Facility” has the meaning assigned to that term in the Trust Agreement.

“Authority” has the meaning assigned to that term in the introductory paragraph.

“Authorized Representative” has the meaning assigned to that term in the Trust Agreement.

“Available Commitment” means on any day the sum of the Available Principal Commitment and the Available Interest Commitment on such day.

“Available Interest Commitment” means for each Weekly Rate Period \$548,014.00, representing an amount equal to 35 days of interest on the Available Principal Commitment calculated at the assumed rate of interest of 12% per annum (on the basis of actual days elapsed and a 365-day year) and rounded up to the nearest dollar. The Available Interest Commitment shall increase or decrease concurrently and proportionately with each increase or decrease in the Available Principal Commitment. Notwithstanding the foregoing provisions of this defined term, in no event shall the Available Interest Commitment exceed \$548,014.00.

“Available Principal Commitment” means initially \$47,625,00.00 and thereafter means such amount adjusted from time to time as follows: (a) downward by the amount of any reduction or termination of the Available Principal Commitment pursuant to Section 2.04 hereof, (b) downward by the principal amount of any Certificates purchased by the Bank pursuant to Section 2.03 hereof; and (c) upward by the principal amount of any Certificates theretofore purchased by the Bank pursuant to Section 2.03 hereof, which are remarketed pursuant to Section 2.05(b) hereof or are prepaid pursuant to the terms hereof and for which the Bank has received immediately available funds equal to the principal amount thereof and accrued interest thereon, or which cease to bear interest at the Bank Rate pursuant to Section 2.05(c) hereof; provided that after giving effect to such adjustment the Available Principal Commitment shall never exceed \$47,625,000. Any adjustment pursuant to clause (a), (b) or (c) in this defined term shall occur simultaneously with the event requiring such adjustment.

“Bank” has the meaning assigned to that term in the introductory paragraph.

“Bank Assignees” has the meaning assigned to that term in Section 8.01(c) hereof.

“Bank Certificate” means each Certificate (whether or not such Certificate is at the time of determination owned by the Bank) purchased with funds provided by the Bank hereunder, until such Certificate is remarketed in accordance with Section 2.05(b) hereof, prepaid in accordance with the terms hereof or ceases to bear interest at the Bank Rate pursuant to Section 2.05(c) hereof.

“Bank Certificateholder” means (a) the Bank in its capacity as owner of Bank Certificates purchased pursuant to this Agreement and (b) any Bank Assignee to whom the Bank has sold Bank Certificates in accordance with the terms of this Agreement.

“Bank Purchase Period” means the period from the Effective Date to and including the earliest of (a) the Stated Expiration Date then in effect; (b) the first Business Day following the date on which the Rate Period for all of the Certificates ceases to be a Weekly Rate Period; (c) the close of business of the Bank on the Business

Day following the Substitution Date; (d) the Purchase Termination Date (except to the extent that purchases are permitted on the Termination Date pursuant to Section 7.02(b)); (e) the date on which no Certificates are Outstanding; and (f) the date on which the Available Commitment is terminated in whole pursuant to Section 2.04(b).

“Bank Rate” means on any day, (a) if such day occurs during the Bank Purchase Period but prior to the forty-sixth day following the date on which such Bank Certificate was purchased by the Bank hereunder, a rate per annum equal to the Base Rate; (b) if such day occurs during the Bank Purchase Period but after the forty-fifth day following the date on which such Bank Certificate was purchased by the Bank hereunder, a rate per annum equal to the Base Rate plus 1.00% and (c) if such day occurs during the Bank Purchase Period but after the ninetieth day following the date on which such Bank Certificate was purchased by the Bank hereunder or if such day occurs after the Bank Purchase Period has terminated or expired, a rate per annum equal to the Bank Rate plus 3.00%.

“Base Rate” means, for any day, the higher of (a) the Prime Rate if the Bank establishes a Prime Rate or otherwise the Bank's "base rate" for such date, or (b) the Fed Funds Rate plus two percent (2.0%) per annum.

“Bond Insurance Policy” has the meaning assigned to that term in the recitals to this Agreement.

“Bond Insurer” has the meaning assigned to that term in the recitals to this Agreement.

“Bond Insurer Event of Insolvency” means the occurrence and continuance of one or more of the following events: (a) the issuance, under the laws of the state of incorporation or formation of the Bond Insurer, of an order of relief, rehabilitation, reorganization, conservation, liquidation or dissolution of the Bond Insurer; (b) the commencement by the Bond Insurer of a voluntary case or other proceeding seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution with respect to the Bond Insurer or its debts or claims under any bankruptcy, insolvency or other similar law now or hereafter in effect including, without limitation, the appointment of a trustee, receiver, liquidator, custodian, assignee, sequestrator or other similar official for the Bond Insurer or any substantial part of its property; (c) the commencement of an involuntary case or other proceeding seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution with respect to the Bond Insurer or its debts or claims under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, assignee, sequestrator or other similar official for the Bond Insurer or any substantial part of its property, and such involuntary case or appointment remains undismissed and unstayed for a period of 90 consecutive days; (d) the consent of the Bond Insurer to any relief referred to in the preceding clause (c) in an involuntary case or other proceeding commenced against it; (e) the making by the Bond Insurer of a general assignment for the benefit of creditors; (f) the failure of the Bond Insurer to generally pay its debts as they become due or claims under any of its insurance policies as such claims

are made; or (g) the board of directors or any senior officer of the Bond Insurer shall take any action to authorize any of the foregoing.

“Business Day” means a day that is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California or in any state in which the office of the Remarketing Agent or the Trustee is located or at which Notice of Bank Purchases are to be presented and payments made by the Bank pursuant thereto are authorized or required to remain closed or a day on which the New York Stock Exchange is closed; provided, however, that the Bank shall not be deemed to have notice of any day that is a legal holiday on which banking institutions in the state in which the office of the Remarketing Agent or the Trustee is located are authorized or required to remain closed unless the Bank has received written notice thereof from the Authority, the City, the Remarketing Agent and/or the Trustee.

“Certificate Purchase Contract” means the Purchase Contract, dated May 29, 2008, 2008, by and between the Authority and Banc of America Securities LLC, as the underwriter of the Certificates.

“Certificates” has the meaning assigned to that term in the recitals to this Agreement and shall include, unless the context otherwise requires, all Bank Certificates.

“City” has the meaning assigned to that term in the introductory paragraph.

“Custodian Agreement” means the Custodian Agreement to be entered into among the Bank, the City and the Trustee on or prior to the Effective Date, the form of which is attached hereto as Exhibit D.

“Debt” of any Person means at any date, without duplication, (a) all obligations of such person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business; (d) all obligations of such Person as lessee under capital leases; (e) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person; and (f) all obligations, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other person including, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement condition or otherwise) or (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that with respect to the City, Debt shall exclude conduit, enterprise and other Debt that have no claim on the General Fund of the City other than obligations payable from the Water Enterprise Fund.

“Defaulted Interest” means accrued interest payable on a Certificate, which was not paid when due under the terms of the Trust Agreement.

“Default Rate” means the Base Rate plus 4.00% per annum.

“Differential Interest Amount” means, with respect to any Bank Certificate, the excess of (a) the interest which has accrued and could actually be paid on such Bank Certificate at the Bank Rate, as determined in accordance with Section 3.01 hereof, up to but excluding the Business Day on which such Bank Certificate is purchased from a Bank Certificateholder pursuant to Section 2.05(b) hereof, less (b) the interest accrued on such Certificate received by the Bank Certificateholder thereof as part of the Sale Price.

“Dollars” and “\$” means the lawful currency of the United States of America.

“Effective Date” means the first date on which all of the conditions set forth in Section 6.01 have been satisfied or waived by the Bank.

“Eligible Certificate” means any Certificate bearing interest at the Weekly Rate other than Bank Certificates and Certificates owned by, for the account of, or on behalf of, the Authority or the City.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“Event of Default” has the meaning assigned to that term in Section 7.01 hereof.

“Excess Interest Amount” has the meaning assigned to that term in Section 3.01(c) hereof.

“Extended Bank Purchase Period” has the meaning assigned to that term in Section 8.15 hereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate

(rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as determined by the Bank.

“Fitch” means Fitch Ratings and its successors.

“Indemnitee” has the meaning assigned to that term in Section 8.06(a) hereof.

“Involuntary Insolvency Event” has the meaning assigned to that term in Section 7.02(c) hereof.

“Interest Component” has the meaning assigned to that term in Section 2.01 hereof.

“Interest Payment Date” has the meaning assigned to that term in the Trust Agreement.

“Interest Payment Period” has the meaning assigned to that term in the Trust Agreement.

“Liquidity Payment Date” has the meaning assigned to that term in Section 3.01(a) hereof.

“Mandatory Purchase” means a mandatory purchase of all or a portion of the Certificates on any date on which the Certificates are subject to mandatory tender for purchase as described in subsections (iii), (iv), (v), (vi) and (vii) of the definition of “Mandatory Purchase Date” in the Trust Agreement, in each case, at a price equal to the principal amount thereof plus accrued interest thereon if the date of Mandatory Purchase is other than an Interest Payment Date for the Certificates that are subject to mandatory purchase.

“Maximum Interest Rate” means, with respect to Bank Certificates and all other payment obligations under this Agreement, the lower of (i) eighteen percent (18%) per annum and (ii) the highest rate permitted by law.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Notice of Bank Purchase” means (a) in the case of a purchase of Eligible Certificates by the Bank as a result of an Optional Tender, a notice in the form of Exhibit A attached hereto and incorporated herein by this reference or (b) in the case of a purchase of Eligible Certificates by the Bank as a result of a Mandatory Purchase, a notice in the form of Exhibit B attached hereto and incorporated herein by this reference, in each case with blanks appropriately completed and executed by the Trustee.

“Notice of Termination” has the meaning assigned to that term in Section 7.02(b) hereof.

“Official Statement” means the Official Statement of the Authority, dated May 29, 2008, with respect to the Certificates, and any supplement and/or amendment thereto used with respect to the Certificates.

“Optional Tender” means the tender of Certificates by the registered owner thereof in accordance with the applicable provisions of Section 3.01 of the Trust Agreement.

“Other Event of Insolvency” means the occurrence and continuance of one or more of the following events: (a) the Authority or the City shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code (the “Bankruptcy Code”) or any other federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for itself or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take action for the purpose of effecting any of the foregoing; or (b) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Authority, the City or of a substantial part of the property of the Authority or the City, under the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency or similar law or (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Authority, the City or for a substantial part of the property of the Authority or the City, and such proceeding or petition shall continue undismissed and unstayed for 60 days; or an order or decree for relief shall be entered against the Authority or the City under the Bankruptcy Code as now or hereafter in effect.

“Outstanding” has the meaning assigned to that term in the Trust Agreement.

“Participants” has the meaning assigned to that term in Section 8.01(c) hereof.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or a political subdivision or an agency or instrumentality thereof.

“Potential Event of Default” means the occurrence of any event that, with the passage of time, the giving of notice, or both, would become an Event of Default.

“Prime Rate” means the rate of interest publicly announced from time to time by the Bank as its Prime Rate. The Prime Rate is set by the Bank based on various factors, including the Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans. The Bank may price loans to its customers at, above, or below the Prime Rate. Any change in the Prime Rate

shall take effect at the opening of business on the day specified in the public announcement of a change in the Bank's Prime Rate.

“Purchase Date” means the date on which the Bank purchases Eligible Certificates following its receipt of a Notice of Bank Purchase.

“Purchase Price” means, with respect to any Eligible Certificate or portion thereof on a Purchase Date therefor, the unpaid principal amount thereof plus accrued but unpaid interest thereon, other than Defaulted Interest, to but excluding a Purchase Date, without premium; provided that if a Purchase Date is an Interest Payment Date, interest payable on such Bond on such Interest Payment Date shall not be taken into account in the computation of the Purchase Price.

“Purchase Termination Date” means the date on which the Bank is no longer required to purchase Eligible Certificates pursuant to Section 7.02(a), (b) or (c) hereof.

“Rate Period” has the meaning assigned to that term in the Trust Agreement.

“Rating Agencies” means Fitch, Moody's and S&P.

“Related Documents” means the Certificates, the Trust Agreement, the Contract, the Custodian Agreement, the Official Statement, the Bond Insurance Policy and the Remarketing Agreement.

“Remarketing Agent” has the meaning assigned to that term in the Trust Agreement.

“Remarketing Agreement” has the meaning assigned to that term in the Trust Agreement.

“Request for Extension” has the meaning assigned to that term in Section 8.15 hereof.

“Rescission Notice” has the meaning assigned to that term in Section 7.02(c) hereof.

“Revenues” has the meaning assigned to that term in the Trust Agreement.

“Sale Price” has the meaning assigned to that term in Section 2.05(b) hereof.

“S&P” means Standard & Poor's Ratings Services, a division of The McGraw Hill Companies Inc., and any successor to such division.

“State” means the State of California.

“Stated Expiration Date” means the later of (a) May 29, 2011 and (b) the last day of the Extended Bank Purchase Period as extended from time to time pursuant to Section

8.15 hereof or, if any such day is not a Business Day, the next preceding Business Day to such day.

“Substitution Date” means the date of the acceptance by the Trustee of an Alternate Liquidity Facility.

“Termination Date” has the meaning assigned to that term in Section 7.02(b) hereof.

“Termination Event” has the meaning assigned to that term in Section 7.02(a) hereof.

“Term-Out Period” means the period commencing on the ninety-first day following the date Bank Certificates are purchased and ending on the earliest of (a) the fifth anniversary of such purchase date, (b) the 5<sup>th</sup> anniversary of the Purchase Termination Date, (c) the Substitution Date and (d) the date that the Available Commitment is permanently reduced to zero.

“Term-Out Payments” means for each year during the Term-Out Period an amount equal to the sum of (i) (a) the quotient obtained by dividing the aggregate principal amount of all Bank Certificates that are Outstanding immediately following the termination of the Bank Purchase Period by five (5) and (b) the interest to accrue on the amount determined in accordance with clause (a) above during such year, assuming a per annum interest rate equal to the Maximum Interest Rate (based on a 365-day year and actual days elapsed), plus (ii) the principal and interest due with respect to all Certificates that are not Bank Certificates.

“Trust Agreement” has the meaning assigned to that term in the recitals to this Agreement.

“Trustee” means the Person appointed from time to time to serve as trustee under the Trust Agreement.

“Trust Estate” means all, any amounts on deposit in the Parity Reserve Fund (as such term is defined in the Master Contract), any amounts on deposit in the 2008 Debt Service Fund, and any other amounts (including proceeds of the sale of the Certificates) held by the Trustee in any fund or account established under the Trust Agreement (other than amounts on deposit or the Purchase Fund (as such term is defined in the Trust Agreement), subject to the terms of the Master Contract and the Trust Agreement permitting the application of such amounts on the terms provided in such agreements.

“2008 Payments” has the meaning assigned to that term in the Whereas clauses above.

“2008 Project” has the meaning assigned to that term in the Whereas clauses above.

“Weekly Rate” has the meaning assigned to that term in the Trust Agreement.

“Weekly Rate Period” has the meaning assigned to that term in the Trust Agreement.

“Written” or “in writing” means any form of written communication or a communication by means of e-mail or facsimile.

1.02 Incorporated of Certain Definitions by Reference. Each capitalized term used herein and not defined herein has the meaning provided therefor in the Trust Agreement.

1.03 Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) all references herein to Sections and Exhibits shall be construed to refer to Sections of, and Exhibits to, this Agreement.

## SECTION 2 PURCHASE COMMITMENT; FEES

2.01 Commitment to Purchase Certificates. The Bank agrees, on the terms and conditions contained in this Agreement, at the request of the Trustee, to purchase from time to time during the Bank Purchase Period at the Purchase Price, with its own immediately available funds, Eligible Certificates tendered or deemed tendered for purchase pursuant to an Optional Tender or a Mandatory Tender and which, in either case, the Remarketing Agent has been unable to remarket. The aggregate principal amount of any Certificate purchased by the Bank on a Purchase Date shall be an authorized denomination applicable to Certificates bearing interest at the Weekly Rate, and in any case the aggregate principal amount of all Certificates purchased on the applicable Purchase Date shall not exceed the Available Principal Commitment on such date (calculated immediately before giving effect to any such purchase of Certificates by the Bank on such date). The aggregate amount of the Purchase Price comprising interest on the Certificates (the “Interest Component”) purchased on a Purchase Date shall not exceed the lesser of (a) the Available Interest Commitment on such date and (b) the actual aggregate amount of interest accrued and unpaid on each such Certificate, other than Defaulted Interest, to but excluding a Purchase Date; provided that if a Purchase Date is an Interest Payment Date the amount described in this clause (b) shall be reduced by the amount of interest payable on each such Certificate on such Interest Payment Date.

2.02 Bank Certificates; Rights of Bank Certificateholders. Any Certificates purchased by the Bank pursuant to Section 2.01 shall thereupon constitute Bank Certificates and shall, from the date of such purchase and while they are Bank Certificates, bear interest at the Bank Rate and

have other characteristics of Bank Certificates as set forth herein and in the Trust Agreement. Upon purchasing Bank Certificates, Bank Certificateholders shall be entitled to and, where necessary, shall be deemed assigned all rights and privileges accorded Certificateholders, except to the extent such rights and privileges conflict with this Agreement, in which case the terms of this Agreement shall prevail and govern. Upon purchasing Bank Certificates, Bank Certificateholders shall be recognized by the Authority, the Bond Insurer, the City and the Trustee as the true and lawful owners of such Bank Certificates, free from any claims, liens, security interests, equitable interests and other interests of the Authority and/or the City, except as such interests might exist under the terms of the Bank Certificates with respect to all owners of the Certificates.

2.03 Method of Purchasing. If the Trustee determines that the Bank is required to purchase Eligible Certificates during the Bank Purchase Period as a result of an Optional Tender, the Trustee shall deliver to the Bank a Notice of Bank Purchase in the form of Exhibit A. If the Trustee determines that the Bank is required to purchase Eligible Certificates during the Bank Purchase Period as a result of a Mandatory Purchase, the Trustee shall deliver to the Bank a Notice of Bank Purchase in the form of Exhibit B. Each Notice of Bank Purchase shall be executed by the Trustee and delivered to the Bank by facsimile (confirmed by telephone). If the Bank receives a Notice of Bank Purchase from the Trustee at or before 9:30 a.m. (California time) on a Business Day during the Bank Purchase Period, the Bank will, unless it determines that any applicable condition specified in Section 6.02 below is not satisfied, transfer not later than 11:30 a.m. (California time) on the same Business Day to the Trustee, in funds of the Bank to be available as specified in such Notice of Bank Purchase, an amount equal to the aggregate Purchase Price of such Certificates. If the Bank receives a Notice of Bank Purchase from the Trustee after 9:30 a.m. (California time) but before 4:00 p.m. (California time) on a Business Day during the Bank Purchase Period, the Bank will, unless it determines that any applicable condition specified in Section 6.02 below is not satisfied, transfer not later than 11:30 a.m. (California time) on the next Business Day to the Trustee, in funds of the Bank to be available as specified in such Notice of Bank Purchase, an amount equal to the aggregate Purchase Price of such Certificates. Without limiting the generality of Section 8.13 hereof, the Bank shall not have any responsibility for, or incur any liability in respect of any act, or any failure to act, by the Trustee which results in the failure of the Trustee (a) to credit the appropriate account with funds made available by the Bank pursuant to this Section or (b) to effect the purchase for the account of the Bank of Certificates with such funds pursuant to this Section or (c) deliver a completed Notice of Bank Purchase to the Bank on or prior to the expiration of the Bank Purchase Period.

The Certificates purchased with amounts made available hereunder shall be registered in the name of the Bank or its nominee and shall be held as Bank Certificates in custody by the Trustee in its capacity as custodian for the benefit of the Bank or such nominee as provided in the Custodian Agreement. Immediately following the purchase of Certificates by the Bank, the Trustee shall take such steps as necessary to assign a separate CUSIP number to such Bank Certificates and to make such Bank Certificates eligible for book-entry with DTC. Upon the sale of Bank Certificates or payment in full of such Certificates pursuant to the terms of this Agreement, the Bank Certificates shall be released by the Bank and the Trustee shall take such actions as may be necessary to return such Certificates to the CUSIP number assigned to the Certificates other than Bank Certificates.

Amounts made available hereunder on a Purchase Date that are not so used to purchase Certificates or which are not required by the Trustee to purchase undelivered Certificates will be returned to the Bank no later than 1:00 p.m. California time on the same Purchase Date. In the event the Trustee fails to return such funds by 1:00 p.m. California time on such date, the City shall pay the Bank as Additional Payments interest on such unused amount for each day until such funds are returned at a rate equal to the Bank's cost of funds for one night overdrafts in New York, New York. For purposes of computing such interest, funds returned after 1:00 p.m. California time on a Business Day shall be deemed to have been returned on the following Business Day.

#### 2.04 Reduction and Termination of Commitment.

(a) Mandatory Reduction and Termination of Commitment. Upon any prepayment, repayment or other payment pursuant to the Trust Agreement of all or any portion of the principal amount of the Certificates so that such Certificates shall cease to be Outstanding under the Trust Agreement or the conversion of a portion of the Certificates to a Rate Period other than a Weekly Rate Period, the aggregate Available Principal Commitment of the Bank shall automatically be reduced by the principal amount of such Certificates so prepaid, repaid or otherwise deemed paid or converted, and the Available Interest Commitment shall also be simultaneously reduced as provided in the definition thereof in Section 1.01 hereof. The Trustee shall notify the Bank within two Business Days of such prepayment, repayment or other payment or conversion. The Available Commitment shall automatically terminate on the last day of the Bank Purchase Period (except to the extent that purchases are permitted or required on the Termination Date pursuant to Section 7.02(b) hereof).

(b) Voluntary Termination of Commitment. Subject to Section 5.01(n), the City may substitute this Agreement with an Alternate Liquidity Facility or an Alternate Credit Facility and thereby terminate the Available Commitment in whole (but not in part) upon sixty (60) days written notice to the Bank at any time. In the event the City so terminates this Agreement prior to the second anniversary of the execution and delivery of this Agreement, the District shall pay the Bank a fee (the "Termination Fee") in an amount equal to the Commitment Fee payable pursuant to Section 2.06(a) that would have accrued had this Agreement been in effect for two full years (less any amounts then paid pursuant to Section 2.06(a) hereof). Notwithstanding the foregoing, no Termination Fee shall be payable in the event this Reimbursement Agreement is terminated due to (i) a downgrading of the Bank's long-term ratings to below "**BBB-**", "**Baa3**" and "**BBB-**", or short-term ratings to below "**A-1**" or "**P-1**" or "**F-1**" by Moody's, S&P or Fitch or (ii) the imposition by the Bank of any increased costs pursuant to Section 2.07 hereof.

#### 2.05 Sale of Bank Certificates.

(a) Right to Sell Bank Certificates. The Bank shall not have the right to sell Bank Certificates to any Person other than: (i) Bank Assignees, provided that each Bank Assignee acknowledges that: (A) so long as such Bank Certificates remain as such, it has no right to tender such Bank Certificates for purchase and (B) the ratings otherwise applicable to the Certificates will not apply to the Bank Certificates purchased by such purchaser, (ii) the Remarketing Agent

(or a purchaser identified by the Remarketing Agent), (iii) the Authority, (iv) the City or (v) an Alternate Liquidity Facility provider. The City and the Authority agree that any Bank Certificates sold by the Bank pursuant to this Section 2.05(a) shall, subject to Section 2.05(b), remain Bank Certificates in the hands of the purchaser thereof. Each Person that purchases Bank Certificates from the Bank pursuant to this Section 2.05(a) shall by his or its acceptance of such Bank Certificates be deemed to have agreed to sell such Bank Certificates only to (1) the Bank, (2) the Remarketing Agent (or a purchaser identified by the Remarketing Agent), (3) the Authority, (4) the City or (5) an Alternate Liquidity Facility provider.

(b) Sales by Remarketing Agent. Each Bank Certificateholder by its acceptance of Bank Certificates hereby authorizes the Remarketing Agent to sell Bank Certificates on behalf of such Bank Certificateholder pursuant to the Trust Agreement at a price equal to the principal amount thereof (plus unpaid accrued interest thereon to but excluding the date such Bank Certificates are to be sold pursuant to this Section 2.05(b) at the interest rate to be borne by the Certificates after such sale or, if less, the Bank Rate) (the “Sale Price”); provided that no Bank Certificateholder shall have any obligation to deliver Bank Certificates as directed by the Remarketing Agent or sell such Bank Certificates unless (i) the City has paid or has duly provided for the payment of the Differential Interest Amount to the Bank for the account of such Bank Certificateholder and (ii) such Bank Certificateholder has received one Business Day’s prior written notice of such sale. Any sale of a Bank Certificate pursuant to this Section 2.05(b) shall be without recourse to the seller and without representation or warranty of any kind. Each Bank Certificateholder by its acceptance of Bank Certificates agrees to deliver (but only upon receipt by the Bank of Dollars in the amount of the Sale Price and the Differential Interest Amount) to the Trustee each certificate representing a Bank Certificate sold by it pursuant to this Section 2.05(b), including without limitation certificates representing Bank Certificates which are deemed to have been delivered in accordance with the provisions of the Trust Agreement. Notwithstanding the foregoing or anything else in this Agreement, each Bank Certificateholder shall have the right, by notice to the Remarketing Agent, to elect not to sell Bank Certificates or any portion thereof.

(c) Right to Retain Certificates. After any sale of Bank Certificates by the Remarketing Agent pursuant to Section 2.05(b) and payment (or, in the case of the Differential Interest Amount accrued on such Bank Certificates, provision for payment thereof on the date of such sale in accordance with the Trust Agreement) to the Bank of the Sale Price, or any election by a Bank Certificateholder not to sell such Bank Certificates or any portion thereof through the Remarketing Agent pursuant to Section 2.05(b) hereof, such Bank Certificates so sold or as to which such election is made, shall from such sale date or upon such election cease to bear interest at the Bank Rate and shall bear interest at a rate calculated in accordance with the provisions applicable to such Certificates immediately prior to the Bank’s purchase thereof.

## 2.06 Fees.

(a) Commitment Fee.

(i) The City hereby agrees to pay or cause to be paid (as Additional Payments) to the Bank a commitment fee quarterly in arrears equal to .40% of the average daily Available Commitment during the applicable quarter; provided that the Available Commitment shall be deemed not to be reduced during any period that the obligation of the Bank to purchase Certificates has been suspended pursuant to Section 7.02(c) hereof.

(ii) In the event that the Standard & Poor's, Moody's or Fitch ratings of the Bond Insurer are reduced below AAA by Standard & Poor's or Aaa by Moody's or AAA by Fitch, respectively, the annual fee will be increased (A) by .10% for each rating downgrade, or (B) by 1.00% if (x) any rating should be withdrawn or suspended for any reason or (y) upon the occurrence of an Insurer Event of Default.

(iii) If any of the Standard & Poor's, Moody's or Fitch ratings are lower than the other rating agencies, the number of percentage points used to calculate the fee will be determined by reference to the lowest rating.

(iv) Such commitment fee shall accrue for (i) each period ending on March 31, June 30, September 30 and December 31 during the Bank Purchase Period, commencing with the period beginning on the Effective Date and ending on June 30, 2008, and

(b) the period ended on the last day of the Bank Purchase Period or, if earlier, the date on which the Available Commitment is terminated or reduced to zero.

(c) Other Fees. In addition, the City shall pay to the Bank an amendment fee equal to \$2,500 plus attorneys' fees and expenses for each amendment, transfer, waiver or consent to this Agreement and a draw fee for each draw on the Available Commitment equal to \$250.00 for each draw.

2.07 Compensation for Increased Costs.

(a) Reserves, Etc. In the event of the adoption of any law, rule or regulation, or any change in any law, rule or regulation, or the interpretation or application thereof by any court, governmental authority, central bank or comparable authority charged with the enforcement or administration or interpretation thereof, or the compliance with any guidelines or request from any governmental authority, central bank or comparable authority (whether or not having the force of law):

(i) subjects the Bank to any tax, deduction or withholding or changes the basis for taxation with respect to this Agreement or any Bank Certificates held by or on behalf of the Bank (other than any tax based upon the overall net income of the Bank), or

(ii) imposes, modifies or deems applicable any reserve, special deposit, insurance premium (including any assessment or other cost imposed by the Federal Deposit Insurance Corporation or any successor thereto) or similar requirement against credits or commitments to extend credit extended by, or assets (funded or contingent)

held by, or deposits with or for the account of or loans by, or other acquisitions of funds or bonds by, the Bank, or

(iii) imposes upon the Bank any other condition or expense with respect to this Agreement, the commitment or obligations of the Bank hereunder, the Certificates or the purchase or holding of Bank Certificates by or on behalf of the Bank,

and the result of any of the foregoing is to increase the cost to the Bank, reduce the income receivable by the Bank, impose any expense upon the Bank or reduce the amount of any payment receivable by the Bank, with respect to this Agreement, any Bank Certificate or any purchase of Eligible Certificates or holding by the Bank of Bank Certificates, or with respect to the Available Commitment or any portion thereof, as reasonably determined and allocated by the Bank by an amount which the Bank deems to be material, the Bank shall from time to time notify the City thereof by delivery of a certificate of an officer of the Bank of the nature described in the next sentence, and the City shall pay (as Additional Payments) to the Bank promptly, and in any event within thirty days after receipt of such notice, that amount which shall compensate the Bank (on an after tax basis, grossing up to cover any taxes payable by the Bank on such amount) for such increase in cost, reduction in income, additional expense, reduced amount or reduced rate of return. A certificate setting forth in reasonable detail such increase in cost, reduction in income or additional expense or reduced amount or reduced rate of return, and the manner of calculating the same as determined by the Bank, shall be submitted by the Bank to the Authority, the Bond Insurer and the City and, absent manifest error, shall be conclusive as to the amount thereof.

(b) Capital Costs. If the Bank shall have determined that the applicability of any law, rule, regulation or report adopted pursuant to or arising out of the July 1988 report of the Basle Committee on Banking Regulations and Supervisory Practices entitled "International Convergence of Capital Measurement and Capital Standards," or the adoption of any law, rule, regulation or guideline (whether or not having the force of law) regarding capital adequacy (including but not limited to any United States law, rule, regulation or guideline), or any change in any applicable law, rule, regulation or guideline, as the case may be, or any change in the enforcement or interpretation or administration thereof by any court or any administrative or governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank (or any lending office thereof) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of the Bank or of its bank holding company, if any, as a consequence of its obligations hereunder, the Available Commitment or its purchase of Eligible Certificates or holding of Bank Certificates to a level below that which the Bank or such bank holding company could have achieved but for such applicability, adoption, change or compliance (taking into consideration the policies of the Bank and of its bank holding company, if any, with respect to liquidity and capital adequacy) by an amount deemed by the Bank to be material, then within thirty days after demand by the Bank, the City shall pay (as Additional Payments) compensation to the Bank from time to time as specified by the Bank or its bank holding company, if any, as the case may be, for such reduction. Each demand for compensation pursuant to this Section 2.07(c) shall be accompanied by a certificate of an officer of the Bank in reasonable

detail, with a copy to the Bond Insurer, setting forth the computation of such compensation (including the reason therefor), which certificate shall be conclusive, absent manifest error.

(c) Calculations. The amounts owed by the City as compensation to the Bank or its bank holding company pursuant to this Section 2.07 shall be calculated as though the Bank were the holder of all Bank Certificates and without regard to any sales of Bank Certificates by the Bank pursuant to Section 2.05(a) or to any assignments or participations made by the Bank with regard to its obligations or rights hereunder or with regard to Bank Certificates other than to a Bank Assignee. The benefits of this Section 2.07 shall be available to each Bank Assignee as provided in Section 8.01 hereof.

2.08 Term-Out Payments; Increase in Amount of 2008 Payments.

(a) Commencing on the ninety-first day following a Purchase Date and until the last day of the Term-Out Period, the City and the Authority shall increase the amount of the monthly installments of 2008 Payments payable under the 2008 Supplemental Contract during the Term-Out Period to one-twelfth (1/12) of the Term-Out Payments.

(b) The Authority shall prepay or purchase Bank Certificates pursuant to Section 2.03(b) of the Trust Agreement and this Section 2.08, at a Prepayment Price (the "Prepayment Price") equal to 100% of the principal amount of the Bank Certificates to be prepaid plus accrued interest at the Bank Rate to the prepayment date, on each Bank Certificate Prepayment Date (as defined below). The term "Bank Certificate Prepayment Date" means the first Business Day of each April and October during the Term-Out Period, provided that the first Bank Certificate Prepayment Date shall be the first such date that is at least five (5) complete calendar months following the first Purchase Date.

(c) The City shall cause the Bond Insurer to insure payment of the Prepayment Price of the Bank Certificates required to be prepaid pursuant to Section 2.08(b) by endorsement of the Bond Insurance Policy (the "Endorsement").

(d) The insurance required by Section 2.08(c) is in addition to, and not by way of limitation of, the obligation of the Bond Insurer under its Bond Insurance Policy to insure timely payment of the principal of, interest on, and scheduled Prepayment Price of the Certificates (including Bank Certificates) in accordance with the terms of the Trust Agreement.

2.09 Interest Component of Draws. The Authority agrees to pay the component, if any, of each advance made by the Bank under this Agreement to purchase any Certificate which corresponds to accrued interest on such Certificate, together with interest on such component accruing at the Bank Rate from and including the date on which the Bank purchased such Certificate to but excluding the date on which such component (and accrued interest thereon) is paid in full.

2.10 Bank Records. All transactions relating to the Available Commitment and Bank Certificates including, without limitation, prepayments, repayments, interest charges and reductions in the amount of the Available Commitment shall be reflected in the books and records of the Bank, which records shall be conclusive and binding upon the Authority and the City absent manifest error. The Bank agrees, following its receipt of a written request of the

City, to provide the City and the Authority with reasonable access during the Bank's regular business hours to the Bank's books and records related to the Available Commitment and Bank Certificates for the sole purpose of verifying the existence or lack of existence of manifest error in such books and records as they relate to the Available Commitment and Bank Certificates.

### SECTION 3 BANK RATE

#### 3.01 Bank Certificates to Bear Interest at Bank Rate.

(a) Bank Rate. Each Bank Certificate shall bear interest at the Bank Rate for the period commencing from the date that the Bank shall have purchased such Certificate (subject to Section 2.05(c) hereof) and continuing until such Certificate is paid in full or remarketed as provided in Section 2.05(b) hereof. Interest on Bank Certificates shall be payable (i) on the first Business Day of each calendar month, (ii) at maturity, (iii) upon prepayment or purchase by the Authority and (iv) on the date such Bank Certificates are remarketed as provided in Section 2.05(b) (each such date, a "Liquidity Payment Date"). The Bank shall give telephonic notice, confirmed in writing, to the City, the Authority and the Trustee with a copy to the Bond Insurer on the Business Day preceding each Liquidity Payment Date of the interest payment due on such date. The failure of the Bank to give any notice shall not limit or otherwise affect the obligation of the Authority to pay interest on the Bank Certificates at the rates specified in this Section 3.01.

(b) Default Rate. If the principal amount of any Bank Certificate, or any other obligation of the Authority or the City under this Agreement or the Bank Certificates (including, to the extent permitted by law, any interest payment required thereunder) is not paid when due (whether by acceleration, prepayment or otherwise), such overdue principal payment or other obligation shall bear interest from the date such principal amount or other obligation, as the case may be, was due until paid in full (after as well as before judgment) at a rate per annum (computed on the basis of a year of 365/366 days and actual days elapsed) equal to the Default Rate. Such interest shall be payable on demand. If at any time an Event of Default of the type described in Sections 7.01(a), (b) or (c) has occurred and is continuing, the principal amount of any Bank Certificate, or any other obligation of the Authority or the City under this Agreement or the Bank Certificates (including, to the extent permitted by law, any interest payment required thereunder), shall bear interest from the date such principal amount or other obligation, as the case may be, was due until paid in full (after as well as before judgment) at the Default Rate (computed on the basis of a year of 365/366 days and actual days elapsed). Such interest shall be payable on demand.

(c) Excess Interest Amount. If the amount of interest accrued in respect of any Bank Certificate for any day during a period ending on any Liquidity Payment Date exceeds the amount of interest that would have accrued for such day had interest for such day been calculated at the Maximum Interest Rate, then the amount of interest payable on such Bank Certificate for such day shall be calculated at the Maximum Interest Rate. The aggregate amount of interest, if any, accrued on Bank Certificates under Sections 3.01(a) and (b) for all periods ending on a Liquidity Payment Date in excess of the amount of interest actually paid for all such periods as a result of the preceding sentence shall constitute the "Excess Interest Amount." If the Excess Interest Amount is a positive amount on any day when the Bank Rate is less than the Maximum Interest Rate, then for purposes of calculating the interest accrued and payable on all Bank

Certificates outstanding on such day, interest shall accrue for such day at the Maximum Interest Rate instead of the Bank Rate and, upon payment of such interest on the applicable Liquidity Payment Date, the amount of such accrual difference shall be applied Dollar-for-Dollar to reduce the Excess Interest Amount until such time, if any, as the Excess Interest Amount is zero.

### 3.02 Payments.

(a) Place of Payment, Etc. Except to the extent otherwise provided in the Trust Agreement with respect to payments on Bank Certificates, all payments hereunder shall be made to the Bank as the Bank may direct, prior to 10:00 a.m. California time on the date such payment is due and shall be made in immediately available funds.

(b) Withholding. All payments to the Bank under this Agreement and the Bank Certificates shall be made in Dollars and in immediately available and freely transferable funds at the place of payment without counterclaim, defense, set-off, condition or qualification, and free and clear of and without deduction or withholding for or by reason of any present or future taxes, levies, imposts, deductions, fees, assessments or charges of any nature whatsoever. In the event that the City is compelled by law to make any such deduction or withholding, the City shall nevertheless pay to the Bank such amounts as will result in the receipt by the Bank of the sum it would have received had not such deduction or withholding been required to be made. If requested, the Bank or any Bank Assignee, shall from time to time provide the Authority, the City, the Trustee and the United States Internal Revenue Service (to the extent such information and forms may be lawfully provided by the Bank or such Bank Assignee) with such information and forms as may be required by Treasury Regulations section 1.1411 or any other such information and forms as may be necessary to establish that neither the Authority nor the City is subject to any withholding obligation under section 1442 or other comparable provisions of the Code.

## SECTION 4 REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY AND THE CITY

4.01 Representations of the Authority. The Authority makes the following representations and warranties to the Bank as of the date hereof, the Effective Date and as of each Purchase Date:

(a) Valid Existence. The Authority is a joint exercise of powers entity, duly organized and validly existing under the laws of the State and has the necessary power and authority to execute and deliver this Agreement and the Related Documents to which the Authority is a party, to perform its obligations hereunder and thereunder and to conduct the business of the Authority as presently conducted.

(b) Authorization and Validity. The execution, delivery and performance by the Authority of this Agreement and the Related Documents to which the Authority is a party have been duly authorized by proper proceedings of the Authority, and no further approval, authorization or consents are required by law or otherwise. This Agreement and such Related Documents constitute the legal, valid and binding obligations of the Authority enforceable in

accordance with their respective terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and principles of equity and public policy.

(c) Compliance with Laws and Contracts. Neither the execution and delivery by the Authority of this Agreement and the Related Documents to which the Authority is a party, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will (i) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Authority or the Authority's organizational documents; (ii) result in any material breach of or default under the provisions of any material indenture, instrument or agreement to which the Authority is a party or is subject, or by which it or its property is bound, or (iii) conflict with or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement.

(d) Litigation. Except as disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by and court, public board or body pending with service of process accomplished or, to the knowledge of the Authority after due inquiry, threatened against or affecting the Authority, the 2008 Project or any properties or rights of the Authority (i) wherein an unfavorable decision, ruling or finding would adversely affect (A) the Authority's ability to perform its obligations under this Agreement and the other Related Documents to which the Authority is a party or (B) the validity of this Agreement, any of the Related Documents to which the Authority is a party or any other agreement or instrument to which the Authority is a party and which pertains to the 2008 Project; or (ii) which in any way contests the existence, organization or powers of the Authority or the titles of the officers of the Authority to their respective offices.

(e) No Event of Default. No Event of Default or Potential Event of Default has occurred and is continuing.

(f) Title to 2008 Project. Upon the Effective Date, the City will own the 2008 Project free and clear of all liens and encumbrances other than those approved by the Bank.

(g) Contract; 2008 Supplemental Contract. The Contract and the 2008 Supplemental Contract are in full force and effect. The Authority has not granted any waiver, indulgence or postponement of any of the City's obligations under the Contract or the 2008 Supplemental Contract. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Contract or the 2008 Supplemental Contract.

(h) Parity Obligations. The obligations under this agreement constitute Parity Obligations of the City under the Master Contract, secured by a valid pledge of the Gross Revenues of the Water Enterprise Fund on a parity with all other Parity Obligations and are subject to the limitations set forth in Section 7.01 of the Master Contract. The payment of Bank Certificates is further secured by a Trust Estate. The Trust Agreement creates a valid security interest in favor of the Trustee in the Trust Estate and, as of the Effective Date, all necessary action on the part of the Authority, the Trustee and the Bank has been taken as required (other than delivery of possession of after-acquired moneys, securities and instruments to the Trustee) to pledge and grant a valid security interest in the Trust Estate for the benefit of the Bank, the

Bond Insurer and the Certificateholders under the Trust Agreement prior to any pledge, lien, assignment or security interest of any other creditors of the Authority.

(i) Accurate and Complete Disclosure. All factual information certified by the Authority in writing to the Bank (including without limitation all information contained in, or made pursuant to, this Agreement and the Related Documents to which the Authority is a party) is, and all other such factual information hereafter certified by the Authority in writing to the Bank will be, to the knowledge of the authorized person making such certification after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified. The Official Statement, true copies of which have heretofore been delivered to the Bank, and each amendment or supplement thereto prepared subsequent to the Effective Date (a true copy of which shall be furnished to the Bank), do not and will not contain any untrue statement of a material fact and do not and will not omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which made, not misleading, except no representation is made as to any information furnished by the Bond Insurer, the Trustee, DTC or the Bank expressly for inclusion therein.

(j) Certificates. Each Certificate will be duly issued under the Trust Agreement and entitled to the benefits thereof.

(k) Regulatory Approvals. On the Effective Date, each authorization, consent, approval, license or formal exemption from or filing, declaration or registration with, any court governmental agency or regulatory authority (federal, state or local), required in connection with the Authority's execution and delivery of, and performance under, the Related Documents (and the documents contemplated thereby) to which the Authority is a party, or the issuance by the Authority of the Certificates in the manner and for the purpose contemplated by this Agreement and the Related Documents, has been obtained or made and is in full force and effect; provided, however, that no representation is made as to State blue sky laws.

(l) Use of Proceeds. The proceeds of the Certificates will be used only as authorized in the Trust Agreement.

(m) Other Documents. Each of the Related Documents to which the Authority is a party is in full force and effect, and the Authority hereby makes to the Bank each of the representations and warranties made by the Authority therein as if set forth at length herein. None of the Related Documents has been amended or supplemented except by such amendments or supplements as have previously been delivered to the Bank.

(n) No Other Defaults. The Authority is not in default on any Debt to any person or entity in excess of \$5,000,000.

(o) No Immunity. The Authority is subject to liability for damages in contract and in tort in the manner and to the extent provided by the laws of the State. The Authority is subject to claims and to suit for money or damages in connection with or under this Agreement pursuant to and in accordance with the laws of the State applicable to public entities, including, but not limited to Part 3 of Division 3.6 of Title 1 of the Government Code of the State of California. The Authority is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

4.02 Representations of the City. The City makes the following representations and warranties to the Bank as of the date hereof, the Effective Date and as of each Purchase Date:

(a) Valid Existence. The City is a charter city and municipal corporation, duly organized and validly existing under its charter and the Constitution of the State and has the necessary power and authority to execute and deliver this Agreement and the Related Documents to which the City is a party and to perform its obligations hereunder and thereunder.

(b) Authorization and Validity. The execution, delivery and performance by the City of this Agreement and the Related Documents to which the City is a party have been duly authorized by all proper proceedings of the City, and no further approval, authorization or consents are required by law or otherwise. This Agreement and such Related Documents constitute the legal, valid and binding obligations of the City enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and principles of equity and public policy.

(c) Compliance with Laws and Contracts. Neither the execution and delivery by the City of this Agreement and the Related Documents to which the City is a party, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will (i) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the City or the City's charter, (ii) result in any material breach of, or default under the provisions of any material indenture, instrument or agreement to which the City is a party or is subject, or by which it or its property is bound, or (iii) conflict with or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement.

(d) Litigation. Except as disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending with service of process accomplished or, to the knowledge of the City after due inquiry, threatened against or affecting the City, the 2008 Project or any properties or rights of the City (i) wherein an unfavorable decision, ruling or finding would adversely affect (A) the City's ability to perform its obligations under this Agreement and the other Related Documents to which the City is a party or (B) the validity of this Agreement, any of the Related Documents to which the City is a party or any other agreement or instrument to which the City is a party and which pertains to the 2008 Project; or (ii) which in any way contests the existence, organization or powers of the City or the titles of the officers of the City to their respective offices.

(e) No Event of Default. No Event of Default or Potential Event of Default has occurred and is continuing.

(f) Financial Statements. The audited statements of revenues, expenses and changes in fund balances and changes in financial position of the City for each of its fiscal years ended June 30, 2006 and June 30, 2007, including balance sheets as of June 30 of each of said years, and statements of revenue and expense for the City's water system as of June 30 of each of said years, all examined and reported on by independent public accountants, prepared by the City, as heretofore delivered to the Bank correctly and fairly present the financial condition of the City as

of said dates and the results of the operations of the City for each of such periods, respectively, and have been prepared in accordance with generally accepted accounting principles consistently applied except as stated in the notes thereto.

(g) Master Contract; 2008 Supplemental Contract. The Master Contract and the 2008 Supplemental Contract are in full force and effect. The City has not been granted any waiver, indulgence or postponement of any of the City's obligations under the Master Contract or the 2008 Supplemental Contract. There exists no event of default or event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under the Master Contract or the 2008 Supplemental Contract.

(h) Accurate and Complete Disclosure. All factual information certified by the City in writing to the Bank (including without limitation all information contained in, or made pursuant to, this Agreement and the Related Documents to which the City is a party) is, and all other such factual information hereafter certified by the City in writing to the Bank will be, to the knowledge of the authorized person making such certification after reasonable inquiry, accurate and complete in all material respects on the date as of which such information is certified. The Official Statement, true copies of which have heretofore been delivered to the Bank, and each official statement pertaining to the Certificates (including any amendments or supplements) prepared subsequent to the Effective Date (a true copy of which shall be furnished to the Bank prior to the distribution thereof) do not and will not contain any untrue statement of a material fact and do not and will not omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which made, not misleading, except no representation is made as to any information furnished by the Bond Insurer, the Trustee, DTC or the Bank expressly for inclusion therein.

(i) Regulatory Approvals. On the Effective Date, each authorization, consent, approval, license or formal exemption from or filing, declaration or registration with, any court governmental agency or regulatory authority (federal, state or local), required in connection with the City's execution and delivery of, and performance under, this Agreement and each of the Related Documents to which the City is a party has been obtained or made and is in full force and effect; provided, however, that no representation is made as to State blue sky laws.

(j) Other Documents. Each of the Related Documents to which the City is a party is in full force and effect, and the City hereby makes to the Bank each of the representations and warranties made by the City therein as if set forth at length herein. None of the Related Documents has been amended or supplemented except by such amendments or supplements as have previously been delivered to the Bank.

(k) Prospective Change in Law. To the best knowledge of the City (after due inquiry), except as otherwise disclosed in the Official Statement, there is no amendment, or proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the ability

of the Authority or the City, as the case may be, to perform their respective obligations under this Agreement or any of the Related Documents to which each is a party.

(l) Tax-Exempt Status. Neither the City nor the Authority has taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Certificates from gross income for Federal income tax purposes or the exemption of such interest from the State's personal income tax.

(m) No Other Defaults. The City is not in default on any Debt to any person or entity in excess of \$5,000,000.

(n) No Immunity. The City is subject to liability for damages in contract and in tort in the manner and to the extent provided by the laws of the State. The City is subject to claims and to suit for money or damages in connection with or under this Agreement pursuant to and in accordance with the laws of the State applicable to public entities, including, but not limited to Part 3 of Division 3.6 of Title 1 of the Government Code of the State of California. The City is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

## SECTION 5 COVENANTS OF THE AUTHORITY AND THE CITY

5.01 Covenants of the Authority. During the term of this Agreement, and until the obligations of the Authority and the City to the Bank hereunder are paid in full, including full payment of the Bank Certificates, and the Bank has no further commitment hereunder, unless the Bank shall otherwise consent in writing, the Authority covenants and agrees as follows:

(a) Notice of Default. As soon as practicable but in any event not more than five (5) Business Days after the Authority shall have obtained knowledge of the occurrence of an Event of Default or Potential Event of Default provide to the Bank the written statement of an Authorized Representative setting forth the details of each such Event of Default or Potential Event of Default and the action, if any, which the Authority proposes to take with respect thereto.

(b) Compliance With Laws. The Authority shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; provided, however, that the Authority may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the Authority's power and authority to execute and deliver this Agreement, to perform its obligations and pay all amounts payable by it hereunder, or to execute and deliver the Related Documents and to perform its obligations thereunder.

(c) Use of Proceeds. The Authority shall (i) cause the proceeds from purchases of Certificates made hereunder to be used solely to pay the Purchase Price of such Certificates as

more fully described in Section 2.01 hereof and (ii) use the proceeds of the Certificates for the purpose set forth in the Trust Agreement.

(d) Related Obligations. The Authority shall promptly pay all amounts payable by it hereunder and under the Related Documents according to the terms hereof or thereof and shall duly perform each of its obligations under this Agreement and the other Related Documents to which it is a party. The Authority shall use its best efforts to cause the Bond Insurer at all times to comply with the Bond Insurance Policy, and the Trustee and the Remarketing Agent at all times to comply with the terms of the Related Documents to which they are a party.

(e) Financial Statements. The Authority shall provide to the Bank copies of all financial statements and other information of the Authority, if any, that it is required to provide to the Bond Insurer concurrently with providing the same to the Bond Insurer.

(f) Inspection Rights. At any reasonable time and from time to time the Authority shall permit the Bank or any agents or representatives thereof to examine and make copies of the records and books of account related to the Trust Estate and the transactions contemplated by this Agreement and the Related Documents, to visit its properties and to discuss its affairs, finances and accounts with any of its officers and independent accountants.

(g) Amendments. The Authority shall not amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination, modification, or grant of a waiver under the Bond Insurance Policy or any other Related Document without the prior written consent of the Bank, provided that such consent shall not be required if the Bank notifies the Authority in writing that the Bank, in its sole discretion, has determined that any such amendment, modification or waiver does not affect its rights, duties or obligations.

(h) Official Statement. The Authority shall not refer to the Bank in any official statement (including the Official Statement) or make any changes in reference to the Bank in any official statement (including the Official Statement) without the Bank's prior written consent thereto, which the Bank shall not unreasonably withhold or delay based upon customary business practices at the time such consent is requested.

(i) Voluntary Prepayment. Without the prior written consent of the Bank, the Authority shall not voluntarily prepay pursuant to the Trust Agreement any Certificates (other than Bank Certificates) issued under the Trust Agreement prior to prepaying the Bank Certificates in full.

(j) Conversion. The Authority shall promptly furnish, or cause to be furnished, to the Bank, notice of any proposed conversion of the Rate Period on the Certificates to an interest rate period other than a Weekly Rate Period.

(k) Certain Notices. The Authority shall furnish to the Bank a copy of any notice, certification, demand or other writing or communication given by the Bond Insurer to the Authority or by the Authority to the Bond Insurer under or in connection with the Certificates or any of the Related Documents, in each case promptly after the receipt or giving of the same. The

Authority shall give the Bank prompt notice of any action, suit or proceeding known to it at law or in equity or by or before any governmental instrumentality, entity or other agency which, if adversely determined, would materially impair the ability of the Authority to carry out its obligations under this Agreement, the Related Documents to which it is a party or any other document, instrument or agreement required hereunder or thereunder, or would materially and adversely affect its assets or financial condition. The Authority shall promptly give written notice to the Bank of (i) any material dispute which may exist between the Authority on the one hand and the Bond Insurer, the Trustee or the Remarketing Agent on the other hand or any dispute in connection with any transaction contemplated under this Agreement or any Related Document, or (ii) any matter or event which may result in a material adverse change in the Authority's financial condition or operations.

(l) Existence. The Authority shall maintain its legal existence and will not merge or consolidate with any other Person.

(m) Bond Insurance Policy. Except as provided in Section 5.01(r), the Authority shall at all times maintain the Bond Insurance Policy with respect to the Certificates. The Authority shall take no action that could reasonably be expected to impair the ability of the Trustee to present claims for payment under, and in accordance with, the terms of the Bond Insurance Policy. The Authority shall not, without the prior written consent of the Bank, (i) cause or permit the Bond Insurance Policy to be surrendered, canceled or terminated or (ii) permit an Alternate Credit Facility to become effective.

(n) Liquidity. The Authority agrees to use its best efforts to obtain an Alternate Liquidity Facility to replace this Agreement in the event (i) the Bank shall decide not to extend the Stated Expiration Date (such replacement to occur on or before the then current Stated Expiration Date), (ii) the Bank shall furnish a Notice of Termination pursuant to Section 7.02(b) hereof to the Trustee, or (iii) a mandatory purchase of Certificates shall have been effected with any funds made available hereunder, unless the Bank shall have been immediately reimbursed therefor by the proceeds of the remarketing of the Certificates. The Authority agrees that any Alternate Liquidity Facility will require, as a condition to the effectiveness of the Alternate Liquidity Facility, that the Authority, the City or the issuer of the Alternate Liquidity Facility, as the case may be, will provide immediately available funds, on the date of such termination or provision, which funds, when taken together with funds available to the Bank under the Trust Agreement, will be sufficient to ensure the payment of all Bank Certificates then outstanding (at par plus accrued and unpaid interest thereon at the Bank Rate) and all other amounts due to the Bank hereunder, including, without limitation, payment of any fees due hereunder and interest accrued thereon and payment of any Differential Interest Amount.

(o) Appointment of Successors. The Authority shall not, without the prior written consent of the Bank, which consent shall not be unreasonably withheld, appoint a successor Trustee or Remarketing Agent.

(p) Incorporation of Certain Covenants. The covenants of the Authority set forth in the Trust Agreement, the Master Contract and the 2008 Supplemental Contract are hereby incorporated by reference in this Agreement for the benefit of the Bank. The Authority further confirms to and agrees with the Bank that the Trust Agreement has been made and was entered

into for the express benefit of the holder of any Certificates and shall constitute a contract among the Authority, the Trustee and the Bank, in its capacities hereunder as the “Bank” and as holder of any Certificates that are Bank Certificates.

(q) Liens, etc. The Authority shall not create or suffer to exist any lien upon or with respect to any of the Trust Estate.

(r) Rating of Bond Insurer’s Obligations. If the ratings assigned by both Moody’s and S&P to the claims paying ability of the Bond Insurer and if the rating assigned by both Moody’s and S&P to the obligations of the City secured by the City’s Water Enterprise Fund shall, for any uninterrupted period of thirty (30) days drop below: (i) in the case of Moody’s, a financial strength rating of Aa2 (or its equivalent); or (ii) in the case of S&P, a financial strength rating of AA (or its equivalent) (a suspension or withdrawal of a rating shall be treated as “below” the stated rating for purposes of the foregoing), the Authority shall use its best efforts to (including soliciting the assistance of the City to) (x) replace the Bond Insurer with a bond insurer rated “Aaa” by Moody’s and “AAA” by S&P or obtain additional insurance or other credit enhancement in respect of the payment of principal and interest on the Certificates (including Bank Certificates) on terms comparable to the Bond Insurance Policy or as the Bank may otherwise consent and in form and substance and from an insurer or other issuer satisfactory to the Bank, (y) convert the Certificates to a rate not covered by this Agreement and terminate this Agreement or (z) obtain an Alternate Credit Facility or an Alternate Liquidity Facility.

5.02 Covenants of the City. During the term of this Agreement, and until the obligations of the Authority and the City to the Bank hereunder are paid in full, including full payment of the Bank Certificates, and the Bank has no further commitment hereunder, unless the Bank shall otherwise consent in writing, the City covenants and agrees as follows:

(a) Notice of Default. As soon as practicable but in any event not more than five (5) Business Days after an Authorized Representative of the City shall have obtained knowledge of the occurrence of an Event of Default or Potential Event of Default provide to the Bank the written statement of an Authorized City Representative setting forth the details of each such Event of Default or Potential Event of Default and the action, if any, which the City proposes to take with respect thereto.

(b) Compliance With Laws. The City shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject; provided, however, that the City may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect the City’s power and authority to execute and deliver this Agreement, to perform its obligations and pay all amounts payable by it hereunder, or to execute and deliver the Related Documents to which it is a party and to perform its obligations thereunder.

(c) Related Obligations. The City shall duly perform each of its obligations under this Agreement and the other Related Documents to which it is a party. The City shall use its best efforts to cause the Bond Insurer at all times to comply with the Bond Insurance Policy, and

the Trustee and the Remarketing Agent at all times to comply with the terms of the Related Documents to which they are a party.

(d) Inspection Rights. At any reasonable time and from time to time the City shall permit the Bank or any agents or representatives thereof to examine and make copies of the records and books of account related to the transactions contemplated by this Agreement and the Related Documents, to visit its properties and to discuss its affairs, finances and accounts with any of its officers and independent accountants.

(e) Amendments. The City shall not amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, termination, modification, or grant of a waiver under the Bond Insurance Policy or any other Related Document without the prior written consent of the Bank; provided that such consent shall not be required if the Bank notifies the City in writing that the Bank, in its sole discretion, has determined that any such amendment, modification or waiver does not affect its rights, duties or obligations; and provided further that nothing herein shall prevent the City from incurring additional Parity Obligations under the Master Contract in accordance with its terms.

(f) Official Statement. The City shall not refer to the Bank in any official statement (including the Official Statement) or make any changes in reference to the Bank in any official statement (including the Official Statement) without the Bank's prior written consent thereto, which the Bank shall not unreasonably withhold or delay based upon customary business practices at the time such consent is requested.

(g) Voluntary Prepayment. Without the prior written consent of the Bank, the City shall not permit the prepayment pursuant to the Trust Agreement of any Certificates (other than Bank Certificates) prior to prepaying the Bank Certificates in full.

(h) Certain Notices; Financial Statements. The City shall provide or cause to be provided to the Bank copies of:

(i) Financial Statements. The City shall provide the following financial information and statements in form and content acceptable to the Bank, and such additional information as requested by the Bank from time to time:

(A) Within 270 days of the City's fiscal year end, the City's annual financial statements, including statements of revenue and expense for the City's water system as of June 30 of each year, certified and dated by an authorized financial officer of the City. These financial statements must be audited (with an unqualified opinion, using the accounting standards then applicable to the City) by a Certified Public Accountant .

(B) The City shall, promptly upon its approval and upon publication of the annual budget of the City each year, deliver to the Bank a copy of such budget and promptly after the adoption thereof.

(C) Promptly, upon sending or receipt, copies of any management letters and correspondence relating to management letters, sent or received by the City to or from the City's auditor, or, if no management letter is prepared, a letter from such auditor stating that no deficiencies were noted that would otherwise be addressed in a management letter.

(D) Together with the annual financial statements of the City delivered pursuant to Section 5.02 (i)(A), a certificate in the form attached hereto as Exhibit E as to whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any default under this Agreement and, if any such default exists, specifying the nature thereof and the action the City is taking and proposes to take with respect thereto.

(E) A copy of the annual report of the City, if any, which is delivered in accordance with the City's "continuing disclosure certificate" related to the Certificates at the time it is delivered thereunder.

(ii) Promptly, notice of any action, suit or proceeding known to it at law or in equity or by or before any governmental instrumentality, entity or other agency for any uninsured claim which, if adversely determined, could result in a judgment against the City of \$5,000,000 or more against the Water Enterprise Fund, or would materially and adversely affect the City's ability to pay its obligations under this Agreement.

(iii) Promptly, notice of (A) any material dispute which may exist between the City on the one hand and the Bond Insurer, the Remarketing Agent or the Trustee on the other hand or any dispute in connection with any transaction contemplated under this Agreement or any Related Document, and (B) any matter or event which may result in a material adverse change in the City's ability to pay its obligations under this Agreement; and

(iv) Any notice, certification, demand or other writing or communication given by the Bond Insurer to the City or by the City to the Bond Insurer under or in connection with the Certificates or any of the Related Documents, in each case promptly after the receipt or giving of the same.

(i) Existence. The City shall maintain its legal existence.

(j) Incorporation of Certain Covenants. The covenants of the City set forth in the Master Contract are hereby incorporated by reference in this Agreement for the benefit of the Bank.

(k) Liens, etc. The Authority shall not create or suffer to exist any lien upon or with respect to any of the Trust Estate.

(l) Insurance. The City shall maintain at all times the insurance required by Section 4.08 of the Master Contract.

(m) Maintenance of 2008 Project. Without limiting the generality of Section 4.06 of the Master Contract, the City shall maintain and preserve the 2008 Project in good working order and condition, making all repairs or replacements as necessary. (n) Rate Covenant. The City shall comply with the rate covenants set forth in Section 4.12 of the Master Contract.

## SECTION 6 CONDITIONS PRECEDENT

6.01 Conditions to Bank's Entering Into Agreement. It shall be a condition precedent to the Bank's entering into this Agreement that all corporate and other proceedings taken in connection with the transactions contemplated hereby and all documents incident thereto including the Related Documents and the Bond Insurance Policy shall be in form and substance satisfactory to the Bank and that the conditions enumerated in this Section 6.01 have been fulfilled to the satisfaction of the Bank. Delivery by the Bank of fully executed signature pages to this Agreement shall constitute acknowledgment and acceptance by the Bank that all such conditions have been met or waived.

(a) Representations. On the Effective Date (and after giving effect to the issuance of the Certificates and the effectiveness hereof), (i) there shall exist no Event of Default or Potential Event of Default or Involuntary Insolvency Event, (ii) all representations and warranties made by the Authority or the City herein or in any of the Related Documents to which it is a party shall be true and correct with the same effect as though such representations and warranties had been made at and as of such time and (iii) each of the Related Documents to which the Authority or the City is a party, as amended (if applicable), is in full force and effect and has not been amended, modified or changed.

(b) Supporting Documents. On or prior to the Effective Date, the Bank shall have received, in form and substance satisfactory to the Bank, the following:

(i) (A) True and complete executed originals of this Agreement, the Custodian Agreement, the Trust Agreement, the 2008 Supplemental Contract, the Certificate Purchase Contract and the Remarketing Agreement, (B) a specimen of the executed Bond Insurance Policy and Endorsement, (C) a copy of the Official Statement and (D) a specimen Certificate;

(ii) Resolutions of the Authority authorizing this Agreement and the Related Documents to which the Authority is a party and the issuance of the Certificates, certified on the Effective Date by an Authorized Representative;

(iii) Signature and incumbency certificates, dated the Effective Date, of the signatories of the Authority executing this Agreement, the Related Documents to which the Authority is a party and the Certificates;

(iv) A certificate of an Authorized Representative, dated the Effective Date, making the representations set forth in Section 6.01(a) with respect to the Authority;

- (v) Resolutions of the City authorizing this Agreement and the Related Documents to which the City is a party and approving the issuance of the Certificates, certified on the Effective Date by an Authorized Representative;
- (vi) Signature and incumbency certificates, dated the Effective Date, of the signatories of the City executing this Agreement and the Related Documents to which the City is a party;
- (vii) A certificate of an Authorized Representative, dated the Effective Date, making the representations set forth in Section 6.01(a) with respect to the City;
- (viii) Executed copies of all legal opinions, certificates, reports and other documents rendered or delivered in connection with the issuance of the Certificates, the Official Statement, the sale of the Certificates pursuant to the Certificate Purchase Contract, the delivery of this Agreement and the delivery of the Related Documents, including but not limited to all opinions, accountants' reports and letters, projections and certificates required to be furnished by any party under the Certificate Purchase Contract, which opinions, reports, letters, projections and certificates shall be in form and substance satisfactory to the Bank, and, if requested by the Bank, shall be addressed to the Bank or accompanied by a letter addressed to the Bank stating that the Bank is entitled to rely thereon;
- (ix) Executed legal opinions, dated the Effective Date, addressed to the Bank and in form and substance satisfactory to the Bank, (A) of counsel to the Bond Insurer, as to (i) the due organization of the Bond Insurer and the due authorization, execution and delivery of the Bond Insurance Policy and (ii) the legality, validity, binding effect and enforceability of the Bond Insurance Policy; (B) of counsel to the Authority, to the effect set forth in Section 4.01(a)-(d), inclusive, Section 4.01(k) and covering such other matters as the Bank may reasonably request; (C) of counsel to the City, to the effect set forth in Section 4.02(a)-(d), inclusive, Section 4.02(i) and covering such other matters as the Bank may reasonably request; and (D) of counsel to the Trustee, covering such other matters as the Bank may reasonably request;
- (x) Review and approval by the Bank of the City's financial condition
- (xi) Review and approval of the City's adopted budget for the 2007-2008 fiscal year; and
- (xii) Such further documentation, certificates or opinions as the Bank may reasonably request in connection with the matters arising under this Agreement.
- (c) Certain Payments. The City shall have paid the Bank its out-of-pocket expenses as provided in Section 8.05 hereof and shall have paid the fees and expenses of counsel to the Bank as provided in Section 8.05 hereof.
- (d) Ratings. The Bank shall have received satisfactory evidence that the Certificates have been assigned long-term ratings of "Aaa" by Moody's and "AAA" by S&P.

6.02 Obligation to Purchase. The obligation of the Bank to purchase any of the Certificates hereunder on a Purchase Date is subject to the satisfaction of the following conditions on such date:

- (a) No Termination Event. No Termination Event shall have occurred.
- (b) No Suspension or Termination. The obligation of the Bank to purchase Certificates hereunder shall not have been suspended or terminated pursuant to Section 7.02(c) hereof.
- (c) Notices of Purchase. The Bank shall have received the required Notice of Bank Purchase with respect to such purchase provided for in Section 2.03 hereof.

## SECTION 7 EVENTS OF DEFAULT; TERMINATION EVENTS AND REMEDIES

7.01 Events of Default. Each of the following events shall constitute an “Event of Default” hereunder:

- (a) any principal or interest due on the Certificates is not paid by the Authority when due and such principal or interest is not paid by the Bond Insurer when, as and in the amounts required to be paid pursuant to the terms of the Bond Insurance Policy; or
- (b) a Bond Insurer Event of Insolvency shall have occurred and the rating of the City’s Water Enterprise Fund by any two of the three Rating Agencies is withdrawn or drops below (i) in the case of Fitch, a rating of “AAA-“ (or its equivalent); (ii) in the case of Moody’s, a rating of “Aaa” (or its equivalent); and (iii) in the case of S&P, a rating of “AAA“ (or its equivalent) (such event referred to as a “City Rating Event”); or
- (c) (i) any material provision of the Bond Insurance Policy relating to the Bond Insurer’s payment obligations at any time for any reason ceases to be valid and binding on the Bond Insurer in accordance with the terms of the Bond Insurance Policy or is declared or ruled to be null and void by a court or other governmental agency of appropriate jurisdiction; or (ii) a senior authorized officer of the Bond Insurer denies that it has any or further liability or obligation under the Bond Insurance Policy; and in either case, a City Rating Event has occurred and is continuing; or
- (d) the Bond Insurer shall default in any payment or payments of amounts payable by it under any insurance policy or policies (other than the Bond Insurance Policy) when due and such default shall continue for a period of thirty (30) days; (it being understood by the Bank that default, for the purposes of this paragraph, shall not mean a situation whereby the Bond Insurer contests in good faith its liability under any such policy or policies in light of the claim or claims made thereunder), and in any case a City Rating Event has occurred and is continuing; or
- (e) any material representation or warranty made by the Authority or the City under or in connection with this Agreement shall prove to be untrue in any material respect on the date as of which it was made; or

- (f) any Other Event of Insolvency shall have occurred; or
- (g) nonpayment of any fees due to the Bank hereunder pursuant to Section 2.06(a), if such failure to pay when due shall continue for ten (10) Business Days after the City, the Authority and the Bond Insurer has received written notice thereof from the Bank; or
- (h) the breach by the Issuer or the City of any of the terms or provisions of Section 5.01(c)(i) (in respect of proceeds from the purchases of Certificates hereunder), (g), (i), (j), (l), (m), the second sentence of (n), (o) or (q) hereof or 5.02(e), (g), (i), (k) or (p) hereof; or
- (i) the Authority shall default in the performance or observance of any other material covenant or agreement contained (or incorporated by reference) in this Agreement and such default shall continue unremedied for a period of thirty (30) days after the Authority has received written notice thereof from the Bank; or
- (j) the City shall default in the performance or observance of any other material covenant or agreement contained (or incorporated by reference) in this Agreement and such default shall continue unremedied for a period of thirty (30) days after the City has received written notice thereof from the Bank; or
- (k) the Trust Agreement or the 2008 Supplemental Contract shall terminate or cease to be of full force and effect, other than as a result of any prepayment in full of the Certificates or provision for such prepayment in full in accordance with the Trust Agreement and discharge of all payment obligations under the 2008 Supplemental Contract; or
- (l) the occurrence of any “event of default” as defined in the Trust Agreement which is not otherwise described in this Section 7.01, other than the failure of the Bank to provide funds for the purchase of Eligible Certificates when required by the terms and conditions of this Agreement; or
- (m) the Trustee ceases to have an effective security interest in the Trust Estate prior to any lien, pledge, assignment or security interest of any creditors of the City or the Authority; or
- (n) for an uninterrupted period of ninety (90) days there is not in effect both of the following in respect of the Certificates: (i) in the case of Moody’s, a rating of “Baa3” (or its equivalent) or higher; and (ii) in the case of S&P, a rating of “BBB-” (or its equivalent) or higher; or
- (o) the City shall default in any payment of principal of or premium, if any, or interest on any of its Debts in excess of \$5,000,000 and such default shall continue beyond the expiration of the applicable grace period, if any, or the City shall fail to perform any other agreement, term or condition contained in any agreement under which any obligation for the payment of \$5,000,000 or more is created or secured, which shall permit or result in the declaring due and payable of such obligation prior to the date on which it would otherwise have become due and payable; or

(p) a final judgment or order for the payment of money for an uninsured claim in excess of \$5,000,000 shall have been rendered against the City and such judgment or order shall not have been satisfied, stayed or bonded pending appeal within a period of thirty (30) days from the date on which it was first so rendered; or

(q) Any amendment, replacement or other modification of the Bond Insurance Policy or substitution of the Bond Insurer occurs without the prior written consent of the Bank.

## 7.02 Remedies.

(a) In the case of an Event of Default specified in Section 7.01(a), (b) or 7.01(c)(i) hereof (each, a "Termination Event"), the Available Commitment and the obligation of the Bank to purchase Certificates shall immediately terminate without notice or demand, and thereafter the Bank shall be under no obligation to purchase Certificates. Promptly after the Bank receives written notice of such Termination Event, the Bank shall give written notice of the same to the Trustee, the Authority, the City, the Rating Agencies and the Remarketing Agent; provided, that the Bank shall incur no liability or responsibility whatsoever by reason of its failure to give such notice and such failure shall in no way affect the termination of the Available Commitment and of the Bank's obligation to purchase Eligible Certificates pursuant to this Agreement.

(b) Upon the occurrence and during the continuance of an Event of Default specified in Section 7.01(g) or 7.01(n) hereof, the Bank may terminate the Available Commitment by giving written notice (a "Notice of Termination") to the City, the Trustee, the Remarketing Agent and the Bond Insurer, specifying the date on which at 3:00 p.m. California time the Available Commitment shall terminate (the "Termination Date"), which shall be not less than thirty (30) days from the date of receipt of such notice by the Trustee, and after the Termination Date the Bank shall be under no further obligation to purchase Certificates hereunder other than Certificates which are the subject of the Notice of Bank Purchase delivered by the Trustee in accordance with Section 2.03 hereof and received by the Bank on or prior to the Termination Date.

(c) In the case of (i) the occurrence of an Event of Default of the type specified in Section 7.01(c)(ii) hereof or (ii) the commencement of an involuntary case or other involuntary proceeding seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution with respect to the Bond Insurer or its debts or claims under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, assignee, sequestrator or other similar official for the Bond Insurer or any substantial part of its property (an "Involuntary Insolvency Event") together with the occurrence and continuance of a City Rating Event, the Bank's obligation to purchase Eligible Certificates hereunder shall immediately be suspended without further action on the part of any Person. Upon such a suspension, the Bank shall give written notice thereof to the City, the Trustee, the Remarketing Agent and the Bond Insurer; provided, however, that the failure of the Bank to give such notice shall not affect the validity of such suspension. The obligation of the Bank to purchase Eligible Certificates shall be suspended until either (x) the Bank delivers a written notice to the Trustee rescinding the automatic suspension of its obligation to purchase Eligible Certificates under this Agreement (a "Rescission Notice") or, (y) (1) in the case of a

suspension event of the type described in Section 7.01(c)(ii) hereof, a final non-appealable order of a court having jurisdiction in the premises shall be entered declaring that all material contested provisions of the Bond Insurance Policy are upheld in their entirety or (2) in the case of an Involuntary Insolvency Event, a court having jurisdiction in the premises shall dismiss or stay such involuntary case, proceeding or appointment within 60 days. In the event a final non-appealable order is entered declaring any material provision of the Bond Insurance Policy to be null and void, or declaring that the Bond Insurer does not have any further liability or obligation under the Bond Insurance Policy or in the event an Involuntary Insolvency Event is not dismissed or stayed within 60 days by a court having jurisdiction in the premises, then, so long as a City Rating Event is continuing, the obligation of the Bank to purchase Eligible Certificates shall immediately terminate without any further action by any Person. In the event a final non-appealable order is entered declaring that all material contested provisions of the Bond Insurance Policy are upheld in their entirety or in the event a court having jurisdiction in the premises shall dismiss or stay any Involuntary Insolvency Event within 60 days, the obligation of the Bank to purchase Eligible Certificates shall be automatically reinstated and the terms of this Agreement will continue in full force and effect (unless the Bank Purchase Period shall have otherwise expired or terminated) as if there had been no such suspension. Notwithstanding the foregoing, if the Bank has not delivered a Rescission Notice to the Trustee and if, upon the earlier of (a) the last day of the Bank Purchase Period or (b) (i) in the case of the occurrence of an Event of Default of the type described in Section 7.01(c)(ii) hereof, the date which is three years after the effective date of suspension of the obligation of the Bank to purchase Eligible Certificates, litigation is still pending and a judgment regarding the validity of the Bond Insurance Policy has not been obtained or (ii) in the case of the occurrence of an Involuntary Insolvency Event and the continuance of a City Rating Event, the date which is 60 days after the commencement of the involuntary case, proceeding or appointment, such involuntary case, proceeding or appointment has not been dismissed or stayed, then the Available Commitment and the obligation of the Bank to purchase Eligible Certificates shall at such time terminate without notice or demand and thereafter the Bank shall be under no further obligation to purchase Eligible Certificates.

(d) In addition to the rights and remedies set forth in Section 7.02(a), (b) and (c) hereof, in the case of any Event of Default, upon the election of the Bank: (i) all amounts payable hereunder (other than payments of principal and interest on Bank Certificates) shall upon notice to the City become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Authority and the City, and (ii) the Bank shall have all the rights and remedies available to it under this Agreement, the Related Documents or otherwise pursuant to law or equity other than acceleration of the Certificates or termination of its obligation to purchase Certificates.

## SECTION 8 MISCELLANEOUS

### 8.01 Other Matters.

(a) No failure or delay on the part of the Bank in exercising any right, power or privilege hereunder and no course of dealing shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the

Bank would otherwise have. No notice to or demand on the Authority, the City or any other party hereto in any case shall entitle the Authority, the City or such other party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Bank to any other or further action in any circumstances without notice or demand.

(b) No provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties hereto; provided that the provisions of Sections 2.06, 2.07, 2.08, 3.01, 6.02, 7, 8.01(b) and 8.07 and the following defined terms: Available Commitment, Available Interest Commitment, Available Principal Commitment, Bank Purchase Period, Bank Rate, Bond Insurer Event of Insolvency, Bond Insurer Rating Level and Maximum Interest Rate may be changed, waived, discharged or terminated by instruments in writing signed by the Bank, the Authority and the City with the consent of the Bond Insurer. The City shall give notice to Moody's, S&P and Fitch of any amendments to this Agreement.

(c) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided, however, that neither the Authority nor the City may assign or transfer any of its rights or obligations hereunder without the prior written consent of the Bank. The Bank shall have the right at any time to sell or assign all or part of its rights (but not its obligations) hereunder, under the Related Documents and/or in and to Bank Certificates owned by the Bank to any commercial bank or institutional investor (herein, the "Bank Assignees") without the consent of or notice to the Authority or the City; provided, however, that no such sale or assignment shall relieve the Bank from any of its obligations under this Agreement (including its obligation to purchase Eligible Certificates in accordance with the terms of this Agreement) and the Authority, the City, the Trustee and the Remarketing Agent may deal exclusively with the Bank for all purposes of this Agreement. The Bank shall also have the right at any time to grant or sell participation interests in all or part of its rights and obligations hereunder, under the Related Documents and/or in and to Bank Certificates owned by the Bank to any Person (herein, the "Participants") without the consent of or notice to the Authority or the City; provided that no participation shall relieve the Bank from any of its obligations under this Agreement (including its obligation to purchase Eligible Certificates in accordance with the terms of this Agreement with its own funds).. The Bank may disclose to any Bank Assignees, prospective Bank Assignees, participants or prospective participants any information or other data or material in the Bank's possession relating to this Agreement, any Related Document, the Bond Insurer, the City and the Authority, without the consent of or notice to the Bond Insurer, the City or the Authority. If the Bank seeks to assign its obligations to any Bank Assignee and such assignment would relieve the Bank of its obligation to purchase any portion of Eligible Certificates pursuant to this Agreement with its own funds, the Bank shall obtain prior written confirmation from the rating agencies that the rating on the Bonds will not be lowered or withdrawn as a result of such assignment.

8.02 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INsofar AS THEY ARE ENFORCEABLE AGAINST THE BANK AND THE LAW OF THE STATE OF CALIFORNIA, IN EITHER CASE, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE.

8.03 Severability. If any provision of this Agreement shall be held or deemed to be or shall in fact be illegal, inoperative or unenforceable the same shall not affect any other provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

8.04 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

8.05 Expenses. The City shall pay counsel to the Bank fees and expenses and shall reimburse counsel to the Bank for its reasonable out-of-pocket expenses, in each case, in connection with the negotiation, execution and delivery of this Agreement and the Related Documents. The City shall also pay on demand (a) all reasonable out-of-pocket expenses of the Bank, including reasonable fees and expenses of counsel retained by the Bank in connection with any waiver or consent hereunder, under the Certificates or under any Related Documents or any amendment hereof or thereof and (b) all reasonable costs and expenses incurred by the Bank (including fees and expenses of counsel and other experts retained by the Bank) in connection with the enforcement, attempted enforcement or preservation of any rights or remedies under this Agreement, the Related Documents and any other documents delivered hereunder or thereunder, whether or not suit is filed and whether or not a Potential Event of Default or an Event of Default or an Involuntary Insolvency Event exists (including all such costs and expenses incurred during any "workout" or restructuring in respect of this Agreement, the Bond Insurance Policy or the Certificates and during any legal proceeding, including any proceeding under any debtor relief law).

8.06 Indemnification.

(a) To the extent permitted by law, the City agrees to indemnify and hold harmless the Bank, each Bank Assignee, each Participant and each of their respective officers, directors, employees and their agents (each, an "Indemnitee") from and against any and all claims, damages, penalties, actions, losses, liabilities, judgments, suits and reasonable costs or expenses (including, without limitation, reasonable attorneys' fees and expenses) whatsoever which an Indemnitee may incur (or which may be claimed against an Indemnitee by any person or entity whatsoever) by reason of or in connection with (i) the offering, sale, remarketing or resale of the Certificates (including, without limitation, by reason of any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in this Agreement, the Related Documents or the Official Statement (other than in connection with the description of the Bank therein and any other information provided by the Bank for inclusion therein), or in any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements, in the light of the circumstances in which they are or were made, not misleading); (ii) the validity, sufficiency or genuineness of this Agreement (other than a failure thereof resulting from any invalidity on the part of the Bank), the Related Documents or the Official Statement; or (iii) the execution and delivery of this Agreement (other than by the Bank), or the making or the failure to make purchases of Certificates under this Agreement, provided that the City shall not be required to indemnify any Indemnitee for any losses, claims, damages, liabilities, costs and expenses to the extent, that there has been a final, nonappealable determination by a court of competent jurisdiction that such losses, claims,

damages, liabilities, costs and expenses were caused by the willful misconduct or gross negligence of such Indemnitee.

(b) To the extent permitted by law, the City agrees to indemnify and hold each Indemnitee harmless (on a net after-tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with the execution, delivery and performance of, or any payment made under, this Agreement, the Certificates and the other Related Documents, or any amendment thereto.

8.07 Term of the Agreement. The obligation of the Bank to purchase Certificates under this Agreement shall terminate on the last day of the Bank Purchase Period (as it may be extended pursuant to Section 8.15 hereof). Except for the City's obligations to indemnify the Bank and each Indemnitee as provided in Section 8.06 and except as provided in Section 8.12, this Agreement shall terminate when (a) the Bank Purchase Period (as it may be extended pursuant to Section 8.15 hereof) shall have expired or terminated and (b) the principal of and interest on all Certificates purchased by the Bank hereunder and all other amounts owing to the Bank hereunder shall have been paid in full.

8.08 Enforcement by Trustee; Third Party Beneficiaries. The Bank agrees that the Trustee may enforce the provisions of this Agreement on behalf of the Authority and City against the Bank, and the Trustee and the Bond Insurer are each hereby made an express third party beneficiary.

8.09 Notice. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Authority, the City, the Remarketing Agent, the Trustee, the Bank or the Bond Insurer, shall be deemed or have been sufficiently given or filed for all purposes, if any, when delivered by hand or when sent by registered mail, return receipt requested, postage prepaid, and if given by telecopy or telegraphic means shall be deemed given when transmitted (receipt confirmed):

If to the Authority:

Modesto Public Financing Authority  
c/o City of Modesto  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, California 95354  
Attention: Director of Finance;

If to the City:

City of Modesto  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, California 95354  
Attention: Director of Finance;

If to the Bank:

Regarding credit matters:

Bank of America, N.A.  
CA9-193-13-17  
333 South Hope Street, 13<sup>th</sup> Floor  
Los Angeles, California 90071  
Telephone: 213-621-7131  
Telecopy: 213-621-3607  
Attention: Government Credit Products

Regarding operational matters:

Bank of America, N.A.  
101 South Marengo Ave., 5<sup>th</sup> Floor  
CA9-702-05-69  
Pasadena, California 91101  
Attention: Client Credit Services  
Telephone: (626) 666-2321  
Telecopy: (626) 666-8069

If to the Bond Insurer:

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10020  
Attention: General Counsel, with a copy to:  
Risk Management Department – Public Finance Surveillance  
Telephone: (212) 974-0100  
Facsimile: (212) 581-3268

If to the Remarketing Agent:

To the address for notices set forth in the Remarketing Agreement; and

If to the Trustee or any Rating Agency:

To the address for notices set forth in the Trust Agreement.

8.10 Obligations Absolute. The obligations of the Authority and the City under this Agreement shall be primary, absolute, independent, unconditional and irrevocable, and shall be paid and performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including, without limitation, the following circumstances:

- (a) Any lack of validity or enforceability of the Related Documents;

(b) Any amendment or waiver of or any consent to or departure from all or any of the Related Documents or this Agreement;

(c) Any exchange, release or non-perfection of any collateral or any release or amendment or waiver of or consent to departure from any guaranty and insurance documents;

(d) The existence of any claim, set-off, defense, or other right which the Authority or the City may have at any time against the Authority, the City, the Trustee, the Remarketing Agent, the Bond Insurer, the Bank (other than the defense of the payment to the Bank in accordance with the terms of this Agreement) or any other person or entity, whether in connection with this Agreement, the Related Documents or any unrelated transactions;

(e) Any certificate, notice or any other document presented under this Agreement proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever; or

(f) Any other circumstances or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding the foregoing, all liability of the City under this Agreement shall be limited obligations of the City payable solely from Gross Revenues on a parity with other Parity Obligations.

8.11 Holidays. Except as otherwise provided herein, whenever any payment or action to be made or taken hereunder shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day, and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

8.12 Survival. All representations, warranties, covenants and agreements of the Authority and the City contained in this Agreement as amended or supplemented from time to time or made in writing in connection herewith shall survive the execution and delivery hereof and the purchase of Certificates by the Bank hereunder and shall continue in full force and effect until payment in full of all the obligations of the Authority and the City hereunder, it being understood that the agreements of the City found in Sections 2.07, 3.02(b), 8.05 and 8.06 hereof shall survive the termination of this Agreement and payment in full of such obligations.

8.13 Liability of the Bank. The Authority and the City agree that none of the Bank, its officers, directors, employees and their agents shall have any liability or responsibility for the acts or omissions of either the Trustee or the Remarketing Agent in respect of its use of this Agreement or any amounts made available by the Bank hereunder. The Bank, its officers, directors, employees and their agents shall have no responsibility for, nor incur any liability in respect of, any act, or any failure to act, by the Trustee or the Remarketing Agent which results in the failure of the Trustee to effect the purchase of Eligible Certificates for the account of the Bank with funds provided by the Bank pursuant to Section 2.03 hereof or to comply with the applicable provisions of the Trust Agreement. Neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of this Agreement or any amounts made available by the Bank hereunder or for any acts or omissions of the Trustee or

the Remarketing Agent in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respect invalid, insufficient, fraudulent or forged; or (c) any other circumstances whatsoever in making or failing to make payment under this Agreement, other than, in the case of the Bank, the Bank's gross negligence or willful failure to purchase Eligible Certificates when required under the terms and conditions of this Agreement.

8.14 Bank Information. The Bank hereby consents to the use of the information concerning the Bank and this Agreement contained in the Official Statement under the caption "STANDBY PURCHASE AGREEMENT- The Bank." The Bank shall, upon the written request, provide the Authority with the Bank's most recent disclosure information for inclusion in official statements.

8.15 Extension of Bank Purchase Period. Upon the City's written request in the form attached hereto as Exhibit C (a "Request for Extension") and the Bank's agreement thereto, the then current Stated Expiration Date may be extended to a later date (the period from the then current Stated Expiration Date to such new Stated Expiration Date is hereinafter referred to as the "Extended Bank Purchase Period"). The City may submit no more than one Request for Extension for a minimum of one year and a maximum of three years. The City shall not submit a Request for Extension any earlier than the 120<sup>th</sup> day, or any later than the 90<sup>th</sup> day, prior to the then current Stated Expiration Date. The Bank has no obligation to agree to any Request for Extension. If the Bank, in its sole discretion, agrees to a Request for Extension, the Bank shall promptly give written notice of the election to extend to the City (with a copy to the Trustee, the Remarketing Agent and the Bond Insurer); provided, however, that if the Bank fails for any reason or no reason to give such written notice within 60 days of its receipt of a Request for Extension, the Bank shall be deemed to have denied such Request for Extension. At the time of any extension, the Bank may, in its sole discretion, renegotiate terms and conditions of this Agreement, including the duration of the extended term, the commitment fees and the Bank Rate. Any extension shall not become effective unless the Bond Insurer shall have consented thereto; provided, however, that in no event shall the Bond Insurer's consent be required (i) if the Bond Insurer is in default under the Bond Insurance Policy or (ii) for any change in the rate upon which the commitment fee described in Section 2.06 is calculated.

8.16 Dispute Resolution Provision. This paragraph, including the subparagraphs below, is referred to as the "Dispute Resolution Provision." This Dispute Resolution Provision is a material inducement for the parties entering into this agreement.

(a) This Dispute Resolution Provision concerns the resolution of any controversies or claims between the parties, whether arising in contract, tort or by statute, including but not limited to controversies or claims that arise out of or relate to: (i) this agreement (including any renewals, extensions or modifications); or (ii) any document related to this agreement (collectively a "Claim"). For the purposes of this Dispute Resolution Provision only, the term "parties" shall include any parent corporation, subsidiary or affiliate of the Bank involved in the servicing, management or administration of any obligation described or evidenced by this agreement.

(b) At the request of any party to this agreement, to the extent permitted by law, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Act"). The Act will apply even though this agreement provides that it is governed by the law of a specified state.

(c) Arbitration proceedings will be determined in accordance with the Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("AAA"), and the terms of this Dispute Resolution Provision. In the event of any inconsistency, the terms of this Dispute Resolution Provision shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the Bank may designate another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted, unless otherwise required by law, in any U.S. state where real or tangible personal property collateral for this credit is located or if there is no such collateral, in the state specified in the governing law section of this agreement. All Claims shall be determined by one arbitrator; however, if Claims exceed Five Million Dollars (\$5,000,000), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and have judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and may dismiss the arbitration on the basis that the Claim is barred. For purposes of the application of any statutes of limitation, the service on AAA under applicable AAA rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s), except as set forth at subparagraph (j) of this Dispute Resolution Provision. The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this agreement.

(f) The procedure described above will not apply if the Claim, at the time of the proposed submission to arbitration, arises from or relates to an obligation to the Bank secured by real property. In this case, all of the parties to this agreement must consent to submission of the Claim to arbitration.

(g) To the extent any Claims are not arbitrated, to the extent permitted by law, the Claims shall be resolved in court by a judge without a jury, except any Claims which are brought in California state court shall be determined by judicial reference as described below.

(h) Any Claim which is not arbitrated and which is brought in California state court will be resolved by a general reference to a referee (or a panel of referees) as provided in California Code of Civil Procedure Section 638. The referee (or presiding referee of the panel) shall be a retired Judge or Justice. The referee (or panel of referees) shall be selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge of the Court (or his or her representative) as provided in California Code of Civil Procedure Section 638 and the following related sections. The referee shall determine all issues

in accordance with existing California law and the California rules of evidence and civil procedure. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including without limitation motions for summary judgment or summary adjudication . The award that results from the decision of the referee(s) will be entered as a judgment in the court that appointed the referee, in accordance with the provisions of California Code of Civil Procedure Sections 644(a) and 645. The parties reserve the right to seek appellate review of any judgment or order, including but not limited to, orders pertaining to class certification, to the same extent permitted in a court of law.

(i) This Dispute Resolution Provision does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies. The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Claim to arbitration or judicial reference.

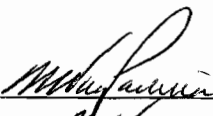
(j) Any arbitration, judicial reference or trial by a judge of any Claim will take place on an individual basis without resort to any form of class or representative action (the “Class Action Waiver”). Regardless of anything else in this Dispute Resolution Provision, the validity and effect of the Class Action Waiver may be determined only by a court or referee and not by an arbitrator. The parties to this Agreement acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is nonseverable from the agreement to arbitrate Claims. If the Class Action Waiver is limited, voided or found unenforceable, then the parties’ agreement to arbitrate shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. **The Parties acknowledge and agree that under no circumstances will a class action be arbitrated.**

(k) By agreeing to binding arbitration or judicial reference, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law in respect of any Claim. Furthermore, without intending in any way to limit this Dispute Resolution Provision, to the extent any Claim is not arbitrated or submitted to judicial reference, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law in respect of such Claim. This waiver of jury trial shall remain in effect even if the Class Action Waiver is limited, voided or found unenforceable. **WHETHER THE CLAIM IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.**

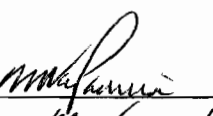
\* \* \*

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

MODESTO PUBLIC FINANCING AUTHORITY


By:   
Name: M. Wayne Pittman  
Title: Auditor and Treasurer

CITY OF MODESTO

By:   
Name: M. Wayne Pittman  
Title: Finance Director/Treasurer

Approved as to Form

Susana Alcala Wood  
City Attorney

By:   
City Attorney

BANK OF AMERICA, N.A.

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

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

MODESTO PUBLIC FINANCING AUTHORITY

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

CITY OF MODESTO

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

Approved as to Form

Susana Alcala Wood  
City Attorney

By: \_\_\_\_\_  
City Attorney

BANK OF AMERICA, N.A.

By: *S. Sacks*  
Name: SHARI SACKS  
Title: VICE PRESIDENT

EXHIBIT A

FORM OF NOTICE OF BANK PURCHASE  
(LIQUIDITY PURCHASE)

Bank of America, N.A.  
101 South Marengo Ave., 5<sup>th</sup> Floor  
CA9-702-05-69  
Pasadena, California 91101  
Attention: Client Credit Services  
Telephone: (626) 666-2321  
Telecopy: (626) 666-8069

Re: *City of Modesto Financing Authority Water Revenue Certificates of Participation, 2008 Series A*

The undersigned, a duly authorized officer of [\_\_\_\_\_], as Trustee (the “Trustee”), hereby certifies to Bank of America, N.A. (the “Bank”), in accordance with the Standby Certificate Purchase Agreement, dated as of May 1, 2008 (as amended, modified and supplemented through the date hereof, the “Standby Certificate Purchase Agreement”), among the City of Modesto Financing Authority, the City of Modesto and the Bank (all capitalized terms herein having the meanings ascribed thereto in the Standby Certificate Purchase Agreement), that:

1. Eligible Certificates have been tendered for purchase pursuant to Section 3.01 of the Trust Agreement.

2. Insufficient moneys are available for such purchase pursuant to Section 3.03(b) of the Trust Agreement.

3. [(a)] \_\_\_\_\_ The total principal amount of the Eligible Certificates referred to above is \$[\_\_\_\_\_], which amount does not exceed the Available Principal Commitment.

[(b)] Accrued but unpaid interest on such Eligible Certificates (other than Defaulted Interest), computed in accordance with the terms of the Certificates and

the Trust Agreement, as of the date of delivery hereof to the Bank is \$[\_\_\_\_\_], which amount does not exceed the Available Interest Commitment.]<sup>1</sup>

4. The Eligible Certificates referred to above are being delivered to the Bank for purchase pursuant to the Standby Certificate Purchase Agreement on the date hereof for an aggregate purchase price of \$[\_\_\_\_\_],<sup>2</sup> which amount does not exceed the Available Commitment.

5. Upon completion of purchase, the Trustee will cause the Certificate to be assigned a separate CUSIP number and made eligible for book-entry with DTC and to register such Certificates for the benefit of the Bank in accordance with the procedures of DTC in effect as such time, or, if the Certificates are then certificated, to register the Certificate in the name of the Bank, or if a Certificate is not delivered and the Certificates are not in book-entry form, to issue a new Certificate in replacement of the undelivered Certificate, in the name of the Bank or if directed in writing by the Bank its nominee or designee on the Certificate register, and the Trustee will hold such Certificates (or new Certificates) in accordance with the terms of the Custodian Agreement.

6. The Purchase Date is [\_\_\_\_\_], and the wire instructions for payment of the Purchase Price are as follows: [insert payment instructions.]

IN WITNESS WHEREOF, the Trustee has executed and delivered this Notice of Bank Purchase as of the [\_\_\_\_\_] day of [\_\_\_\_\_], [\_\_\_\_\_].

[\_\_\_\_\_] ,  
as Trustee

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

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<sup>1</sup> If the Certificates are to be purchased on an Interest Payment Date, this amount will exclude the interest payable on such date. If exclusion results in no interest, delete (b).

<sup>2</sup> Insert the sum of principal and accrued interest shown in paragraphs 3(a) and (b).

EXHIBIT B

FORM OF NOTICE OF BANK PURCHASE  
(MANDATORY PURCHASE)

Bank of America, N.A.  
101 South Marengo Ave., 5<sup>th</sup> Floor  
CA9-702-05-69  
Pasadena, California 91101  
Attention: Client Credit Services  
Telephone: (626) 666-2321  
Telecopy: (626) 666-80691000 West Temple Street, 7<sup>th</sup> Floor

Re: *City of Modesto Financing Authority Water Revenue Certificates of Participation, 2008 Series A*

The undersigned, a duly authorized officer of [\_\_\_\_\_], as Trustee (the “Trustee”), hereby certifies to Bank of America, N.A. (the “Bank”), in accordance with the Standby Certificate Purchase Agreement, dated as of \_\_\_\_\_, 2008 (as amended, modified and supplemented through the date hereof, the “Standby Certificate Purchase Agreement”), among the City of Modesto Financing Authority, the City of Modesto and the Bank (all capitalized terms herein having the meanings ascribed thereto in the Standby Certificate Purchase Agreement), that:

1. Eligible Certificates have been tendered or deemed tendered for mandatory purchase as described in subsections (iii), (iv), (v), (vi) or (vii) of the definition of “Mandatory Purchase Date” in the Trust Agreement pursuant to Section 3.02 of the Trust Agreement.

2. Insufficient moneys from remarketing proceeds are available for such purchase pursuant to Section 3.04 of the Trust Agreement.

3. [(a)] \_\_\_\_\_ The total principal amount of the Eligible Certificates referred to above is \$[\_\_\_\_\_], which amount does not exceed the Available Principal Commitment.

[(b)] Accrued but unpaid interest on such Eligible Certificates (other than Defaulted Interest), computed in accordance with the terms of the Certificates and

the Trust Agreement, as of the date of delivery hereof to the Bank is \$[\_\_\_\_], which amount does not exceed the Available Interest Commitment.]<sup>3</sup>

4. The Eligible Certificates referred to above are being delivered to the Bank for purchase pursuant to the Standby Certificate Purchase Agreement on the date hereof for an aggregate purchase price of \$[\_\_\_\_],<sup>4</sup> which amount does not exceed the Available Commitment.

5. Upon completion of purchase, the Trustee will cause the Certificate to be assigned a separate CUSIP number and made eligible for book-entry with DTC and to register such Certificates for the benefit of the Bank in accordance with the procedures of DTC in effect as such time, or, if the Certificates are then certificated, to register the Certificate in the name of the Bank, or if a Certificate is not delivered and the Certificates are not in book-entry form, to issue a new Certificate in replacement of the undelivered Certificate, in the name of the Bank or if directed in writing by the Bank its nominee or designee on the Certificate register, and the Trustee will hold such Certificates (or new Certificates) in accordance with the terms of the Custodian Agreement.

6. The Purchase Date is [\_\_\_\_], and the wire instructions for payment of the Purchase Price are as follows: [insert payment instructions.]

IN WITNESS WHEREOF, the Trustee has executed and delivered this Notice of Bank Purchase as of the [\_\_\_\_] day of [\_\_\_\_], [\_\_\_\_].

[\_\_\_\_],  
as Trustee

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

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<sup>3</sup> If the Certificates are to be purchased on an Interest Payment Date, this amount will exclude the interest payable on such date. If exclusion results in no interest, delete (b).

<sup>4</sup> Insert the sum of principal and accrued interest shown in paragraphs 3(a) and (b).

EXHIBIT C

FORM OF REQUEST FOR EXTENSION

[Date]

Bank of America, N.A.  
CA9-193-13-17  
333 South Hope Street, 13<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Government Credit Products

Ladies and Gentlemen:

Reference is made to the Standby Certificate Purchase Agreement, dated as of \_\_\_\_\_, 2008 (as amended, modified and supplemented through the date hereof, the "Agreement"), among the Modesto Public Financing Authority, the City of Modesto and Bank of America, N.A. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

The City hereby requests, pursuant to Section 8.15 of the Agreement, that the Stated Expiration Date with respect to the Agreement as of the date hereof be extended by [\_\_\_\_\_] to [\_\_\_\_\_].

The City hereby certifies that, as of the date hereof:

1. The outstanding principal amount of the Certificates is \$[\_\_\_\_\_].
2. [Except as described below,] [N]o Potential Event of Default or Event of Default has occurred and is continuing.
3. [Except as described below,] [T]he representations and warranties of the Authority and the City as set forth in Section 4 of the Agreement are true and correct as though made on the date hereof.

If you agree to extend the Stated Expiration Date, you are required to provide written notice thereof to the City (with a copy to the Trustee, the Remarketing Agent and the Certificate Insurer).

If you fail to notify the City of your decision within 30 days, you shall be deemed to have rejected such request.

Very truly yours,

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

## EXHIBIT D

CUSTODIAN AGREEMENT, dated as of May 1, 2008 (as the same may be amended, modified and supplemented from time to time, this "Agreement"), BANK OF AMERICA, N.A. (the "Bank"), CITY OF MODESTO (the "City") and THE BANK OF NEW YORK TRUST COMPANY, N.A. ("Custodian"), as custodian for the Bank.

### WITNESSETH:

WHEREAS, the Bank has entered into that certain Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Standby Certificate Purchase Agreement"; all terms capitalized herein and not defined herein shall have the meaning ascribed to them in the Standby Certificate Purchase Agreement), among the Bank, the City and the Modesto Public Financing Authority (the "Authority");

WHEREAS, pursuant to the terms of the Standby Certificate Purchase Agreement the Bank has agreed to purchase from time to time Eligible Certificates tendered or deemed tendered for purchase in accordance with the terms of the Trust Agreement;

WHEREAS, it is a condition precedent, among others, to the effectiveness of the Standby Certificate Purchase Agreement that the City and Custodian shall have executed and delivered this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the terms and conditions of this Agreement, and other good and valuable consideration, the parties hereto do hereby agree as follows:

1. Appointment and Acceptance.

(a) The Bank hereby appoints The Bank of New York Trust Company, N.A. to act as agent, bailee and custodian ("Custodian") for the exclusive benefit of the Bank with respect to Bank Certificates. Wells Fargo hereby accepts such appointment and agrees to maintain and hold all Bank Certificates at any time delivered to it as agent, bailee or custodian for the exclusive benefit of the Bank in accordance with the terms of this Agreement.

(b) The Custodian acknowledges and agrees that it is acting and will act with respect to Bank Certificates at the direction of the Bank for the exclusive benefit of the Bank and is not and shall not at any time be subject in any manner or to any extent to the direction or control of the City or the Authority with respect to such Bank Certificates. The Custodian agrees to act in strict accordance with this Agreement and in accordance with any lawful written instructions from the Bank delivered to the Custodian from time to time pursuant hereto. Under no circumstances shall the Custodian deliver possession of the Bank Certificates to, or cause Bank Certificates to be registered in the name of, the City, the Authority, the Remarketing Agent or any Person other than the Bank except in accordance with the express terms of this Agreement or otherwise upon the lawful written instructions of the Bank.

(c) The Custodian may rely and shall be protected in acting upon any document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Custodian shall not be liable for any error in judgment made in good faith by its responsible officers, employees and agents unless the Custodian, its responsible officers, employees or agents were negligent or engaged in willful misconduct. Anything herein to the contrary notwithstanding, the Custodian shall have no liability hereunder for any act or omission except as shall result from its gross negligence or willful misconduct.

2. Receipt of the Bank Certificates. The Custodian agrees to receive and hold Bank Certificates in custody for the Bank. Immediately upon the Custodian's receipt of Bank Certificates, the Custodian shall (a) promptly give telephonic notice to the Bank that it has received such Bank Certificates and (b) within 2 Business Days following such receipt, send or cause to be sent to the Bank, (i) a copy of the transfer journal entry for such Bank Certificates identifying the principal amount of such Bank Certificates and (ii) confirmation that the Bank or its nominee has been registered as the owner of such Bank Certificates. If the Certificates are in book-entry, the Custodian shall cause the Certificate to be assigned a separate CUSIP number and made eligible for book-entry with DTC and shall register such Certificates for the benefit of the Bank in accordance with the procedures of DTC in effect as such time.

3. Payments with respect to the Certificates. If, while this Agreement is in effect, the Custodian shall become entitled to receive or shall receive any payment in respect of any Bank Certificates, the Custodian agrees to accept the same as the Bank's agent and to hold the same in trust on behalf of the Bank and to deliver the same forthwith to the Bank in accordance with the payment instructions provided to the Custodian from time to time by the Bank in writing (any such payment instructions to remain effective until the Custodian receives written instructions from the Bank to the contrary).

4. Release of Bank Certificates.

(a) Upon the remarketing of any Bank Certificates, the Bank shall as soon as practicable after receipt of written notice thereof from the Remarketing Agent on a Business Day instruct the Custodian by telephone (promptly confirmed in writing) to deliver to the Trustee on the same Business Day, against receipt of the purchase price (which purchase price shall consist of the sum of the principal amount of such Bank Certificates and any accrued but unpaid interest with respect thereto, at the rate borne by Certificates, from the prior Interest Payment Date through but excluding the date such Bank Certificates are remarketed, Bank Certificates in a principal amount equal to the principal amount so remarketed.

(b) In order to facilitate the transfer of Bank Certificates, the Bank agrees to deliver to the Custodian from time to time upon the written request of the Custodian, instruments of transfer duly endorsed in blank by the Bank.

5. No Disposition, Etc. Except as provided in Section 4 above, without the prior written consent of the Bank, the Custodian agrees that it will not sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, Bank Certificates, and will not create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest,

charge, option or any other encumbrance or take any other action with respect to Bank Certificates, or any interest therein, or any proceeds thereof.

6. Information Regarding Bank Certificates. The Custodian shall deliver to the Bank at the Bank's request such information as may be in the possession of the Custodian with respect to Bank Certificates.

7. Standard of Care. The Custodian agrees that it will perform its duties hereunder in accordance with the express terms of this Agreement. The Custodian shall perform such duties and only such duties as set forth herein. The Custodian shall not be liable to the Bank except for gross negligence or willful misconduct in the performance of its obligations under this Agreement. The Bank shall indemnify the Custodian for and hold it harmless against any and all liability arising out of the performance of its obligations under the Agreement except for any liability arising out of the gross negligence or willful misconduct of the Custodian. The terms of this paragraph shall survive the termination of this Agreement.

8. Removal or Resignation. The Bank may, at any time, effective immediately, and with or without cause, remove and discharge the Custodian from the performance of the Custodian's duties under this Agreement by written notice to the Custodian with a copy to the City and the Trustee. Upon the effective date of any such termination, the Custodian shall deliver all Bank Certificates then in its custody to any successor custodian to be held in accordance with this Agreement or any other document executed by such successor custodian or, if the Bank has not designated a successor custodian, to the Bank.

9. Insurance. The Custodian, at its own expense, shall maintain and keep in full force and effect at all times during the existence of this Agreement: (a) fidelity insurance, (b) theft of documents insurance, (c) forgery insurance, and (d) errors and omissions insurance (which may be maintained by self-insurance). All such insurance shall be in amounts, with standard coverage and subject to deductibles, that are customary for insurance typically maintained by a bank or other financial institution acting as custodian.

10. Payment of Expenses. The City acknowledges and agrees that the transactions contemplated by this Agreement are for the benefit of the City and the City agrees to pay or cause to be paid all reasonable out-of-pocket fees, costs disbursements, taxes and expenses (including, without limitation, the reasonable attorney's fees) incurred by the Custodian in connection with the performance by the Custodian of its obligations hereunder.

11. Further Assurances. The Custodian and the City each agree that at any time upon the written request of the Bank and at the expense of such requested party, such party will execute and deliver or cause to be executed and delivered any and all such further documents and do any and all such further acts and things as the Bank may reasonably request in order to effect the purposes of this Agreement.

12. Availability of Documents. The Custodian agrees to keep and to cause its agents to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available upon reasonable prior notice for inspection by the Bank, its agents, accountants, attorneys and auditors.

13. Originals and Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and which counterparts shall constitute and be one and the same instrument.

14. Notices. Except as otherwise expressly provided in this Agreement, all notices shall be in writing, and delivered personally or by certified or registered United States mail, postage prepaid, or by expedited mail or courier, return receipt requested, charges prepaid, addressed to the respective party at the address set forth below:

If to the Bank: Bank of America, N.A.  
CA9-193-13-17  
333 South Hope Street, 13<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Account Officer – City of Modesto  
Telephone: (213) 621-7131  
Facsimile: (213) 621-3607

If to the Custodian: The Bank of New York Trust Company, N.A.  
550 Kearny Street, Suite 600  
San Francisco, California 94108  
Attention: Corporate Trust Dept.  
Telephone: (415) 263-2418  
Facsimile: (415) 399-1647

If to the City: City of Modesto  
Finance Department  
City Hall  
101 Tenth Street, Suite 5200  
Modesto, California 95353  
Attention: Director of Finance

Any party may change the address to which notices are to be sent by giving written notice of such change to the other parties hereto.

15. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16. Waivers, Amendments. None of the terms or provisions of this Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by each of the Bank, the City and the Custodian. This Agreement and all obligations of the Custodian and the City hereunder shall be binding upon their respective successors and assigns and shall, together with the rights and remedies of the Bank hereunder, inure to the benefit of the Bank and its successors and assigns.

17. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

\* \* \*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered on the day and year first above written.

BANK OF AMERICA, N.A.

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

CITY OF MODESTO

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

Approved as to Form

Susana Alcala Wood  
City Attorney

By: \_\_\_\_\_  
City Attorney

THE BANK OF NEW YORK TRUST  
COMPANY, N.A.,  
in its capacity as Custodian

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

CUSTODIAN AGREEMENT, dated as of May 1, 2008 (as the same may be amended, modified and supplemented from time to time, this "Agreement"), BANK OF AMERICA, N.A. (the "Bank"), CITY OF MODESTO (the "City") and THE BANK OF NEW YORK TRUST COMPANY, N.A. ("Custodian"), as custodian for the Bank.

W I T N E S S E T H:

WHEREAS, the Bank has entered into that certain Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Standby Certificate Purchase Agreement"; all terms capitalized herein and not defined herein shall have the meaning ascribed to them in the Standby Certificate Purchase Agreement), among the Bank, the City and the Modesto Public Financing Authority (the "Authority");

WHEREAS, pursuant to the terms of the Standby Certificate Purchase Agreement the Bank has agreed to purchase from time to time Eligible Certificates tendered or deemed tendered for purchase in accordance with the terms of the Trust Agreement;

WHEREAS, it is a condition precedent, among others, to the effectiveness of the Standby Certificate Purchase Agreement that the City and Custodian shall have executed and delivered this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the terms and conditions of this Agreement, and other good and valuable consideration, the parties hereto do hereby agree as follows:

1. Appointment and Acceptance.

(a) The Bank hereby appoints The Bank of New York Trust Company, N.A. to act as agent, bailee and custodian ("Custodian") for the exclusive benefit of the Bank with respect to Bank Certificates. Wells Fargo hereby accepts such appointment and agrees to maintain and hold all Bank Certificates at any time delivered to it as agent, bailee or custodian for the exclusive benefit of the Bank in accordance with the terms of this Agreement.

(b) The Custodian acknowledges and agrees that it is acting and will act with respect to Bank Certificates at the direction of the Bank for the exclusive benefit of the Bank and is not and shall not at any time be subject in any manner or to any extent to the direction or control of the City or the Authority with respect to such Bank Certificates. The Custodian agrees to act in strict accordance with this Agreement and in accordance with any lawful written instructions from the Bank delivered to the Custodian from time to time pursuant hereto. Under no circumstances shall the Custodian deliver possession of the Bank Certificates to, or cause Bank Certificates to be registered in the name of, the City, the Authority, the Remarketing Agent or any Person other than the Bank except in accordance with the express terms of this Agreement or otherwise upon the lawful written instructions of the Bank.

(c) The Custodian may rely and shall be protected in acting upon any document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Custodian shall not be liable for any error in judgment made in good faith by its responsible officers, employees and agents unless the Custodian, its responsible officers,

employees or agents were negligent or engaged in willful misconduct. Anything herein to the contrary notwithstanding, the Custodian shall have no liability hereunder for any act or omission except as shall result from its gross negligence or willful misconduct.

2. Receipt of the Bank Certificates. The Custodian agrees to receive and hold Bank Certificates in custody for the Bank. Immediately upon the Custodian's receipt of Bank Certificates, the Custodian shall (a) promptly give telephonic notice to the Bank that it has received such Bank Certificates and (b) within 2 Business Days following such receipt, send or cause to be sent to the Bank, (i) a copy of the transfer journal entry for such Bank Certificates identifying the principal amount of such Bank Certificates and (ii) confirmation that the Bank or its nominee has been registered as the owner of such Bank Certificates. If the Certificates are in book-entry, the Custodian shall cause the Certificate to be assigned a separate CUSIP number and made eligible for book-entry with DTC and shall register such Certificates for the benefit of the Bank in accordance with the procedures of DTC in effect as such time.

3. Payments with respect to the Certificates. If, while this Agreement is in effect, the Custodian shall become entitled to receive or shall receive any payment in respect of any Bank Certificates, the Custodian agrees to accept the same as the Bank's agent and to hold the same in trust on behalf of the Bank and to deliver the same forthwith to the Bank in accordance with the payment instructions provided to the Custodian from time to time by the Bank in writing (any such payment instructions to remain effective until the Custodian receives written instructions from the Bank to the contrary).

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(b) In order to facilitate the transfer of Bank Certificates, the Bank agrees to deliver to the Custodian from time to time upon the written request of the Custodian, instruments of transfer duly endorsed in blank by the Bank.

5. No Disposition, Etc. Except as provided in Section 4 above, without the prior written consent of the Bank, the Custodian agrees that it will not sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, Bank Certificates, and will not create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest, charge, option or any other encumbrance or take any other action with respect to Bank Certificates, or any interest therein, or any proceeds thereof.

6. Information Regarding Bank Certificates. The Custodian shall deliver to the Bank at the Bank's request such information as may be in the possession of the Custodian with respect to Bank Certificates.

7. Standard of Care. The Custodian agrees that it will perform its duties hereunder in accordance with the express terms of this Agreement. The Custodian shall perform such duties and only such duties as set forth herein. The Custodian shall not be liable to the Bank except for gross negligence or willful misconduct in the performance of its obligations under this Agreement. The Bank shall indemnify the Custodian for and hold it harmless against any and all liability arising out of the performance of its obligations under the Agreement except for any liability arising out of the gross negligence or willful misconduct of the Custodian. The terms of this paragraph shall survive the termination of this Agreement.

8. Removal or Resignation. The Bank may, at any time, effective immediately, and with or without cause, remove and discharge the Custodian from the performance of the Custodian's duties under this Agreement by written notice to the Custodian with a copy to the City and the Trustee. Upon the effective date of any such termination, the Custodian shall deliver all Bank Certificates then in its custody to any successor custodian to be held in accordance with this Agreement or any other document executed by such successor custodian or, if the Bank has not designated a successor custodian, to the Bank.

9. Insurance. The Custodian, at its own expense, shall maintain and keep in full force and effect at all times during the existence of this Agreement: (a) fidelity insurance, (b) theft of documents insurance, (c) forgery insurance, and (d) errors and omissions insurance (which may be maintained by self-insurance). All such insurance shall be in amounts, with standard coverage and subject to deductibles, that are customary for insurance typically maintained by a bank or other financial institution acting as custodian.

10. Payment of Expenses. The City acknowledges and agrees that the transactions contemplated by this Agreement are for the benefit of the City and the City agrees to pay or cause to be paid all reasonable out-of-pocket fees, costs disbursements, taxes and expenses (including, without limitation, the reasonable attorney's fees) incurred by the Custodian in connection with the performance by the Custodian of its obligations hereunder.

11. Further Assurances. The Custodian and the City each agree that at any time upon the written request of the Bank and at the expense of such requested party, such party will execute and deliver or cause to be executed and delivered any and all such further documents and do any and all such further acts and things as the Bank may reasonably request in order to effect the purposes of this Agreement.

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14. Notices. Except as otherwise expressly provided in this Agreement, all notices shall be in writing, and delivered personally or by certified or registered United States mail, postage prepaid, or by expedited mail or courier, return receipt requested, charges prepaid, addressed to the respective party at the address set forth below:

If to the Bank: Bank of America, N.A.  
CA9-193-13-17  
333 South Hope Street, 13<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Account Officer – City of Modesto  
Telephone: (213) 621-7131  
Facsimile: (213) 621-3607

The Bank of New York Trust Company, N.A.

550 Kearny Street, Suite 600

San Francisco, California 94108

Attention: Corporate Trust Dept.  
Telephone: (415) 263-2418  
Facsimile: (415) 399-1647

If to the City: City of Modesto  
Finance Department  
City Hall  
101 Tenth Street, Suite 5200  
Modesto, California 95353  
Attention: Director of Finance

Any party may change the address to which notices are to be sent by giving written notice of such change to the other parties hereto.

15. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16. Waivers, Amendments. None of the terms or provisions of this Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by each of the Bank, the City and the Custodian. This Agreement and all obligations of the Custodian and the City hereunder shall be binding upon their respective successors and assigns

and shall, together with the rights and remedies of the Bank hereunder, inure to the benefit of the Bank and its successors and assigns.

17. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

\* \* \*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered on the day and year first above written.

BANK OF AMERICA, N.A.

By: S. Sacks  
Name: SHARI SACKS  
Title: Vice President

CITY OF MODESTO

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

Approved as to Form

Susana Alcalá Wood  
City Attorney

By: \_\_\_\_\_  
City Attorney

THE BANK OF NEW YORK TRUST  
COMPANY, N.A.,  
in its capacity as Custodian

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

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered on the day and year first above written.

BANK OF AMERICA, N.A.

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

CITY OF MODESTO

By: *M. Wayne Powell*  
Name: *M. Wayne Powell*  
Title: *Finance Director/Treasurer*

Approved as to Form

Susana Alcalá Wood  
City Attorney

By: *Susana Alcalá Wood*  
City Attorney

THE BANK OF NEW YORK TRUST  
COMPANY, N.A.,  
in its capacity as Custodian

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

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered on the day and year first above written.

BANK OF AMERICA, N.A.

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

CITY OF MODESTO

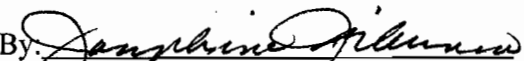
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Form

Susana Alcala Wood  
City Attorney

By: \_\_\_\_\_  
City Attorney

THE BANK OF NEW YORK TRUST  
COMPANY, N.A.,  
in its capacity as Custodian

By:   
Name: JOSEPHINE LIBUNAO  
Title: Vice President

\$47,625,000  
CITY OF MODESTO, CALIFORNIA  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE OF THE LIQUIDITY FACILITY PROVIDER

The undersigned, on behalf of Bank of America, N.A., (the "Liquidity Facility Provider"), hereby consents to the use of the information relating to the Liquidity Facility Provider in the Official Statement pertaining to the above-captioned Certificates dated May 29, 2008 (the "Official Statement") and certifies that the statements and information in the Official Statement under the heading "LIQUIDITY FACILITY" are true, accurate and correct in all material respects.

Dated: May 30, 2008

BANK OF AMERICA, N.A.

By: *S. Sacks*  
Its: *Vice President*

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFICATE OF LIQUIDITY FACILITY PROVIDER  
(Pursuant to Section (8)(f)(20) of the Purchase Contract)

The undersigned, an authorized representative of Bank of America, N.A., as liquidity facility provider (the "Liquidity Facility Provider"), under a Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Standby Purchase Agreement"), by and among the Modesto Public Financing Authority, the City of Modesto (the "City") and the Liquidity Facility Provider, in connection with the City's Water Refunding Revenue Certificates of Participation 2008 Series A, hereby certifies as follows:

(i) the Liquidity Facility has been duly authorized, executed and delivered by the Liquidity Facility Provider;

(ii) the Liquidity Facility Provider has full power and authority to carry out its obligations under the Liquidity Facility; and


(iii) there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body pending or known to be threatened against or affecting the Liquidity Facility Provider where an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Liquidity Facility.

All capitalized terms not defined herein shall have the meanings specified in the Standby Purchase Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Dated: May 30, 2008

BANK OF AMERICA, N.A.,  
as Liquidity Facility Provider

By:   
Authorized Representative

**BANK OF AMERICA, NATIONAL ASSOCIATION**

**SECRETARY'S CERTIFICATE**

The undersigned, Peter H. Fuad, an Assistant Secretary of Bank of America, National Association, a national banking association organized and existing under the laws of the United States of America (herein, the "Bank"), does hereby certify:

1. That the undersigned is a duly elected, qualified and acting Assistant Secretary of the Bank.

2. That the following named persons have been properly designated, elected and assigned to the offices in the Bank as indicated below; and that such persons hold such offices at this time:

NAME	TITLE	SIGNATURE
Shari Sacks	Vice President	<i>S. Sacks</i>

3. That the following is a true and complete copy of an excerpt from the Bylaws of said Bank, and the same is in full force and effect as of the date hereof.

**Section 5.2 Execution of Instruments.** All agreements, indentures, mortgages, deeds, conveyances, transfers, contracts, checks, notes, drafts, loan documents, letters of credit, guarantees, master agreements, swap agreements, security and pledge agreements, guarantees of signatures, certificates, declarations, receipts, discharges, releases, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, powers of attorney, and other instruments or documents may be signed executed, acknowledged, verified, attested, delivered or accepted on behalf of the Association by the Chairman of the Board, the President, any Vice Chairman of the Board, any Division President, any Managing Director, any Principal, any Vice President, any Assistant Vice President, or any individual who is listed on the Association's personnel records in a position equal to any of the aforementioned officer positions, or such other officers, employees or agents as the Board of Directors or any of such designated officers or individuals may direct. The provisions of this Section 5.2 are supplementary to any other provision of these Bylaws and shall not be construed to authorize execution of instruments otherwise dictated by law.

IN WITNESS WHEREOF, I have hereupon set my hand and affixed the seal of said Bank this 30<sup>th</sup> day of May, 2008.



*Peter H. Fuad*  
\_\_\_\_\_  
Peter H. Fuad  
Assistant Secretary



ENDURING FINANCIAL STRENGTH™  
AAA S&P • Aaa Moody's • AAA Fitch

### Financial Guaranty Insurance Policy

<b>Issuer:</b>	City of Modesto, California	<b>Policy No.:</b>	D-2008-461
<b>Obligations:</b>	\$47,625,000 Water Refunding Revenue Certificates of Participation 2008 Series A	<b>Premium:</b>	\$826,615.80
		<b>Effective Date:</b>	May 30, 2008

Assured Guaranty Corp., a Maryland corporation ("Assured Guaranty"), in consideration of the payment of the Premium and on the terms and subject to the conditions of this Policy (which includes each endorsement hereto), hereby unconditionally and irrevocably agrees to pay to the trustee (the "Trustee") or the paying agent (the "Paying Agent") for the Obligations (as set forth in the documentation providing for the issuance of and securing the Obligations) for the benefit of the Holders, that portion of the Insured Payments which shall become Due for Payment but shall be unpaid by reason of Nonpayment.

Assured Guaranty will make such Insured Payments to the Trustee or the Paying Agent on the later to occur of (i) the date applicable principal or interest becomes Due for Payment, or (ii) the Business Day next following the day on which Assured Guaranty shall have Received a completed Notice of Nonpayment. If a Notice of Nonpayment by Assured Guaranty is incomplete or does not in any instance conform to the terms and conditions of this Policy, it shall be deemed not Received, and Assured Guaranty shall promptly give notice to the Trustee or the Paying Agent. Upon receipt of such notice, the Trustee or the Paying Agent may submit an amended Notice of Nonpayment. The Trustee or the Paying Agent will disburse the Insured Payments to the Holders only upon receipt by the Trustee or the Paying Agent, in form reasonably satisfactory to it of (i) evidence of the Holder's right to receive such payments, and (ii) evidence, including without limitation any appropriate instruments of assignment, that all of the Holder's rights to payment of such principal or interest Due for Payment shall thereupon vest in Assured Guaranty. Upon and to the extent of such disbursement, Assured Guaranty shall become the Holder of the Obligations, any appurtenant coupon thereto and right to receipt of payment of principal thereof or interest thereon, and shall be fully subrogated to all of the Holder's right, title and interest thereunder, including without limitation the right to receive payments in respect of the Obligations. Payment by Assured Guaranty to the Trustee or the Paying Agent for the benefit of the Holders shall discharge the obligation of Assured Guaranty under this Policy to the extent of such payment.

This Policy is non-cancelable by Assured Guaranty for any reason. The Premium on this Policy is not refundable for any reason. This Policy does not insure against loss of any prepayment premium or other acceleration payment which at any time may become due in respect of any Obligation, other than at the sole option of Assured Guaranty, nor against any risk other than Nonpayment.

Except to the extent expressly modified by any endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Avoided Payment" means any amount previously distributed to a Holder in respect of any Insured Payment by or on behalf of the Issuer, which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder. "Business Day" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or Assured Guaranty are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York or in the State of Maryland. "Due for Payment" means (i) when referring to the principal of an Obligation, the stated maturity date thereof, or the date on which such Obligation shall have been duly called for mandatory sinking fund redemption, and does not refer to any earlier date on which payment is due by reason of a call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless Assured Guaranty in its sole discretion elects to make any principal payment, in whole or in part, on such earlier date) and (ii) when referring to interest on an Obligation, the stated date for payment of such interest. "Holder" means, in respect of any Obligation, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Obligation to payment of principal or interest thereunder, except that Holder shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Obligations. "Insured Payments" means that portion of the principal of and interest on the Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment. Insured Payments shall not include any additional amounts owing by the Issuer solely as a result of the failure by the Trustee or the Paying Agent to pay such amount when due and payable, including without limitation any such additional amounts as may be attributable to penalties or to interest accruing at a default rate, to amounts payable in respect of indemnification, or to any other additional amounts payable by the Trustee or the Paying Agent by reason of such failure. "Nonpayment" means, in respect of an Obligation, the failure of the Issuer to have provided sufficient funds to the Trustee or the Paying Agent for payment in full of all principal and interest Due for Payment on such Obligation. It is further understood that the term "Nonpayment" in respect of an Obligation includes any Avoided Payment. "Receipt" or "Received" means actual receipt or notice of or, if notice is given by

Page 1 of 2  
Policy No.: D-2008-461  
Form FG001 (05/07)

**Assured Guaranty Corp.**

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100info@assuredguaranty.com  
fax 212 581 3268

www.assuredguaranty.com

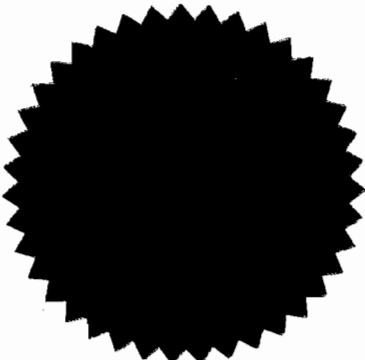
overnight or other delivery service, or by certified or registered United States mail, by a delivery receipt signed by a person authorized to accept delivery on behalf of the person to whom the notice was given. Notices to Assured Guaranty may be mailed by registered mail or personally delivered or telecopied to it at 1325 Avenue of the Americas, New York, New York 10019, Telephone Number: (212) 974-0100, Facsimile Number: (212) 581-3268, Attention: Risk Management Department - Public Finance Surveillance, with a copy to the General Counsel, or to such other address as shall be specified by Assured Guaranty to the Trustee or the Paying Agent in writing. A Notice of Nonpayment will be deemed to be Received by Assured Guaranty on a given Business Day if it is Received prior to 12:00 noon (New York City time) on such Business Day; otherwise it will be deemed Received on the next Business Day. "Term" means the period from and including the Effective Date until the earlier of (i) the maturity date for the Obligations, or (ii) the date on which the Issuer has made all payments required to be made on the Obligations.

At any time during the Term of this Policy, Assured Guaranty may appoint a fiscal agent (the "Fiscal Agent") for purposes of this Policy by written notice to the Trustee or the Paying Agent, specifying the name and notice address of such Fiscal Agent. From and after the date of Receipt of such notice by the Trustee or the Paying Agent, copies of all notices and documents required to be delivered to Assured Guaranty pursuant to this Policy shall be delivered simultaneously to the Fiscal Agent and to Assured Guaranty. All payments required to be made by Assured Guaranty under this Policy may be made directly by Assured Guaranty or by the Fiscal Agent on behalf of Assured Guaranty. The Fiscal Agent is the agent of Assured Guaranty only, and the Fiscal Agent shall in no event be liable to the Trustee or the Paying Agent for any acts of the Fiscal Agent or any failure of Assured Guaranty to deposit, or cause to be deposited, sufficient funds to make payments due under this Policy.

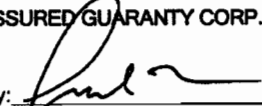
To the fullest extent permitted by applicable law, Assured Guaranty hereby waives, in each case for the benefit of the Holders only, all rights and defenses of any kind (including, without limitation, the defense of fraud in the inducement or in fact or any other circumstance that would have the effect of discharging a surety, guarantor or any other person in law or in equity) that may be available to Assured Guaranty to deny or avoid payment of its obligations under this Policy in accordance with the express provisions hereof. Nothing in this paragraph will be construed (i) to waive, limit or otherwise impair, and Assured Guaranty expressly reserves, Assured Guaranty's rights and remedies, including, without limitation: its right to assert any claim or to pursue recoveries (based on contractual rights, securities law violations, fraud or other causes of action) against any person or entity, in each case, whether directly or acquired as a subrogee, assignee or otherwise, subsequent to making any payment to the Trustee or the Paying Agent, in accordance with the express provisions hereof, and/or (ii) to require payment by Assured Guaranty of any amounts that have been previously paid or that are not otherwise due in accordance with the express provisions of this Policy.

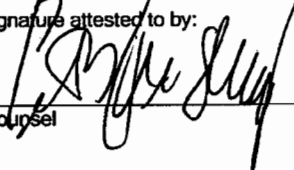
This Policy (which includes each endorsement hereto) sets forth in full the undertaking of Assured Guaranty with respect to the subject matter hereof, and may not be modified, altered or affected by any other agreement or instrument, including, without limitation, any modification thereto or amendment thereof. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. This Policy will be governed by, and shall be construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, Assured Guaranty has caused this Policy to be affixed with its corporate seal, to be signed by its duly authorized officer, and to become effective and binding upon Assured Guaranty by virtue of such signature.



ASSURED GUARANTY CORP.

By:   
Gordon Murray  
Director

Signature attested to by:  
  
Counsel

NOTICE OF NONPAYMENT

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019  
Attention: Risk Management Department - Public Finance Surveillance and General Counsel

The undersigned, [a duly authorized officer of [TRUSTEE][PAYING AGENT]] (the "Trustee" or the "Paying Agent"), hereby certifies to Assured Guaranty Corp. ("Assured Guaranty") with reference to Financial Guaranty Insurance Policy No. \_\_\_\_\_ (the "Policy"), that:

(i) The deficiency with respect to the Insured Payment that is Due for Payment and unpaid by reason of Nonpayment on [insert applicable payment date] is \$[insert applicable amount] (the "Deficiency Amount").

(ii) The [Trustee][Paying Agent] is making a claim under the Policy for the Deficiency Amount.

(iii) The [Trustee][Paying Agent] agrees that, following payment by Assured Guaranty made with respect to the Deficiency Amount which is the subject of this Notice of Nonpayment, it will (a) cause such amounts to be applied directly to the payment of the applicable Insured Payment; (b) insure that such funds are not applied for any other purpose; and (c) cause an accurate record of such payment to be maintained with respect to the appropriate Insured Payment(s), the corresponding claim on the Policy, and the proceeds of such claim.

(iv) The [Trustee][Paying Agent], on behalf of the Holders, hereby assigns to Assured Guaranty all rights of the [Trustee][Paying Agent] and the Holders with respect to the Obligations to the extent of any payments under the Policy, including without limitation any amounts due to the Holders in respect of securities law violations arising from the offer and/or sale of the Obligations; provided, that payments to Assured Guaranty in respect of the foregoing assignment shall in all cases be subject to and subordinate to the rights of the Holders to receive all payments in respect of the Obligations. The foregoing assignment is in addition to, and not in limitation of, rights of subrogation otherwise available to Assured Guaranty in respect of such payments. The [Trustee][Paying Agent][Holder] shall take such action and deliver such instruments as may be reasonably requested or required by Assured Guaranty to effectuate the purpose or provisions of this paragraph (iv).

(v) The [Trustee][Paying Agent], on its behalf and on behalf of the Holders, hereby appoints Assured Guaranty as agent and attorney-in-fact for the [Trustee][Paying Agent] and each such Holder in any legal proceeding with respect to the Obligations. The [Trustee][Paying Agent] hereby agrees that, so long as Assured Guaranty shall not be in default in its payment obligations under the Policy, Assured Guaranty may at any time during the continuation of any proceeding by or against the Issuer under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including, without limitation, (A) all matters relating to any claim in connection with an Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment made with respect to the Obligations (a "Preference Amount"), (B) the direction of any appeal of any order relating to any Preference Amount at the expense of Assured Guaranty but subject to reimbursement as provided in the documentation providing for the issuance of and securing the Obligations, if any, and (C) the posting of any surety, supersedeas or performance bond pending any appeal. In addition, the [Trustee][Paying Agent] hereby agrees that Assured Guaranty shall be fully subrogated to, and the [Trustee][Paying Agent] on its behalf and on behalf of each Holder, hereby delegates and assigns, to the fullest extent permitted by law, the rights of the [Trustee][Paying Agent] and each Holder in the conduct of any Insolvency Proceeding, including without limitation all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

(vi) Payment should be made by credit to the following account:

\_\_\_\_\_  
\_\_\_\_\_

Capitalized terms used in this Notice of Nonpayment and not otherwise defined herein shall have the respective meanings ascribed thereto in the Policy.

This Notice of Nonpayment may be revoked at any time by written notice of such revocation by the [Trustee][Paying Agent][Holder] to the Assured Guaranty.

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.**

IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Nonpayment as of the \_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_.

[TRUSTEE/PAYING AGENT]

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

# ASSURED GUARANTY

ENDURING FINANCIAL STRENGTH™  
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## Endorsement to Financial Guaranty Insurance Policy (California Insurance Guaranty Association)

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Issuer: City of Modesto, California Policy No. D-2008-461

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Obligations: \$47,625,000 Water Refunding Revenue Effective Date: May 30, 2008  
Certificates of Participation, 2008 Series  
A

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Notwithstanding the terms and provisions contained in the Policy, it is further understood that the insurance provided by the Policy to which this endorsement is attached and of which it forms a part is not covered by the California Insurance Guaranty Association, established pursuant to the laws of the State of California (California Insurance Code, Article 15.2).

Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language, the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.

ASSURED GUARANTY CORP.

By: 

Gordon Murray  
Director

Signature attested to by: 

Counsel

Form E-CA001 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com

**Endorsement to Financial Guaranty Insurance Policy  
(California Business Day)**

Issuer: City of Modesto, California Policy No. D-2008-461

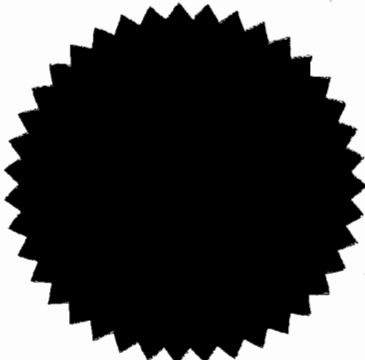
Obligations: \$47,625,000 Water Refunding Revenue Effective Date: May 30, 2008  
Certificates of Participation, 2008 Series  
A

Notwithstanding the terms and provisions contained in the Policy, the Policy to which this endorsement is attached and of which it forms a part is hereby amended to provide that the term "Business Day" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or Assured Guaranty are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York, the State of Maryland or the State of California.

It is further understood the Policy to which this endorsement is attached and of which it forms a part is hereby amended to provide that a Notice will be deemed to be Received on a given Business Day if it is Received prior to 12:00 noon (Pacific Standard time) on such Business Day; otherwise it will be deemed Received on the next Business Day.

Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language, the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.



ASSURED GUARANTY CORP.

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

Gordon Murray  
Director

Signature attested to by \_\_\_\_\_

Counsel

Form E-CA002 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com



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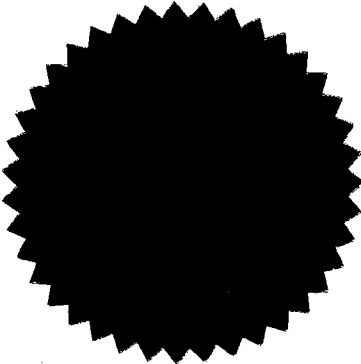
**Endorsement to Financial Guaranty Insurance Policy  
(California Governing Law)**

Issuer:	City of Modesto, California	Policy No.	D-2008-461
Obligations:	\$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A	Effective Date:	May 30, 2008

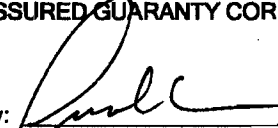
Notwithstanding the terms and provisions contained in the Policy, it is further understood that the insurance provided by the Policy to which this endorsement is attached and of which it forms a part shall be governed by, and shall be construed in accordance with, the laws of the State of California.

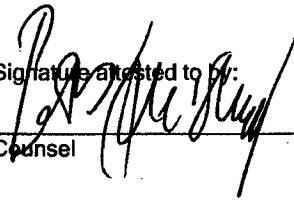
Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.



ASSURED GUARANTY CORP.

By:   
Gordon Murray  
Director

Signature attested to by:   
Counsel

Form E-CA003 (05/07)

**Assured Guaranty Corp.**

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3288

info@assuredguaranty.com

www.assuredguaranty.com



ENDURING FINANCIAL STRENGTH™  
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**Financial Guaranty Insurance Policy  
(Reserve Fund)**

**Issuer:** City of Modesto, California      **Policy No.:** D-2008-462

**Obligations:** \$47,625,000 Water Refunding Revenue  
Certificates of Participation 2008 Series A      **Premium:** \$62,475.38

**Policy Limit:** The lesser of (i) \$2,082,512.74 or (ii) the reserve requirement as set forth in the Transaction Documentation. The Policy Limit shall automatically and irrevocably be reduced from time to time by the amount of each reduction in the reserve fund requirement, as provided in the Transaction Documentation.      **Effective Date:** May 30, 2008

Assured Guaranty Corp., a Maryland corporation ("Assured Guaranty"), in consideration of the payment of the Premium and on the terms and subject to the conditions of this Policy (which includes each endorsement hereto), hereby unconditionally and irrevocably agrees to pay to the trustee (the "Trustee") or the paying agent (the "Paying Agent") for the Obligations (as set forth in the Transaction Documentation), for the benefit of the Holders, that portion of the Insured Payments which shall become Due for Payment but shall be unpaid by reason of Nonpayment.

Assured Guaranty will make such Insured Payments to the Trustee or the Paying Agent on the later to occur of (i) the date applicable principal or interest becomes Due for Payment, or (ii) the Business Day next following the day on which Assured Guaranty shall have Received a completed Notice of Nonpayment. If a Notice of Nonpayment by Assured Guaranty is incomplete or does not in any instance conform to the terms and conditions of this Policy, it shall be deemed not Received, and Assured Guaranty shall promptly give notice to the Trustee or the Paying Agent. Upon receipt of such notice, the Trustee or the Paying Agent may submit an amended Notice of Nonpayment. The Trustee or the Paying Agent will disburse the Insured Payments only upon receipt by Assured Guaranty, in form reasonably satisfactory to it of (i) evidence of the Trustee or Paying Agent's right to receive such payments, and (ii) evidence, including without limitation any appropriate instruments of assignment, that all of the Trustee or Paying Agent's rights to payment of such principal or interest Due for Payment shall thereupon vest in Assured Guaranty. Upon and to the extent of such payment, Assured Guaranty shall become entitled to reimbursement of the amount so paid (together with interest and expenses) pursuant to the Reimbursement Agreement. Payment by Assured Guaranty to the Trustee or the Paying Agent for the benefit of the Holders shall discharge the obligation of Assured Guaranty under this Policy to the extent of such payment.

This Policy is non-cancelable by Assured Guaranty for any reason. The Premium on this Policy is not refundable for any reason. This Policy does not insure against any risk other than Nonpayment.

The amount available under this Policy shall not exceed the Policy Limit. The amount available at any particular time to be paid to the Trustee or the Paying Agent under the terms of this Policy shall automatically be reduced by any payment under the Policy. However, after such payment, the amount available under this Policy shall be reinstated in full or in part, but only up to the Policy Limit, to the extent of the reimbursement of such payment (exclusive of interest and expenses) to Assured Guaranty pursuant to the Reimbursement Agreement. Within three (3) Business Days of such reimbursement, Assured Guaranty shall provide the Trustee or the Paying Agent with a Notice of Reinstatement and such reinstatement shall be effective as of the date Assured Guaranty gives such notice.

If the amount payable under this Policy is also payable under another insurance policy or surety bond insuring the Obligations, payment first shall be made under this Policy to the extent of the amount available under this Policy up to the Policy Limit. In no event shall Assured Guaranty incur duplicate liability for the same amounts owing with respect to the Obligations that are covered under this Policy and any other insurance policy or surety bond that Assured Guaranty has issued.

Except to the extent expressly modified by any endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Avoided Payment" means any amount previously distributed to a Holder in respect of any Insured Payment by or on behalf of the Issuer, which amount has been recovered from such Holder pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to such Holder. "Business Day" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or Assured Guaranty are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York or in the State of Maryland. "Due for Payment" means (i) when referring to the principal of an Obligation, the stated maturity date thereof, or the date on which such Obligation shall have been duly called for mandatory sinking fund redemption, and does not refer to any earlier date on which payment

Page 1 of 2  
Policy No.: D-2008-462  
Form FG002 (05/07)

**Assured Guaranty Corp.**

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100 info@assuredguaranty.com  
fax 212 581 3268

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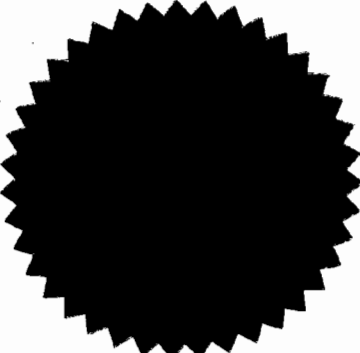
is due by reason of a call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity (unless Assured Guaranty in its sole discretion elects to make any principal payment, in whole or in part, on such earlier date) and means (ii) when referring to interest on an Obligation, the stated date for payment of such interest. "Holder" means, in respect of any Obligation, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Obligation to payment of principal or interest thereunder, except that Holder shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Obligations. "Insured Payments" means that portion of the principal of and interest on the Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment. "Nonpayment" means, in respect of an Obligation, the failure of the Issuer to have provided sufficient funds to the Trustee or the Paying Agent for payment in full of all principal and interest Due for Payment on such Obligation. It is further understood that the term "Nonpayment" in respect of an Obligation includes any Avoided Payment. "Notice of Reinstatement" means the notice from Assured Guaranty to the Trustee or the Paying Agent reinstating the Policy coverage in an amount not greater than the Policy Limit. "Receipt" or "Received" means actual receipt or notice of or, if notice is given by overnight or other delivery service, or by certified or registered United States mail, by a delivery receipt signed by a person authorized to accept delivery on behalf of the person to whom the notice was given. Notices to Assured Guaranty may be mailed by registered mail or personally delivered or telecopied to it at 1325 Avenue of the Americas, New York, New York 10019, Telephone Number: (212) 974-0100, Facsimile Number: (212) 581-3268, Attention: Risk Management Department - Public Finance Surveillance, with a copy to the General Counsel, or to such other address as shall be specified by Assured Guaranty to the Trustee or the Paying Agent in writing. A Notice of Nonpayment will be deemed to be Received by Assured Guaranty on a given Business Day if it is Received prior to 12:00 noon (New York City time) on such Business Day; otherwise it will be deemed Received on the next Business Day. "Reimbursement Agreement" shall mean the Reimbursement Agreement between the Issuer or the obligor on the Obligations, as applicable, and Assured Guaranty, effective as of the date hereof. "Term" means the period from and including the Effective Date until the earlier of (i) the maturity date for the Obligations, or (ii) the date on which the Issuer has made all payments required to be made on the Obligations. "Transaction Documentation" means the documentation providing for the issuance of and securing the Obligations.

At any time during the Term of the Policy, Assured Guaranty may appoint a fiscal agent (the "Fiscal Agent") for purposes of this Policy by written notice to the Trustee or the Paying Agent, specifying the name and notice address of such Fiscal Agent. From and after the date of Receipt of such notice by the Trustee or the Paying Agent, copies of all notices and documents required to be delivered to Assured Guaranty pursuant to this Policy shall be delivered simultaneously to the Fiscal Agent and to Assured Guaranty. All payments required to be made by Assured Guaranty under this Policy may be made directly by Assured Guaranty or by the Fiscal Agent on behalf of Assured Guaranty. The Fiscal Agent is the agent of Assured Guaranty only, and the Fiscal Agent shall in no event be liable to the Trustee or the Paying Agent for any acts of the Fiscal Agent or any failure of Assured Guaranty to deposit, or cause to be deposited, sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, Assured Guaranty hereby waives, in each case for the benefit of the Holders only, all rights and defenses of any kind (including, without limitation, the defense of fraud in the inducement or in fact or any other circumstance that would have the effect of discharging a surety, guarantor or any other person in law or in equity) that may be available to Assured Guaranty to deny or avoid payment of its obligations under this Policy in accordance with the express provisions hereof. Nothing in this paragraph will be construed (i) to waive, limit or otherwise impair, and Assured Guaranty expressly reserves, Assured Guaranty's rights and remedies, including, without limitation: its right to assert any claim or to pursue recoveries (based on contractual rights, securities law violations, fraud or other causes of action) against any person or entity, in each case, whether directly or acquired as a subrogee, assignee or otherwise, subsequent to making any payment to the Trustee or the Paying Agent, in accordance with the express provisions hereof, and/or (ii) to require payment by Assured Guaranty of any amounts that have been previously paid or that are not otherwise due in accordance with the express provisions of this Policy.

This Policy (which includes each endorsement hereto) sets forth in full the undertaking of Assured Guaranty with respect to the subject matter hereof, and may not be modified, altered or affected by any other agreement or instrument, including, without limitation, any modification thereto or amendment thereof. **THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.** This Policy will be governed by, and shall be construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, Assured Guaranty has caused this Policy to be affixed with its corporate seal, to be signed by its duly authorized officer, and to become effective and binding upon Assured Guaranty by virtue of such signature.



ASSURED GUARANTY CORP.

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

Gordon Murray  
Director

Signature attested to by: \_\_\_\_\_

Counsel

NOTICE OF NONPAYMENT

Assured Guaranty Corp.  
 1325 Avenue of the Americas  
 New York, New York 10019  
 Attention: Risk Management Department-Public Finance Surveillance and General Counsel

The undersigned, [a duly authorized officer of [TRUSTEE] [PAYING AGENT] (the "Trustee" or the "Paying Agent"), hereby certifies to Assured Guaranty Corp. ("Assured Guaranty") with reference to Financial Guaranty Insurance Policy (Reserve Fund) No. \_\_\_\_\_ (the "Policy"), that:

- (i) The deficiency with respect to the Insured Payment that is Due for Payment and unpaid by reason of Nonpayment on [insert applicable payment date] is \$[insert applicable amount] (the "Deficiency Amount").
- (ii) The reserve fund requirement for the Obligations is \$\_\_\_\_\_.
- (iii) The [Trustee][Paying Agent] is making a demand for payment under the Policy for the Deficiency Amount.
- (iv) The [Trustee][Paying Agent] agrees that, following payment by Assured Guaranty made with respect to the Deficiency Amount which is the subject of this Notice of Nonpayment, it will (a) cause such amounts to be applied directly to the payment of the applicable Insured Payment; (b) insure that such funds are not applied for any other purpose; and (c) cause an accurate record of such payment to be maintained with respect to the appropriate Insured Payment(s), the corresponding claim on the Policy, and the proceeds of such claim.
- (v) The [Trustee][Paying Agent], on behalf of the Holders, hereby assigns to Assured Guaranty all rights of the [Trustee][Paying Agent] and the Holders with respect to the Obligations to the extent of any payments under the Policy, including without limitation any amounts due to the Holders in respect of securities law violations arising from the offer and/or sale of the Obligations; provided, that payments to Assured Guaranty in respect of the foregoing assignment shall in all cases be subject to and subordinate to the rights of the Holders to receive all payments in respect of the Obligations. The foregoing assignment is in addition to, and not in limitation of, rights of subrogation otherwise available to Assured Guaranty in respect of such payments. The [Trustee][Paying Agent] shall take such action and deliver such instruments as may be reasonably requested or required by Assured Guaranty to effectuate the purpose or provisions of this paragraph (v).
- (vi) The [Trustee][Paying Agent], on its behalf and on behalf of the Holders, hereby appoints Assured Guaranty as agent and attorney-in-fact for the [Trustee][Paying Agent] and each such Holder in any legal proceeding with respect to the Obligations. The [Trustee][Paying Agent] hereby agrees that, so long as Assured Guaranty shall not be in default in its payment obligations under the Policy, Assured Guaranty may at any time during the continuation of any proceeding by or against the Issuer under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including, without limitation, (A) all matters relating to any claim in connection with an Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment made with respect to the Obligations (a "Preference Amount"), (B) the direction of any appeal of any order relating to any Preference Amount at the expense of Assured Guaranty but subject to reimbursement as set forth in the Transaction Documentation (as defined in the Policy), if any, and (C) the posting of any surety, supersedeas or performance bond pending any appeal. In addition, the [Trustee][Paying Agent] hereby agrees that Assured Guaranty shall be fully subrogated to, and the [Trustee][Paying Agent] on its behalf and on behalf of each Holder, hereby delegates and assigns, to the fullest extent permitted by law, the rights of the [Trustee][Paying Agent] and each Holder in the conduct of any Insolvency Proceeding, including without limitation all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.
- (vii) Payment should be made by credit to the following account:  
 \_\_\_\_\_  
 \_\_\_\_\_

Capitalized terms used in this Notice of Nonpayment and not otherwise defined herein shall have the respective meanings ascribed thereto in the Policy.

This Notice of Nonpayment may be revoked at any time by written notice of such revocation by the [Trustee][Paying Agent] to the Assured Guaranty, if and only to the extent that moneys are actually received prior to any such revocation from a source other than Assured Guaranty with respect to the Deficiency set forth herein.

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.**

IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Nonpayment as of the \_\_\_ day of \_\_\_\_\_ of 20\_\_.

[TRUSTEE /PAYING AGENT]

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

**NOTICE OF REINSTATEMENT**

[DATE]

[TRUSTEE] [PAYING AGENT]  
[INSERT ADDRESS]

Reference is made to the Financial Guaranty Insurance Policy (Reserve Fund) No. \_\_\_\_\_ (the "Policy") issued by Assured Guaranty Corp. ("Assured Guaranty"). The terms which are capitalized herein and not otherwise defined have the meanings specified in the Policy.

Assured Guaranty hereby delivers notice that it is in receipt of payment from the [Issuer][Obligor] pursuant to the Reimbursement Agreement and, as of the date hereof the Policy coverage is \$ \_\_\_\_\_, subject to a reduction as the reserve fund requirement is reduced pursuant to the terms set forth in the Transaction Documentation (as defined in the Policy).

**ASSURED GUARANTY CORP.**

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

# ASSURED GUARANTY

ENDURING FINANCIAL STRENGTH™  
AAA S&P • Aaa Moody's • AAA Fitch

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## Endorsement to Financial Guaranty Insurance Policy (California Insurance Guaranty Association)

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Issuer:	City of Modesto, California	Policy No.	D-2008-462
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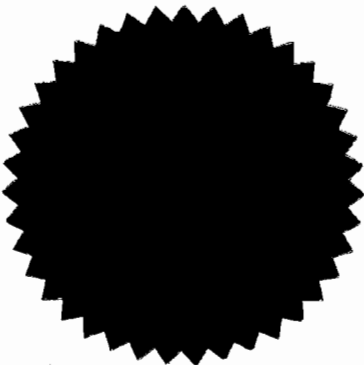
Obligations:	\$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A	Effective Date:	May 30, 2008
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Notwithstanding the terms and provisions contained in the Policy, it is further understood that the insurance provided by the Policy to which this endorsement is attached and of which it forms a part is not covered by the California Insurance Guaranty Association, established pursuant to the laws of the State of California (California Insurance Code, Article 15.2).

Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language, the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.



ASSURED GUARANTY CORP.

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

Gordon Murray  
Director

Signature attested to by \_\_\_\_\_

Counsel

Form E-CA001 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com



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Endorsement to Financial Guaranty Insurance Policy  
(California Business Day)

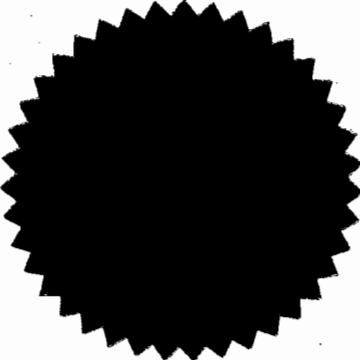
Issuer:	City of Modesto, California	Policy No.	D-2008-462
Obligations:	\$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A	Effective Date:	May 30, 2008

Notwithstanding the terms and provisions contained in the Policy, the Policy to which this endorsement is attached and of which it forms a part is hereby amended to provide that the term "Business Day" means any day other than (i) a Saturday or Sunday, (ii) any day on which the offices of the Trustee, the Paying Agent or Assured Guaranty are closed, or (iii) any day on which banking institutions are authorized or required by law, executive order or governmental decree to be closed in the City of New York, the State of Maryland or the State of California.

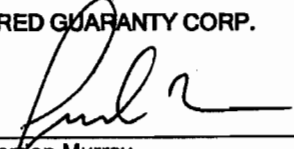
It is further understood the Policy to which this endorsement is attached and of which it forms a part is hereby amended to provide that a Notice will be deemed to be Received on a given Business Day if it is Received prior to 12:00 noon (Pacific Standard time) on such Business Day; otherwise it will be deemed Received on the next Business Day.

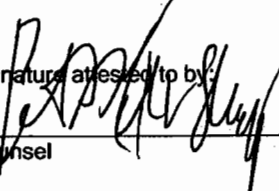
Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language, the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.



ASSURED GUARANTY CORP.

By:   
Gordon Murray  
Director

Signature attested to by:   
Counsel

Form E-CA002 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com

# ASSURED GUARANTY

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## Endorsement to Financial Guaranty Insurance Policy (California Governing Law)

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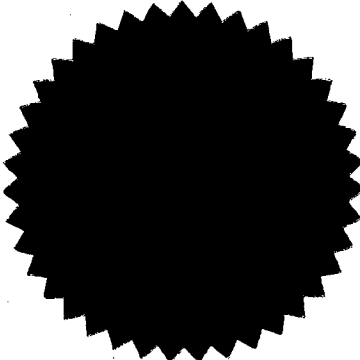
Issuer: City of Modesto, California Policy No. D-2008-462

Obligations: \$47,625,000 Water Refunding Revenue Effective Date: May 30, 2008  
Certificates of Participation, 2008 Series  
A

Notwithstanding the terms and provisions contained in the Policy, it is further understood that the insurance provided by the Policy to which this endorsement is attached and of which it forms a part shall be governed by, and shall be construed in accordance with, the laws of the State of California.

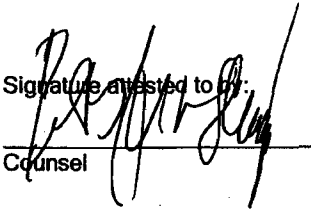
Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.



ASSURED GUARANTY CORP.

By:   
Gordon Murray  
Director

Signature attested to by:  
  
Counsel

Form E-CA003 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com

# ASSURED GUARANTY

ENDURING FINANCIAL STRENGTH™  
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## Endorsement to Financial Guaranty Insurance (Bank Obligation Endorsement)

Issuer: City of Modesto, California Policy No.: D-2008-461

Obligations: \$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A Effective Date: May 30, 2008

The Policy to which this endorsement is attached and of which it forms a part is hereby amended to provide that the term "Due for Payment" shall include (i) interest on the Obligations held by the Bank (as defined the Standby Agreement referred to below) at the Bank Rate (as defined in the Standby Agreement referred to below) that shall become Due for Payment but which is unpaid by reason of Nonpayment on any Obligation held by the Bank (the "Bank Obligations") but only to the extent that such interest rate does not exceed the lesser of eighteen percent (18%) per annum or the maximum rate of interest permitted by applicable law (the "Maximum Rate"), and (ii) the required mandatory amortization of the principal amount of such Bank Obligations until such Bank Obligations shall have been redeemed in full pursuant to Section 2.08(b) of the Standby Agreement. Amounts Due for Payment under the Policy shall not, however, include (a) excess interest on any Bank Obligation to the extent such interest would cause Bank Obligations to bear interest in excess of the Maximum Rate, and (b) any interest accrued on such excess Bank Obligation interest.

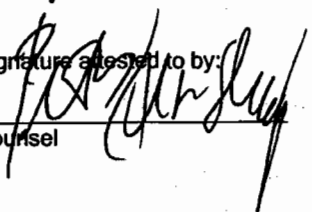
"Standby Agreement" means the "Standby Certificate Purchase Agreement", dated as of May 1, 2008, among Modesto Public Financing Authority, City of Modesto and Bank of America, N.A., as Bank.

Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language, the terms of this Endorsement shall supersede the Policy language with respect to any Bank Obligation.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.

ASSURED GUARANTY CORP.

By:   
Gordon Murray  
Director

Signature attested to by:   
Counsel

Form-E-BB001 (05/07)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com

**REIMBURSEMENT AGREEMENT  
(RESERVE FUND SURETY)**

This AGREEMENT made as of May 1, 2008 by and between ASSURED GUARANTY CORP., a Maryland insurance corporation (“Assured Guaranty”), and CITY OF MODESTO, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the “Obligor”).

**WITNESSETH:**

WHEREAS, the Issuer (as hereinafter defined) will issue the Obligations (as hereinafter defined) pursuant to the terms of the Indenture (as hereinafter defined);

WHEREAS, pursuant to the terms of the Authorizing Resolution the Issuer has agreed to make certain payments with respect to the Obligations;

WHEREAS, the Obligor has requested that Assured Guaranty, subject to the terms and conditions set forth in the Commitment, issue its Policy (as hereinafter defined) pursuant to which Assured Guaranty will guarantee certain payments by the Obligor subject to the terms and conditions of the Policy;

WHEREAS, as consideration for Assured Guaranty issuing the Policy, the Obligor has agreed to (i) cause to be paid to Assured Guaranty a premium as provided in the Commitment, (ii) reimburse Assured Guaranty for any payment made by Assured Guaranty under the Policy, and (iii) indemnify Assured Guaranty for certain amounts as more fully set forth herein; and

NOW, THEREFORE, in consideration of the premises and of the agreements herein contained and of the execution of the Policy, the Obligor and Assured Guaranty agree as follows:

**ARTICLE I**

**DEFINITIONS**

Section 1.01. Definitions. Except as otherwise defined herein, the following words and phrases shall have the following meanings.

“Agreement” shall mean this Reimbursement Agreement (Reserve Fund Surety), dated as of May 1, 2008, between Assured Guaranty and the Obligor, as such agreement may be amended or supplemented.

“Assured Guaranty” shall have the meaning set forth in the first paragraph of this Agreement.

“Authorizing Resolution” shall mean City of Modesto Resolution No. 2008-294, adopted on May 13, 2008.

“Available Funds” shall mean available funds payable solely from Gross Revenues of the Obligor’s Water Utility System (as such terms are defined in the Master Installment Purchase

Contract) on a basis that is junior and subordinate to the Obligor's outstanding Parity Reserve Fund Obligations and any other obligations payable on a parity therewith heretofore or hereafter incurred by the Obligor in accordance with the Master Installment Purchase Contract.

"Commitment" shall mean the commitment of Assured Guaranty to issue the Policy dated May 16, 2008.

"Debt Service Payments" shall mean those payments required to be made by or on behalf of the Issuer, which will be applied to payment of principal of and interest on the Obligations.

"Demand for Payment" shall mean the certificate submitted to Assured Guaranty for payment under the Policy substantially in the form attached to the Policy.

"Event of Default" shall have the meaning given that term in Section 5.01 hereof.

"Financing Documents" shall mean the Indenture, the Master Installment Purchase Contract, the Authorizing Resolution, the Purchase Contract, the Standby Certificate Purchase Agreement and any liquidity facility or other transaction document or agreement contemplated by the obligations set forth in the Master Installment Purchase Contract or this Agreement.

"Indenture" shall mean that certain Trust Agreement, dated May 1, 2008, by and between the Issuer and the Trustee.

"Issuer" shall mean Modesto Public Financing Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California.

"Master Installment Purchase Contract" shall mean that certain Master Installment Purchase Contract, dated November 1, 1997, by and between the Issuer and the Obligor, as supplemented by that certain (i) 1997 Supplemental Installment Purchase Contract, dated November 1, 1997, (ii) 2006 Supplemental Installment Purchase Contract, dated November 1, 2006, and (iii) 2008 Supplemental Installment Purchase Contract, dated May 1, 2008.

"Obligations" shall mean all of the Water Refunding Revenue Certificates of Participation, 2008 Series A, evidencing and representing proportionate interests of the owners thereof in the 2008 Payments to be made by the Obligor, and executed and delivered in accordance with the Indenture.

"Official Statement" shall mean the Official Statement dated May 29, 2008, relating to the Obligations.

"Owners" shall mean the registered owner of any Obligation as indicated in the books maintained by the Trustee for such purpose.

"Parity Obligations" shall have the meaning given to such term in the Master Installment Purchase Contract.

"Parity Reserve Fund Obligation" shall have the meaning given to such term in the Indenture.

“Policy” shall mean the reserve fund financial guaranty insurance policy no. D-2008-462 issued by Assured Guaranty guaranteeing, subject to the terms and limitations thereof, Debt Service Payments.

“Policy Coverage” shall mean the amount available at any particular time to be paid under the terms of the Policy, which amount shall never exceed the Policy Limit.

“Policy Limit” shall mean the amount set forth in the Policy.

“Policy Payment” shall mean an amount equal to the Debt Service Payment required to be made by the Obligor pursuant to the Indenture less (i) that portion of the Debt Service Payment paid by or on behalf of the Obligor, and (ii) other funds legally available for payment to the Owners, all as certified in a Demand for Payment.

“Purchase Contract” shall mean that certain Purchase Contract, dated May 29, 2008, by and among the Obligor, the Issuer and Banc of America Securities LLC.

“Reimbursement Rate” shall mean the per annum rate of interest, publicly announced from time to time by JP Morgan Chase Bank, National Association at its principal office in New York, New York as its prime lending rate (any change in such prime rate of interest to be effective on the date such change is announced by JP Morgan Chase Bank, National Association plus three percent (3%) per annum. The Reimbursement Rate shall be calculated on the basis of the actual number of days elapsed over a 360-day year. In the event JP Morgan Chase Bank ceases to announce its prime rate publicly, the prime rate shall be the publicly announced prime rate or base lending rate of such national bank as Assured Guaranty shall specify.

“Standby Certificate Purchase Agreement” shall mean that certain Standby Certificate Purchase Agreement, dated May 1, 2008, by and among the Obligor, the Issuer and Bank of America, N.A.

“Trustee” shall mean The Bank of New York Trust Company, N.A., a national banking association organized and existing under and by virtue of the laws of the United States of America, or any successor thereto.

Section 1.02. Generic Terms. The term “hereof” or “herein” unless otherwise modified by more specific reference, shall refer to this Agreement. Unless otherwise specified, the term “Article” or “Section” shall refer to an Article or Section of this Agreement.

**ARTICLE II**

**THE POLICY**

Section 2.01. The Policy. Assured Guaranty will issue the Policy in accordance with and subject to the terms and conditions of the Commitment. The maximum liability of Assured Guaranty under the Policy and the coverage and term thereof shall be subject to and limited by the terms and conditions of the Policy.

Section 2.02. Premium. In consideration of Assured Guaranty agreeing to issue the Policy, the Obligor hereby agrees to cause to be paid to Assured Guaranty the premium set forth in the Commitment. The premium on the Policy is not refundable for any reason.

Section 2.03. Policy Limit. Payments under the Policy will reduce the Policy Coverage to the extent of such payment.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Section 3.01. Due Organization and Qualification. The Obligor is a charter city and municipal corporation duly organized and validly existing under, and by virtue of, the Constitution and laws of the State of California.

Section 3.02. Power and Authority. The Obligor has full corporate power and authority to execute and deliver this Agreement and the Financing Documents. The execution and delivery of this Agreement and the Financing Documents have been duly authorized by the Obligor, and all necessary approvals for the execution, delivery and performance of this Agreement and the Financing Documents have been obtained by the Obligor.

Section 3.03. Non-contravention. The execution and delivery of this Agreement and the Financing Documents by the Obligor, the consummation of the transactions contemplated by this Agreement and the Financing Documents by the Obligor and the fulfillment of or compliance with the terms and conditions of this Agreement and the Financing Documents by the Obligor does not conflict with or result in any breach or violation of any of the terms, conditions or provisions of any applicable laws, including regulations, or any material agreement, organizational document or instrument to which, it is now a party or by which it is bound, or constitute a default under any of the foregoing which breach or default would materially and adversely affect the consummation of the transactions contemplated by this Agreement.

Section 3.04. Conditions Required for Delivery of the Policy. The Obligor shall provide or cause to be provided to Assured Guaranty prior to the issuance of the Policy (i) conformed copies of this Agreement and the Financing Documents, (ii) certifications of the Obligor, as requested by Assured Guaranty, if any, and (iii) such opinions of legal counsel to the Obligor evidencing necessary or appropriate corporate action taken by the Obligor, and such other documents as may reasonably be requested by Assured Guaranty including documents evidencing any required approvals of the transactions contemplated by this Agreement and the Financing Documents.

## ARTICLE IV

### REIMBURSEMENT; INDEMNIFICATION; PAYMENTS

#### Section 4.01. Reimbursement for Payments Under the Policy and Expenses; Indemnification; Payment.

(a) The Obligor will reimburse Assured Guaranty, from Available Funds, without demand or notice by Assured Guaranty to the Obligor, or any other person, to the extent of each Policy Payment with interest on each Policy Payment from and including the date made to the date of the reimbursement at the lesser of the Reimbursement Rate or the maximum rate of interest permitted by then applicable law.

(b) The Obligor will pay all other amounts required to be paid to Assured Guaranty pursuant to the terms of this Agreement or in connection with the transactions contemplated by the Financing Documents, this Agreement, or the Policy (and the related Policy No. D-2008-461) from Available Funds upon written notice from Assured Guaranty of the amounts so owed.

(c) The Obligor will pay or reimburse Assured Guaranty, to the extent permitted by law, and solely from Available Funds, any and all charges, fees, costs, losses, liabilities and expenses which Assured Guaranty may pay or incur, including, but not limited to, reasonable fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the Policy (and the related Policy No. D-2008-461), (ii) the administration, enforcement, defense or preservation of any rights in respect of this Agreement or any Financing Document including defending, monitoring or participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the Obligor or any affiliate thereof) relating to this Agreement or any other Financing Document, any party to this Agreement or any other Financing Document or the transaction contemplated by the Financing Documents, (iii) the foreclosure against, sale or other disposition of any collateral securing any obligations under this Agreement or any other Financing Document, if any, or the pursuit of any remedies under any other Financing Document, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition, (iv) any amendment, waiver or other action with respect to, or related to this Agreement, the Policy (and the related Policy No. D-2008-461) or any other Financing Document whether or not executed or completed, or (v) any action taken by Assured Guaranty to cure a default or termination or similar event (or to mitigate the effect thereof) under any Financing Document. Costs and expenses shall include a reasonable allocation of compensation and overhead attributable to time of employees of Assured Guaranty spent in connection with the actions described in clauses (ii) – (iv) above. Assured Guaranty reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this Agreement. Notwithstanding the foregoing, the Obligor will not be liable for any losses, costs or expenses resulting from the willful misconduct or negligence of Assured Guaranty, or resulting from a misrepresentation or omission made by the Assured Guaranty in any offering document or other disclosure materials or filings (including any filings made with any insurance regulator, the Securities & Exchange Commission or any other government body) concerning Assured Guaranty.

(d) The Obligor will pay interest on the amounts owed in clauses (a), (b), and (c), of this Section 4.01 from the date of any payment due or paid as described in clauses (a) or (c), and from the date of receipt of written notice from Assured Guaranty, as provided in clause (b) in each case at the Reimbursement Rate. If the interest provisions of this clause (d) shall result in an effective rate of interest which, for any period, exceeds the limit of the usury or any other laws applicable to the indebtedness created herein, then all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied as additional interest for any later periods of time when amounts are outstanding hereunder to the extent that interest otherwise due hereunder for such periods plus such additional interest would not exceed the limit of the usury or such other laws, and any excess shall be applied upon principal immediately upon receipt of such moneys by Assured Guaranty, with the same force and effect as if the Obligor had specifically designated such extra sums to be so applied and Assured Guaranty had agreed to accept such extra payment(s) as additional interest for such later periods. In no event shall any agreed-to or actual exaction as consideration for the indebtedness created herein exceed the limits imposed or provided by the law applicable to this transaction for the use or detention of money or for forbearance in seeking its collection.

Section 4.02. Conduct of Actions or Proceedings. In the event that any action or proceeding (including any governmental investigation) shall be commenced or claim asserted which may entitle Assured Guaranty, any of its subsidiaries and affiliates, and any shareholder, director, officer, employee, agent or “controlling person,” within the meaning of Section 15 of the Securities and Exchange Act or Section 20 of the Securities and Exchange Act, of any of the foregoing (each, an “Indemnified Party” and, collectively, the “Indemnified Parties”) to be indemnified under this Agreement, such party shall give the Obligor (the “Indemnifying Party”) written notice of such action, proceeding or claim promptly after receipt of written notice thereof. If any such action, proceeding or claim shall be brought against an Indemnified Party, it shall notify the Indemnifying Party thereof. The Indemnified Party shall have the right to employ its own counsel in any such action, proceeding or claim at the expense of the Indemnifying Party and all such reasonable fees and expenses shall be reimbursed promptly as they are incurred. This section is subject to the limitations set forth in the last sentence of Section 4.01(c).

Section 4.03. Allocation of Payments. Assured Guaranty and the Obligor hereby agree that each payment received by Assured Guaranty from or on behalf of the Obligor as a reimbursement to Assured Guaranty as required by Section 4.01 hereof shall be applied by Assured Guaranty as follows: (i) first, toward repayment of the aggregate Policy Payments made by Assured Guaranty and not yet repaid; payment of which will reinstate all or a portion of the Policy Coverage to the extent of such repayment (but not to exceed the Policy Limit), and (ii) second, upon reinstatement of the Policy Coverage to the Policy Limit, toward other amounts, including, without limitation, any interest payable with respect to any Policy Payments then due to Assured Guaranty.

Section 4.04. Security for Payments. To the extent, but only to the extent, that any Financing Document or related indenture, trust agreement, ordinance, resolution, mortgage, security agreement or any similar instrument, if any, pledges to the Owners or any trustee therefore or any other obligations of the Obligor secured on a parity basis with the Obligations,

or grants a security interest or lien in or on any collateral, property, revenue or other payments (“Collateral and Revenues”) in order to secure the Obligations or any Parity Reserve Fund Obligations or provide a source of payment for the Obligations or any Parity Reserve Fund Obligations, the Obligor hereby grants to Assured Guaranty a security interest in or lien on, as the case may be, and pledges to Assured Guaranty all such Collateral and Revenues as security for payment of all amounts due hereunder and under any Financing Document, consistent with subordinate liens, (A) which security interest, lien and/or pledge created or granted under this Section 4.04 shall be subordinate only to (i) the interests of the Owners or owners of any Parity Obligations heretofore or hereafter issued or incurred and any trustee therefor in such Collateral and Revenues, and (ii) the interests of any grantee of any other previously granted security interest in, lien on and/or pledge of such Collateral and Revenue, and (B) which security interest, lien and/or pledge created or granted under this Section 4.04 shall be on a parity with any security interest in, lien on and/or pledge of such Collateral and Revenues hereafter granted to any provider of any letter of credit, surety bond or financial guaranty insurance policy issued to fund a reserve account to the reserve requirement with respect to any Parity Reserve Fund Obligations hereafter issued pursuant to the Master Installment Purchase Contract.

Section 4.05. Payments. All payments made to Assured Guaranty under this Agreement shall be paid in lawful currency of the United States in immediately available funds to Assured Guaranty Corp., 1325 Avenue of the Americas, New York, New York 10019, Attention: Accounting Department, or at such other place as shall be designated by Assured Guaranty.

Section 4.06. Unconditional Obligation. The obligations of the Obligor to pay all amounts due under this Agreement shall be an absolute and unconditional general obligation of the Obligor and will be paid or performed strictly in accordance with this Agreement, irrespective of:

- (a) (i) any lack of validity or enforceability of or any amendment or other modifications of, or waiver with respect to the Obligations or any Financing Document, or (ii) any amendment or other modification of, or waiver with respect to the Policy;
- (b) any exchange, release or non-perfection of any security interest in property securing the Obligations, this Agreement or any Financing Documents;
- (c) whether or not such Obligations are contingent or matured, disputed or undisputed, liquidated or unliquidated;
- (d) any amendment, modification or waiver of or any consent to departure from this Agreement, the Policy or all or any of the Financing Documents;
- (e) the existence of any claim, setoff, defense (other than the defense of payment in full), reduction, abatement or other right which the Obligor may have at any time against the Trustee or any other person or entity other than Assured Guaranty, whether in connection with this Agreement, the transactions contemplated herein or in the Financing Documents or any unrelated transactions;
- (f) any statement or any other document presented under or in connection with the Policy or the Commitment proving in any and all respects invalid, inaccurate,

insufficient, fraudulent or forged or any statement therein being untrue or inaccurate in any respect; or

(g) any payment by Assured Guaranty under the Policy against presentation of a certificate or other document which does not strictly comply with the terms of the Policy, unless Assured Guaranty is grossly negligent in making such payment.

Section 4.07. Assured Guaranty's Rights. The Obligor shall repay Assured Guaranty to the extent of payments made and expenses incurred by Assured Guaranty in connection with the Obligations and this Agreement.

## ARTICLE V

### EVENTS OF DEFAULT; REMEDIES

Section 5.01. Events of Default. The following events shall constitute Events of Default hereunder:

(a) The Obligor shall fail to pay to Assured Guaranty any amount payable under Article IV hereof; or

(b) Any representation or warranty made by the Obligor hereunder or under the Financing Documents or in any report, certificate, financial statement or other instrument provided in connection with the Commitment, the Policy or this Agreement shall have been or is untrue in any material respect; or

(c) Except as otherwise provided in this Section 5.01, the Obligor shall fail to perform any of its other obligations hereunder or under any other Financing Document; or

(d) The occurrence and continuation of an event of default under any Financing Document; or

(e) The Obligor shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of; or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due or (vii) take action for the purpose of effecting any of the foregoing; or

(f) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Obligor, or of a substantial part of its property, under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law or (ii) the

appointment of a receiver, trustee, custodian, sequestrator or similar official for the Obligor or for a substantial part of its property, and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for thirty (30) days.

Section 5.02. Remedies. Whenever an Event of Default referred to in Section 5.01 hereof shall have happened and be continuing, Assured Guaranty may take whatever action at law or in equity as may appear necessary or desirable in Assured Guaranty's judgment to collect the amounts then due and thereafter to become due hereunder or to enforce performance of any obligation of the Obligor to Assured Guaranty hereunder or under any Financing Document.

Section 5.03. No Remedy Exclusive. Unless otherwise expressly provided, no remedy herein conferred upon or reserved to Assured Guaranty is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or any Financing Document or existing at law or in equity. No delay or failure to exercise any right or power occurring under this Agreement or any Financing Document upon the happening of any Event of Default set forth in Section 5.01 hereof or an event of default under any Financing Document shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE VI

### MISCELLANEOUS

Section 6.01. Interest Computations. All computations of premium, interest and fees due hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days.

Section 6.02. Exercise of Rights. No failure or delay on the part of Assured Guaranty to exercise any right, power or privilege under this Agreement and no course of dealing between Assured Guaranty and the Obligor or any other party shall operate as a waiver of any such right, power or privilege, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Assured Guaranty would otherwise have pursuant to law or equity. No notice to or demand on any party in any case shall entitle such party to any other or further notice or demand in similar or other circumstances, or constitute a waiver of the right of the other party to any other or further action in any circumstances without notice or demand.

Section 6.03. Amendments and Waivers. This Agreement may only be amended, modified, waived, supplemented, discharged or terminated only by written instruments signed by the parties hereto.

Section 6.04. Successors and Assigns; Descriptive Headings.

(a) This Agreement shall bind, and the benefits thereof shall inure to, the Obligor and Assured Guaranty and their respective successors and assigns; provided, that the Obligor may

not transfer or assign any or all of its rights and obligations hereunder without the prior written consent of Assured Guaranty.

(b) The descriptive headings of the various provisions of this Agreement are inserted for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

Section 6.05. Waiver. The Obligor waives any defense that this Agreement was executed subsequent to the date of the Policy, admitting and covenanting that such Policy was executed pursuant to their request and in reliance on their promise to execute this Agreement.

Section 6.06. Other Sureties. If Assured Guaranty shall procure any other surety to reinsure the Policy, this Agreement shall inure to the benefit of such other surety, its successors and assigns, so as to give to it a direct right of action against the Obligor to enforce this Agreement and "Assured Guaranty" whenever used herein, shall be deemed to include such reinsuring surety, as its respective interest may appear.

Section 6.07. Notices, Requests, Demands. Except as otherwise expressly provided herein, all written notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been given or made when actually received, or in the case of telex or telecopier notice sent over a telex or a telecopier machine owned or operated by a party hereto, when sent, addressed as specified below or at such other address as any of the parties may hereafter specified in writing to the others:

If to the Obligor	City of Modesto Financial Services City Hall 1010 Tenth Street, Suite 5200 Modesto, CA 95353 Attention: Wayne Padilla, Director of Finance Facsimile No.: (209) 577-5373 Telephone No.: (209) 577-5371
If to Assured Guaranty	Assured Guaranty Corp. 1325 Avenue of the Americas New York, New York 10019 Attention: Risk Management, Public Finance Surveillance Facsimile No.: (212) 581-3268 Telephone No.: (212) 974-0100 Policy No.: D-2008-462

(in each case in which notice or other communication to Assured Guaranty refers to an event of default, a claim on the Policy or any other event with respect to which failure on the part of Assured Guaranty to respond shall be deemed to constitute consent or acceptance, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel via facsimile at facsimile number (212) 581-3268 and shall be marked to indicate "URGENT MATERIAL ENCLOSED").

Section 6.08. Survival of Representations and Warranties. All representations, warranties and obligations contained herein shall survive the execution and delivery of this Agreement and the Policy.

Section 6.09. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK; PROVIDED, HOWEVER, THAT THE OBLIGOR'S AUTHORITY TO ENTER INTO THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

Section 6.10. Reserved.

Section 6.11. Limited Liability of Assured Guaranty. No recourse under this Agreement shall be had against, and no personal liability shall attach to, any officer, employee, agent, director, affiliate, advisor or securityholder of Assured Guaranty, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise in respect of this Agreement or the Policy, it being expressly agreed and understood that the Policy is solely a corporate obligation of Assured Guaranty, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such officer, employee, agent, director, affiliate, advisor or securityholder for breaches by Assured Guaranty of any obligations under the Policy is hereby expressly waived as a condition of and in consideration for the execution and delivery of this Agreement.

Section 6.12. Limited Liability of Obligor. No recourse under this Agreement shall be had against, and no personal liability shall attach to, any officer, employee, agent, director, affiliate, advisor or securityholder of Obligor, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise in respect of this Agreement, it being expressly agreed and understood that this Agreement is solely a limited obligation of Obligor payable solely from Available Funds, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such officer, employee, agent, director, affiliate, advisor or securityholder for breaches by Obligor of any obligations under this Agreement is hereby expressly waived as a condition of and in consideration for the execution and delivery of this Agreement.

Section 6.13. Liability of Obligor Limited to Gross Revenues. The obligations of the Obligor to make payments to Assured Guaranty under this Agreement are special, limited obligations payable solely from Available Funds. The general fund of the Obligor is not liable, and neither the credit nor taxing power of the Obligor is pledged, for the payment of amounts due to Assured Guaranty from the Obligor under this Agreement.

Section 6.14. Trial by Jury Waived. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, UNDER OR IN CONNECTION WITH ANY OF THE THIS AGREEMENT OR THE FINANCING DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREUNDER. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY

OR OTHERWISE, THAT IT WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE FINANCING DOCUMENTS TO WHICH IT IS A PARTY BY, AMONG OTHER THINGS, THIS WAIVER.

Section 6.15. Counterparts. This Agreement may be executed in counterparts by the parties hereto and such counterparts shall constitute one and the same instrument, each of which shall be deemed to be an original instrument.

Section 6.16. Further Assurances. Assured Guaranty and the Obligor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto (including any financing statements, if applicable) and such further instruments as may be required by law or as shall reasonably be requested by Assured Guaranty for carrying out the intention of or facilitating the performance of this Agreement.

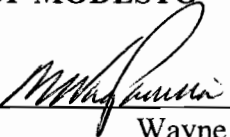
Section 6.17. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, the parties hereto agree that such holding shall not invalidate or make unenforceable any other provision hereof. The parties hereto further agree that the holding by any court of competent jurisdiction that any remedy pursued by any party hereto is unavailable or unenforceable shall not affect in any way the ability of such party to pursue any other remedy available to it.

Section 6.18. Survival of Obligations. Notwithstanding anything to the contrary contained in this Agreement, the obligation of the Obligor to pay all amounts due hereunder and the rights of Assured Guaranty to pursue all remedies shall survive the expiration, termination or substitution of the Policy and this Agreement.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, each of the parties hereto have duly executed and delivered this Agreement as of the date first above written.

**CITY OF MODESTO**

By:   
Wayne Padilla  
Director of Finance

**ASSURED GUARANTY CORP.**

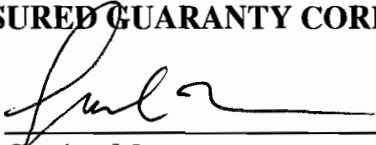
By: \_\_\_\_\_  
Authorized Representative

IN WITNESS WHEREOF, each of the parties hereto have duly executed and delivered this Agreement as of the date first above written.

**CITY OF MODESTO**

By: \_\_\_\_\_  
Wayne Padilla  
Director of Finance

**ASSURED GUARANTY CORP.**

By:  \_\_\_\_\_  
Gordon Murray  
Director

## CERTIFICATE OF ASSURED GUARANTY CORP.

In connection with the issuance of \$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A (the "Obligations") by City of Modesto, California (the "Issuer"), Assured Guaranty Corp. ("Assured Guaranty") is issuing financial guaranty insurance policy no. D-2008-461 (the "FG Policy") and financial guaranty insurance policy no. D-2008-462 (the "Reserve Fund Policy" and, together with the Bond Policy, collectively the "Policies" and each a "Policy"), guaranteeing, when due, the scheduled payment of principal of and interest on the Obligations, all as set forth in the Policies.

On behalf of Assured Guaranty, the undersigned hereby certifies that:

- (i) each Policy is an unconditional and recourse obligation of Assured Guaranty (enforceable on behalf of the holders of the Obligations) to pay the scheduled payments of interest and principal on the Obligations in the event of a Nonpayment (as defined in the Policies);
- (ii) the insurance premium of \$826,615.80 for the FG Policy and \$62,475.38 for the Reserve Fund Policy was determined in an arm's length negotiation in accordance with our standard procedure, and is required to be paid as a condition of the issuance of each Policy;
- (iii) no portion of such premium represents a payment for any direct or indirect services other than the transfer of credit risk;
- (iv) Assured Guaranty is not a co-obligor on the Obligations and does not reasonably expect that it will be called upon to make any payment under the Policies;
- (v) the Issuer is not entitled to a refund of premium for the Policies in the event that the Obligations are retired prior to their stated maturity;
- (vi) there has not come to the attention of the undersigned any information which would cause the undersigned to believe that the description of Assured Guaranty under the caption "CERTIFICATE INSURANCE-Assured Guaranty Corp." in the official statement relating to the above referenced Obligations dated May 29, 2008 (the "Official Statement"), as of the date of the Official Statement or as of the date of this certificate, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;
- (vii) Assured Guaranty is not currently in default nor has Assured Guaranty ever been in default under any policy or obligation guaranteeing the payment of principal of or interest on an obligation;
- (viii) except for the insurance premium referred to in paragraph (ii) above, neither Assured Guaranty nor any party related to Assured Guaranty within the meaning of Section 1.150-1(b) of the Treasury Regulations will use any portion of the proceeds of the Obligations; and
- (ix) Assured Guaranty would not have issued the Policy in the absence of a debt service reserve fund of the size and type established by the documents pursuant to which the Obligations are being issued.

IN WITNESS WHEREOF, Assured Guaranty has caused this certificate to be executed in its name on this 30<sup>th</sup> day of May, 2008, by one of its duly authorized officers.

ASSURED GUARANTY CORP.

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

  
Gordon Murray  
Director

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

SUFFICIENCY CERTIFICATE OF THE FINANCIAL ADVISOR

The undersigned, an authorized representative of Public Financial Management, Inc. (“PFM”), hereby certifies that PFM is the Financial Advisor to the City of Modesto (the “City”), in connection with the City’s Water Refunding Revenue Certificates of Participation 2008 Series A (the “Certificates”).

I hereby further certify that the amount of \$46,286,841.26 deposited into the 2006 Debt Service Fund, is sufficient, without regard to interest earnings, to pay the prepayment price of, and interest due with respect to, the City’s Water Revenue Certificates of Participation 2006 Series A on May 30, 2008.

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Dated: May 30, 2008

PUBLIC FINANCIAL MANAGEMENT, INC.,  
as Financial Advisor

By:  \_\_\_\_\_  
Authorized Representative

**NOTICE AND DIRECTIONS TO TRUSTEE OF PREPAYMENT**

**\$46,275,000  
WATER REVENUE CERTIFICATES OF PARTICIPATION  
2006 SERIES A**

**EVIDENCING AND REPRESENTING PROPORTIONATE INTERESTS  
OF THE OWNERS THEREOF IN 2006 PAYMENTS TO BE MADE BY THE  
CITY OF MODESTO  
TO THE  
MODESTO PUBLIC FINANCING AUTHORITY**

To: The Bank of New York Trust Company, N.A., as Trustee  
550 Kearny Street, Suite 600  
San Francisco, California 94108  
Attention: Josephine Libunao

Pursuant to Section 2.03 of the Trust Agreement, dated as of November 1, 2006 (the "Trust Agreement") by and between the Modesto Public Financing Authority (the "Authority") and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), the Authority hereby notifies and directs you as follows with respect to the above-captioned certificates (the "Certificates"):

1. Notice to Owners. The Trustee is hereby instructed to give notice by first-class mail, in substantially the form attached hereto as Exhibit A, to the Owners of the Certificates in accordance with Section 2.03(f) of the Trust Agreement in order to effect the foregoing. The Trustee is further instructed to provide the Conditional Notice of Full Prepayment to the Owners of the Certificates no later than April 16, 2008. A copy of such notice to the Owners shall be sent to the Securities Depositories and the Information Services.

All capitalized terms not defined herein shall have the meanings specified in the Trust Agreement.

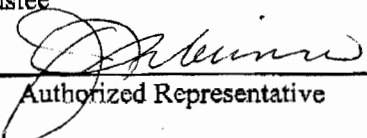
Dated: April 10, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By:   
\_\_\_\_\_  
Authorized Representative

Accepted by:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,  
as Trustee

By:   
\_\_\_\_\_  
Authorized Representative

**NOTICE OF CANCELLATION AND  
WITHDRAWAL OF PREVIOUS NOTICE OF PREPAYMENT**

**AND**

**NOTICE AND DIRECTIONS TO TRUSTEE TO  
DISTRIBUTE NEW NOTICE OF PREPAYMENT**

**\$46,275,000  
WATER REVENUE CERTIFICATES OF PARTICIPATION  
2006 SERIES A**

**EVIDENCING AND REPRESENTING PROPORTIONATE INTERESTS  
OF THE OWNERS THEREOF IN 2006 PAYMENTS TO BE MADE BY THE  
CITY OF MODESTO  
TO THE  
MODESTO PUBLIC FINANCING AUTHORITY**

To: The Bank of New York Trust Company, N.A., as Trustee  
550 Kearny Street, Suite 600  
San Francisco, California 94108  
Attention: Josephine Libunao

Pursuant to Section 2.03 of the Trust Agreement, dated as of November 1, 2006 (the "Trust Agreement") by and between the Modesto Public Financing Authority (the "Authority") and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), the Authority hereby notifies and directs you as follows with respect to the above-captioned certificates (the "Certificates"):

1. Cancellation and Withdrawal of Conditional Notice of Full Prepayment. The Trustee is hereby instructed to cancel and withdraw the Conditional Notice of Full Prepayment, issued on April 16, 2008, with respect to the prepayment of the Certificates scheduled to occur on May 16, 2008.

2. Revised Notice to Owners. The Trustee is hereby instructed to give notice by first-class mail, in substantially the form attached hereto as Exhibit A, to the Owners of the Certificates in accordance with Section 2.03(f) of the Trust Agreement in order to effect the foregoing. The Trustee is further instructed to provide the Conditional Notice of Full Prepayment to the Owners of the Certificates no later than April 30, 2008. A copy of such notice to the Owners shall be sent to the Securities Depositories and the Information Services.

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All capitalized terms not defined herein shall have the meanings specified in the Trust Agreement.


Dated: April 28, 2008

MODESTO PUBLIC FINANCING AUTHORITY

By:   
Authorized Representative

Accepted by:

THE BANK OF NEW YORK TRUST COMPANY, N.A.,  
as Trustee

By:   
Authorized Representative

**REVISED CONDITIONAL NOTICE OF FULL PREPAYMENT  
To The Owners Of**

**\$46,275,000  
WATER REVENUE CERTIFICATES OF PARTICIPATION  
2006 SERIES A**

**EVIDENCING AND REPRESENTING PROPORTIONATE INTERESTS  
OF THE OWNERS THEREOF IN 2006 PAYMENTS TO BE MADE BY THE  
CITY OF MODESTO  
TO THE  
MODESTO PUBLIC FINANCING AUTHORITY  
(the "Certificates")**

CONDITIONAL NOTICE IS HEREBY GIVEN on behalf of the Modesto Public Financing Authority (the "Authority") that, pursuant to Section 2.03 of the Trust Agreement (the "Agreement"), dated as of November 1, 2006, by and between the Authority and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), the Certificates, originally issued November 2, 2006, have been conditionally called for full prepayment on the date and at the aggregate principal amount set forth below, at a prepayment price equal to 100% of the principal amount thereof, plus accrued interest to the prepayment date. The Certificates are expected to be prepaid with the proceeds of refunding certificates and other available moneys, if any.

<i>CUSIP*</i>	<i>Original Principal Amount</i>	<i>Original Maturity Date</i>	<i>Principal Amount to be Prepaid</i>	<i>Prepayment Date</i>
607804AA9	\$46,275,000	10/01/2036	\$46,275,000	May 30, 2008

Interest with respect to the Certificates shall cease to accrue on and from the prepayment date. Payment of the Certificates will be made upon surrender of the Certificates for cancellation, but not before the prepayment date.

**This prepayment is conditional upon the receipt by the Trustee on or prior to the prepayment date of moneys sufficient to pay the principal of and interest with respect to the Certificates to be prepaid. If such moneys shall not have been so received this notice shall be of no force and effect and the Authority shall not be required to prepay such Certificates.**

**This conditional notice may be revised or withdrawn. If this conditional notice is withdrawn, this conditional notice shall be of no force and effect and none of the Certificates shall be prepaid on the prepayment date set forth herein. If this Notice is revised or withdrawn, notice of such revision or withdrawal shall be disseminated in the same manner as this Conditional Notice of Full Prepayment at least three business days prior to the prepayment date.**

The Certificates will become due and payable on the prepayment date upon presentation and surrender to the Trustee:

*First Class/Registered/Certified:*

The Bank of New York  
Global Corporate Trust  
P.O. Box 396  
East Syracuse, New York 13057

*Express Delivery Only:*

The Bank of New York  
Global Corporate Trust  
111 Sanders Creek Parkway  
East Syracuse, New York 13057

*By Hand Only:*

The Bank of New York  
Corporate Trust Window  
101 Barclay Street  
First Floor East  
New York, NY 10286

\* The CUSIP numbers are included solely for the convenience of the holders of the Certificates. Neither the Authority nor the Trustee shall be responsible for any error of any nature relating to such numbers.

**Dated: April 30, 2008**

By: The Bank of New York Trust Company, N.A., as Trustee

A-1

204161

Old Job#201655



www.ezdisclose.com

### ezDisclose Notice Proof Summary Report

204161 05/01/2008

**Client Name:** Bank of New York - (a) Syracuse  
**Notice Issuer:** City of Modesto  
**Issue Title:** Water Revenue Certificates of Participation 2006 Series A  
**Job Type:** Redemption **Issue Date:** 11/02/2006 **Pub Date:** 04/30/2008 **Call Type:** Full **Call Date:** 05/30/2008 **Total Amt Called:** \$46,275,000.00  
**Notice Memo:** Revised for chg to call date from May 16 to May 30 and mail date from April 15 to April 30

**Reliance:** 2

#### Customers:

Role	Bank Name	Bank #	DTC Agent	Address	City	State	Zip	Phone	Address Desc
Paying Agent	Bank of New York - (a) Syracuse		40090153	Corp Trust Ops, 111 Sanders Creek P	East Syracuse	NY	13057		Hand-Delivery Address (0783)

#### Issues:

Cusip	Interest	Accrnt	Maturity	Int Types	Called/Cus	Price(%)	Cert No	Type	Prefix	Par Value	Called Value	Out Value	Trans
607804AA9	0.0000	0.0000	10/01/2021	01 MU F	\$46,275,000.00	100.0000				N/A	N/A	N/A	
<b>Total for CUSIP</b>												<b>Amount Called</b>	
607804AA9												\$46,275,000.00	

\$46,275,000  
CITY OF MODESTO  
WATER REVENUE CERTIFICATES OF PARTICIPATION  
2006 SERIES A

NOTICE AND INSTRUCTIONS TO DISSEMINATION AGENT

To: The Bank of New York Trust Company, N.A., as Trustee  
550 Kearny Street, Suite 600  
San Francisco, California 94108  
Attention: Josephine Libunao

Pursuant to Section 5(c) of the Continuing Disclosure Agreement, dated November 2, 2006 (the "Continuing Disclosure Agreement"), by and between the City of Modesto (the "City") and The Bank of New York Trust Company, N.A., as dissemination agent (the "Dissemination Agent"), the City hereby notifies the Dissemination Agent that \$46,275,000 outstanding aggregate principal amount of City of Modesto Water Revenue Certificates of Participation, 2006 Series A (the "Certificates") was prepaid on May 30, 2008, which prepayment constitutes a Listed Event under Section 5(a) of the Continuing Disclosure Agreement. The City also hereby notifies the Dissemination Agent of its determination that the prepayment of Certificates is material to Owners under applicable federal securities laws, and the Dissemination Agent is hereby instructed to report the occurrence of such prepayment in accordance with Section 5(a) of the Continuing Disclosure Agreement.

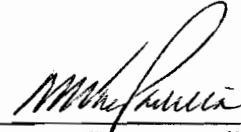
All capitalized terms not defined herein shall have the meanings specified in the Continuing Disclosure Agreement.

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Dated: May 30, 2008

CITY OF MODESTO

By:



---

Wayne Padilla  
Finance Director/Treasurer

(Local Currency—Single Jurisdiction)

# ISDA<sup>®</sup>

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

Dated as of May 29, 2008

**BANK OF AMERICA, N.A.**

**and CITY OF MODESTO, CALIFORNIA**

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

**1. Interpretation**

- (a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

**2. Obligations**

**(a) General Conditions.**

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

#### 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed

by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: —

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its

winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below: —

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Two Affected Parties.** If an Illegality under section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) **Right to Terminate.** If:—

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative

number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
  - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 10. Notices

- (a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated: —
- (i) if in writing and delivered in person or by courier, on the date it is delivered;
  - (ii) if sent by telex, on the date the recipient's answerback is received;

- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 12. Definitions

As used in this Agreement:—

**"Additional Termination Event"** has the meaning specified in Section 5(b).

**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means: —

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iii).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"law"** includes any treaty, law, rule or regulation and **"lawful"** and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain

resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under

this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Event"** means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined

by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

**BANK OF AMERICA, N.A.**

**CITY OF MODESTO, CALIFORNIA**

By: .....

Name:

Title:

Date:

By: ..... 

Name:

Title:

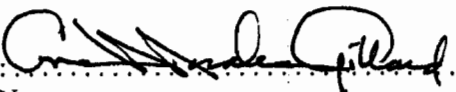
Date:

by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

**BANK OF AMERICA, N.A.**

**CITY OF MODESTO, CALIFORNIA**

By: 

Name:  
Title: **Ana Morales Gillard**  
Date: **Vice President**

By: .....

Name:  
Title:  
Date:

(Local Currency—Single Jurisdiction)

# ISDA<sup>®</sup>

International Swap Dealers Association, Inc.

## U.S. MUNICIPAL COUNTERPARTY SCHEDULE to the Master Agreement

dated as of May 29, 2008

Between **BANK OF AMERICA, N.A.** and **CITY OF MODESTO, CALIFORNIA**

("Party A")

("Party B")

### **PART 1: Termination Provisions**

- (a) **"Specified Entity"** means in relation to Party A for the purpose of:-
- |  |           |
|--|-----------|
| Section 5(a)(v) (Default under Specified Transaction), | none;     |
| Section 5(a)(vi) (Cross Default),                      | none;     |
| Section 5(a)(vii) (Bankruptcy),                        | none; and |
| Section 5(b)(ii) (Credit Event Upon Merger),           | none;     |
- in relation to Party B for the purpose of:-
- |   |           |
|---|-----------|
| Section 5(a)(v) (Default under Specified Transaction) | none;     |
| Section 5(a)(vi) (Cross Default),                     | none;     |
| Section 5(a)(vii) (Bankruptcy),                       | none; and |
| Section 5(b)(ii) (Credit Event Upon Merger),          | none.     |
- (b) **"Specified Transaction"** will have the meaning specified in Section 12; provided, however that with respect to Party B, "Specified Transactions" shall include only those obligations payable from Gross Revenues of Party B's Water Utility System. For purposes of this Agreement, the terms "Gross Revenues" and "Water Utility System" shall have the meanings ascribed to them in the Covered Indenture.
- (c) The **"Cross-Default"** provisions of Section 5(a)(vi) (as amended in Part 5(e)) will apply to Party A and

will apply to Party B.

In connection therewith:

**"Specified Indebtedness"** will not have the meaning specified in Section 12, and such definition shall be replaced by the following: With respect to Party A, any obligation in respect of the payment of moneys (whether present or future, contingent or otherwise, as principal or surety or otherwise), excluding obligations in respect of deposits received in the ordinary course of Party A's banking business; and with respect to Party B, any obligation in respect of borrowed money payable from Gross Revenues of Party B's Water Utility System, excluding conduit obligations, special tax bonds, special assessment bonds, contingent obligations of Party B to reimburse any other person in respect of surety bonds or letters of credit to the extent such surety bonds or letters of credit support debt or such similar obligations that do not have a material effect on Party B's ability to perform its obligations under this Agreement."

**"Threshold Amount"** means, with respect to Party A, an amount equal to three percent (3%) of the Shareholders' Equity of Bank of America Corporation and, with respect to Party B, Five Million United States Dollars (\$5,000,000).

**"Shareholders' Equity"** means, with respect to Party A, at any time, the sum (as shown in its most recent annual audited financial statements) of (i) its capital stock (including preferred stock) outstanding, taken at par value, (ii) its capital surplus and (iii) its retained earnings, minus (iv) treasury stock, each to be determined in accordance with generally accepted accounting principles.

- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(ii) will apply to Party A  
will apply to Party B.
- (e) The **"Automatic Early Termination"** provision of Section 6(a) will not apply to Party A  
will not apply to Party B;

provided, however, that with respect to a party, where the Event of Default specified in Section 5(a)(vii)(1), (3), (4), (5), (6) or to the extent analogous thereto, (8) is governed by a system of law which does not permit termination to take place after the occurrence of the relevant Event of Default, then the Automatic Early Termination provisions of Section 6(a) will apply to such party.

**Section 6(e)(iii).** Section 6(e)(iii) of this Agreement shall be amended to include the following sentences after the existing sentence:

"In addition to and notwithstanding anything to the contrary in the preceding sentence of this Section 6(e)(iii), if an Early Termination Date is deemed to have occurred under Section 6(a) as a result of Automatic Early Termination, the Defaulting Party hereby agrees to indemnify the Non-Defaulting Party on demand against all loss or damage that the Non-Defaulting Party may sustain or incur in respect of each Transaction as a result of movement in interest rates, currency exchange rates or market quotations between the Early Termination Date and the date (the 'Determination Date') upon which the Non-Defaulting Party obtains the information confirming the existence of the Event of Default leading to the deemed Early Termination Date under

Section 6(a) that has been derived from reasonably reliable source of information, including publicly available information, such as Telerate, Reuters, Financial Times and The Wall Street Journal.

If the Non-Defaulting Party shall determine that it would gain or benefit from the movement in interest rates, currency exchange rates or market quotations between the Early Termination Date and the Determination Date, the amount of such gain or benefit shall be deducted from the amount payable by the Defaulting Party pursuant to Section 6(e)(i).

The Determination Date shall be a date not later than the date upon which creditors generally of the Defaulting Party are notified of the occurrence of the Event of Default leading to the deemed Early Termination Date.”

- (f) **Payments on Early Termination.** For the purpose of Section 6(e):
- (i) Market Quotation will apply.
  - (ii) The Second Method will apply.
- (g) **Additional Termination Event** will apply. The following events shall constitute Additional Termination Events hereunder:
- (i) So long as Party B’s Water Refunding Revenue Certificates of Participation, 2008 Series A (the “COPs”) remain unrated by either Moody's Investor Services, Inc. or any successor thereto (“Moody's”), or by Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or any successor thereto (“S&P”), in the event that Party B fails to fix, prescribe and collect rates, fees and charges for the Water Service during any Fiscal Year which will be at least sufficient to yield Adjusted Net Water Revenues for such Fiscal Year that are equal to at least (A) one hundred twenty-five percent (125%) of the Annual Debt Service on any Outstanding Parity Obligations for such Fiscal Year, and (B) any amounts necessary to replenish the Parity Reserve Fund and any similar reserve fund established with respect to any Parity Obligations to their required amounts, and Party B fails, within ten (10) General Business Days, to either (i) assign this Agreement and all Transactions hereunder to a third party reasonably satisfactory to Party A, (ii) provide, from time to time, a letter of credit, surety or other insurance policy in form and substance satisfactory to Party A, or (iii) deliver an executed ISDA Credit Support Annex in form and substance satisfactory to Party A. For purposes of this Part 1(g)(i), capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Covered Indenture. Party B shall be the sole Affected Party with respect to this Additional Termination Event.
  - (ii) With respect to any Transaction which is not an Insured Transaction, as defined herein, in the event that Party B’s COPs become rated by either or both Moody’s, or by S&P, and a Ratings Event then occurs with respect to Party B and Party B fails, within thirty (30) General Business Days of such Ratings Event, to either (i) assign this Agreement and all Transactions hereunder to a third party reasonably satisfactory to Party A, (ii) provide, from time to time, a letter of credit, surety or other insurance policy in form and substance satisfactory to Party A, or (iii) deliver an executed ISDA Credit Support Annex in form and substance satisfactory to Party A. For purposes of this Termination

Event, "Ratings Event" means that (i) the unenhanced ratings (without regard to any third party credit enhancement) of the COPs is lower than "Baa2" by Moody's Investor Services, Inc. or any successor thereto ("Moody's"), or "BBB" by Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or any successor thereto ("S&P"), or (ii) either such rating is withdrawn or suspended. . Party B shall be the sole Affected Party with respect to this Additional Termination Event.

- (iv) A Ratings Event occurs with respect to Party A and Party A fails, within thirty (30) General Business Days of such Ratings Event, to either (i) assign this Agreement and all Transactions hereunder to a third party reasonably satisfactory to Party B and Insurer, (ii) provide, from time to time, a letter of credit, surety or other insurance policy in form and substance satisfactory to Party B (and in respect to an Insured Transaction, satisfactory to both Party B and to Insurer), or (iii) delivers additional collateral under the terms of the ISDA Credit Support Annex in an amount satisfactory to Party B (and in respect to an Insured Transaction, satisfactory to both Party B and Insurer). For purposes of this Termination Event, "Ratings Event" means that (i) the unenhanced ratings (without regard to any third party credit enhancement) of its long-term certificates of deposit are lower than "A3" by Moody's, and "A-" by S&P, or (ii) either such rating is withdrawn or suspended. Party A shall be the sole Affected Party with respect to this Additional Termination Event.

(h) ***Events of Default.***

- (i) ***Bankruptcy.*** Clause (6) of Section 5(a)(vii) of this Agreement is hereby amended to read in its entirety as follows:

"(6)(A) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or (B) in the case of a Government Entity, any Credit Support Provider of such Government Entity or any applicable Specified Entity of such Government Entity, (I) there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to declare a financial emergency or similar state of financial distress with respect to it or (II) there shall be declared by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;".

- (ii) ***Merger Without Assumption.*** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:

"(viii) ***Merger Without Assumption.*** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such party is a Government Entity, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, such party or any Credit Support Provider of such party) and, at the time of such consolidation, amalgamation, merger, transfer or succession:

- (1) the resulting, surviving, transferee or successor entity fails to assume all the obligations of such party or such Credit Support Provider under

this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement."

(iii) **Covered Indenture.** Section 5(a)(ix) of this Agreement is hereby added to read in its entirety as follows:

"(ix) **Covered Indenture.** With respect to the Government Entity, any Event of Default under the Covered Indenture (and as defined therein) shall be an Event of Default under this Agreement."

(i) **Termination Events.** Section 5(b)(ii) of this Agreement is hereby amended to read in its entirety as follows:

"(ii) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if X is a Government Entity, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, X, any Credit Support Provider of X or any Specified Entity of X) and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving, transferee or successor entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the sole Affected Party); or".

**PART 2: Agreement to Deliver Documents**

For the purpose of Section 4(a) of this Agreement, each party agrees to deliver the following documents:-

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party B	Annual Report of Party B and of any Credit Support Provider thereof containing audited, consolidated financial statements certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in	To be made available on <a href="http://www.ci.modesto.ca.us">www.ci.modesto.ca.us</a> s/ as soon as available and in any event within 240 days after the end of each fiscal year of Party B	Yes

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
	the country in which such party and such Credit Support Provider is organized	and of the Credit Support Provider	
Party A	Annual Report of Bank of America Corporation containing audited, consolidated financial statements certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the country in which such party is organized	To be made available on <a href="http://www.bankofamerica.com/investor/">www.bankofamerica.com/investor/</a> as soon as available and in any event within 180 days after the end of each fiscal year of Party A	Yes
Party B	Credit Support Document(s)	Upon execution and delivery of this Agreement	No
Party B	Opinion of Counsel satisfactory to Party A (and in respect to an Insured Transaction, satisfactory to Insurer) substantially in the form of Exhibit I and Exhibit II hereto	Upon execution and delivery of this Agreement and each Transaction confirmed hereunder	No
Party A	Opinion of Counsel satisfactory to Party B (and in respect to an Insured Transaction, satisfactory to Insurer) substantially in the form of Exhibit III hereto	Upon execution and delivery of this Agreement	No
Party A and Party B	Certified copies of all corporate authorizations and any other documents with respect to the execution, delivery and performance of this Agreement and any Credit Support Document, as applicable	Upon execution and delivery of this Agreement	Yes
Party A and Party B	Certificate of incumbency and/or specimen signatures of individuals executing this Agreement and any	Upon execution and delivery of this Agreement and	Yes

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
	Credit Support Document	thereafter upon request of the other party	
Party B	Certified copy of the Covered Indenture	Upon execution and delivery of this Agreement.	No
Party B	Certified copy of any amendment, modification or supplement to the Covered Indenture	Upon execution and delivery of such amendment, modification or supplement	No

**PART 3: Miscellaneous**

(a) **Address for Notices.** For the purpose of Section 10(a) of this Agreement:-

Address for notice or communications to Party A:

Bank of America, N.A.  
 Sears Tower  
 233 South Wacker Drive, Suite 2800  
 Chicago, IL 60606  
 Attention: Swap Operations  
 Telephone No.: 312-234-2732  
 Facsimile No.: 866-255-1444

with a copy to:

Bank of America, N.A.  
 One Bryant Park, NY1-100-05-01  
 New York, New York 10036  
 Attention: Client Integration Group  
 Facsimile No.: 212.548.6822

And with a copy to Insurer, at the address hereinbelow.

Address for financial statements to Party A:

Bank of America, N.A.

Bank of America Plaza  
333 South Hope St.  
Los Angeles, California 90071-1406  
Attention: Deborah L. Miller, Senior Vice President  
Mail Code: CA9-193-13-17

Address for notice or communications to Party B:

City of Modesto  
Financial Services  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, California 95353  
Attention: Director of Finance  
Telephone No.: (209) 577-5371  
Facsimile No.: (209) 571-5880

With a copy to:

City Attorney's Office  
c/o City of Modesto  
City Hall  
1010 Tenth Street, Sixth Floor  
Modesto, California 95354  
Attention: Director  
Telephone No.: (209) 577-5284  
Facsimile No.: (209) 544-8260

And with a copy to Insurer, at the address hereinbelow.

With respect to an Insured Transaction, address for notice or communication to Insurer:

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019  
Attention: Risk Management Department Public Finance Surveillance  
Facsimile: (212) 581-3268

- (b) **Calculation Agent.** The Calculation Agent is Party A, unless an Event of Default with respect to Party A is continuing, in which case the Calculation Agent will be a financial institution that would qualify as a Reference Market Maker, which shall be reasonably acceptable to Party A, selected by Party B.
- (c) **Credit Support Document.** Details of any Credit Support Document:  
Each of the following, as amended, supplemented, modified, renewed, replaced, consolidated, substituted or extended from time to time, is a "Credit Support Document":

In relation to Party A, the Credit Support Annex.

- (d) **Credit Support Provider.**

Credit Support Provider means in relation to Party A: Not applicable.

Credit Support Provider means in relation to Party B: Not applicable.

- (e) **Governing Law.** This Agreement and any and all controversies arising out of or in relation to this Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws doctrine). Notwithstanding the foregoing, the parties agree that matters relating to the powers, authority and capacity of Party B to enter into the Agreement or any Transaction shall be governed by the laws of the State of California.
- (f) **Netting of Payments.** Subparagraph (ii) of Section 2(c) shall not apply to any Transactions; *provided, however*, if the parties otherwise so agree, then subparagraph (ii) of Section 2(c) shall apply.
- (g) **"Affiliate"** will have the meaning specified in Section 12 of this Agreement.
- (h) **"Covered Indenture"** means, the Indenture.
- (i) **"Indenture"** means the Master Installment Purchase Contract, dated as of November 1, 1997, by and between Party B and the Modesto Public Financing Authority (the "Contract"), and the 2008 Supplemental Installment Purchase Contract, dated as May 1, 2008, by and between Party B and the Modesto Public Financing Authority, each as amended and supplemented prior to the date hereof in accordance with the terms thereof and each as amended and supplemented following the date hereof in accordance with the terms hereof and thereof.
- (j) **"Covered Indenture Incorporation Date"** means the date hereof.
- (k) **"Government Entity"** means Party B.

#### **PART 4: Municipal Counterparty Provisions**

- (a) **Obligations.** Section 2(a)(iii) of this Agreement is hereby amended to read in its entirety as follows:
  - "(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement."
- (b) **Representations.**
  - (i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:
    - "Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a) and 3(e), at all times until the termination of this Agreement) that:"
  - (ii) Section 3(a)(ii) of this Agreement is hereby amended to read in its entirety as follows:

"(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action and made all necessary determinations and findings to authorize such execution, delivery and performance;"

(iii) Section 3(b) of this Agreement is hereby amended to read in its entirety as follows:

"(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Incipient Illegality (in the case of a Government Entity) or Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party."

(iv) Section 3 of this Agreement is hereby amended by adding the following subsection "(e)" thereto, which subsection shall only apply to the Government Entity:

"(e) **Non-Speculation.** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for purposes of managing its borrowings or investments and not for purposes of speculation."

(v) Section 3 of this Agreement is hereby amended by adding the following subsection "(f)" thereto:

"(f) **No Immunity.** It is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or financial assets (irrespective of their use or intended use) from (i) suit, (ii) jurisdiction of any court, or, (iii) except to the extent provided in Part 5 of Division 3.6 of Title 1 of the Government Code of the State of California ("Part 5") (x) relief by way of injunction, order for specific performance or for recovery of property, (y) attachment of its financial assets (whether before or after judgment) or (z) execution or enforcement of any judgment to which it or its revenues or financial assets might otherwise be subject to in any Proceedings (as defined in Section 11(b)) in the courts of any jurisdiction and no such immunity (whether or not claimed) may be attributed to such party or its revenues or assets."

(c) **Agreements.**

(i) The introductory clause of Section 4 of this Agreement is hereby amended to read in its entirety as follows:

"Each party agrees with the other (or, in the case of Section 4(d), (e) and (f), the Government Entity agrees with the other party) that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:"

(ii) Section 4 of this Agreement is hereby amended by adding the following subsections "(d)", "(e)", and "(f)" thereto:

"(d) *Compliance with Covered Indenture.* The Government Entity will observe, perform and fulfill each provision of Sections 2.04, 3.01, 3.02, 3.03, 4.01, 4.09, 4.11, 4.12 and 4.13 in the Covered Indenture applicable to such Government Entity in effect on the Covered Indenture Incorporation Date, as any of those provisions may be amended, supplemented or modified for purposes of this Agreement with the prior written consent of the other party hereto (the "Incorporated Provisions"), with the effect that such other party hereto will have the benefit of each of the Incorporated Provisions (including without limitation, covenants, right to consent to certain actions subject to consent under the Covered Indenture and delivery of financial statements and other notices and information); provided, however, that Party A shall not be entitled to exercise any of the rights and remedies granted to the Insurer, nor shall Party A's rights hereunder be construed to limit the Insurer's rights and remedies under the Incorporated Provisions (or to require Party A's consent to any action taken or consent provided by the Insurer in accordance with the terms of the Incorporated Provisions). These Incorporated Provisions are limited to the aforementioned Sections. In the event the Covered Indenture ceases to be in effect prior to the termination of this Agreement, the Incorporated Provisions (other than those provisions requiring payments in respect of bonds, notes, warrants or other similar instruments issued under the Covered Indenture) will remain in full force and effect for purposes of this Agreement as though set forth herein until such date on which all of the obligations of the Government Entity under this Agreement and any obligations of the Government Entity or any Credit Support Provider of the Government Entity under a Credit Support Document have been fully satisfied; provided, however, that Party A shall not be entitled to exercise any of the rights and remedies granted to the Insurer, nor shall Party A's rights hereunder be construed to limit the Insurer's rights and remedies under the Incorporated Provisions (or to require Party A's consent to any action taken or consent provided by the Insurer in accordance with the terms of the Incorporated Provisions). The Incorporated Provisions are hereby incorporated by reference and made a part of this Agreement to the same extent as if such provisions were set forth herein. For purposes of this Agreement, the Incorporated Provisions shall be construed as though (i) all references therein to any party making loans, extensions of credit or financial accommodations thereunder or commitments therefor (the "Financings") were to the other party hereto and (ii) to the extent that such Incorporated Provisions are conditioned on or relate to the existence of such Financings or the Government Entity having any obligations in connection therewith, all references to such Financings or obligations were to the obligations of the Government Entity under this Agreement; provided, however, that Party A shall not be entitled to exercise any of the rights and remedies granted to the Insurer, nor shall Party A's rights hereunder be construed to limit the Insurer's rights and remedies under the Incorporated Provisions (or to require Party A's consent to any action taken or consent provided by the Insurer in accordance with the terms of the Incorporated Provisions). Other than Supplemental Contracts permitted to be executed and entered into by Party B under Article III of the Covered Indenture in connection with the incurrence of Parity Obligations, Party B will not hereafter amend the Covered Indenture in any manner which adversely affects the rights of Party A under this Agreement, without the prior written consent of Party A. Any other such amendment, supplement, modification or waiver of any of the Incorporated Provisions without the prior written consent of the other party hereto shall have no force and effect with respect to this Agreement. Any amendment, supplement or

modification for which such consent is obtained shall be part of the Incorporated Provisions for purposes of this Agreement.

(e) **Notice of Incipient Illegality.** If an Incipient Illegality occurs, the Government Entity will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Incipient Illegality and will also give such other information about that Incipient Illegality as the other party may reasonably require.

(f) **Security and Source of Payment of Party B's Obligations.** Party B covenants to cause Party B's obligations under this Agreement to be, and each Transaction hereunder shall be payable solely from, and secured by a pledge of Gross Revenues of the Water Utility System as a Parity Obligation under the Contract; provided, however, the payment of Early Termination Amounts shall be payable from and secured by a pledge of Gross Revenues of the Water Utility System as a Subordinate Obligation under the Contract, except to the extent of amounts payable by the City for termination payments as a result of the designation of an Early Termination Date pursuant to Part 6(ii) hereof following an Event of Default under this Agreement with respect to Party B as a Defaulting Party, which termination payments payable by the City that are insured by the Swap Insurance Policy shall be payable as a Parity Obligation. Party B covenants not to create or cause to be created or permit the creation of any lien or charge upon the Gross Revenues except (i) Maintenance and Operating Costs, (ii) Parity Obligations in compliance with Section 3.01 and Section 3.02 of the Contract and (iii) Subordinate Obligations in compliance with Section 3.03 of the Contract.

For purposes of this Section 4(f), capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Covered Indenture."

- (d) **Jurisdiction.** Section 11(b) of this Agreement is hereby amended to read in its entirety as follows:

"(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ('Proceedings'), each party irrevocably:

(i) submits, to the fullest extent permitted by applicable law, to the non-exclusive jurisdiction of each of the courts of the State of New York, the United States District Court located in the Borough of Manhattan in New York City, the courts of the state in which the Government Entity or the other party's principal executive offices are located and the United States District Court with jurisdiction over the location of the Government Entity or the other party's principal executive offices; and

(ii) waives, to the fullest extent permitted by applicable law, (1) any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, (2) any claim that such Proceedings have been brought in an inconvenient forum and (3) the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction."

- (e) **Definitions.** Section 12 of this Agreement is hereby amended to add the following definitions in their appropriate alphabetical order:

" **'Covered Indenture'** has the meaning specified in the Schedule."

" **'Covered Indenture Incorporation Date'** has the meaning specified in the Schedule."

" **'Government Entity'** has the meaning specified in the Schedule."

" **'Incipient Illegality'** means (a) the enactment by any legislative body with competent jurisdiction over a government entity of legislation which, if adopted as law, would render unlawful (i) the performance by the Government Entity of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by the Government Entity with any other material provision of this Agreement relating to such Transaction or (ii) the performance by the Government Entity or a Credit Support Provider of such Government Entity of any contingent or other obligation which the Government Entity (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction, (b) any assertion in any proceeding, forum or action by the Government Entity, in respect of the Government Entity to the effect that performance under this Agreement or similar agreements is unlawful or (c) the occurrence with respect to the Government Entity or any Credit Support Provider of such Government Entity of any event that constitutes an Illegality."

#### **PART 5: Other Provisions**

- (a) **Set-off.** Any amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(ii) or (iii) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this Part 5(a).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Part 5(a) shall be effective to create a charge or other security interest. This Part 5(a) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

- (b) **Delivery of Confirmations.** For each Transaction entered into hereunder, Party A shall promptly send to Party B a Confirmation via facsimile transmission. Party B agrees to respond to such Confirmation within two (2) Local Business Days, either confirming agreement thereto or requesting a correction of any error(s) contained therein. Failure by Party A to send a Confirmation or of Party B to respond within such period shall not affect the validity or enforceability of such Transaction. Absent manifest error, there shall be a presumption that the terms contained in such Confirmation are the terms of the Transaction.
- (c) **Notice by Facsimile Transmission.** Section 10(a) is hereby amended by deleting the parenthetical "(except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system)".
- (d) **Recording of Conversations.** Each party to this Agreement acknowledges and agrees to the tape recording of conversations between trading and marketing personnel of the parties to this Agreement whether by one or other or both of the parties or their agents, and that any such tape recordings may be submitted in evidence in any proceedings relating to the Agreement.
- (e) **Cross Default.** Section 5(a)(vi) of this Agreement is hereby amended by the following:
  - (i) with respect to any Specified Indebtedness that is not capable of being declared due and payable as a result of the occurrence or existence of a default, event of default or other similar condition or event (however described) under the agreement or instrument relating to such Specified Indebtedness, the words "which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable" shall be deleted from clause (1) of such Section 5(a)(vi) and the words "and the bondholders or trustee are permitted to exercise any remedies under the agreements and instruments" shall be added in its place.
  - (ii) adding the following after the semicolon at the end thereof: "provided, however, that notwithstanding the foregoing (but subject to any provision to the contrary contained in any such agreement or instrument), an Event of Default shall not occur under either (1) or (2) above if the default, event of default or other similar condition or event referred to in (1) or the failure to pay referred to in (2) is caused not (even in part) by the unavailability of funds but is caused solely due to a technical or administrative error which has been remedied within three Local Business Days after notice of such failure is given to the party."
- (f) Section 3(a) of this Agreement is amended by (i) deleting the word "and" at the end of clause (iv); (ii) deleting the period at the end of clause (v) and inserting therein "; and "; and (iii) by inserting the following additional representation:
  - "(vi) **Eligible Contract Participant.** Each party represents to the other party (which representation will be deemed to be repeated by each party on each date on which a Transaction is entered into) that it is an "eligible contract participant" as defined in Section 1a(12) of the U.S. Commodity Exchange Act, 7 U.S.C. Section 1a(12)."

- (g) **Additional Representations.** Section 3 is revised so as to add the following subsection (g) at the end thereof:

"(g) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

(ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(iii) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction."

- (h) **Waiver of Jury Trial; General Reference; Arbitration.**

(i) To the fullest extent permitted by applicable law, each party hereto irrevocably waives any right it may have to trial by jury.

(ii) If, and only if, any court of competent jurisdiction determines that the jury trial waiver set forth in subparagraph (a) above is unlawful, impermissible or otherwise ineffective, then the parties hereto agree that any dispute, whether sounding in contract, tort or otherwise, arising out of, connected with, related to, or incidental to this Agreement (a "Dispute") shall be resolved by a general reference to a referee (or a panel of referees) as provided in California Code of Civil Procedure Section 638 or any statute containing reasonably similar provisions which replaces such sections, except as expressly modified by the provisions hereof. The referee (or presiding referee of the panel) shall be a retired judge or justice. The referee (or panel of referees) shall be selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge of the Court (or his or her representative) as provided in California Code of Civil Procedure Section 638 and the following related sections. The referee shall determine all issues in accordance with existing New York law and the New York rules of evidence and civil procedure. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including without limitation motions for summary judgment or summary adjudication. The award that results from the decision of the referee(s) will be entered as a judgment in the court that appointed the referee, in accordance with the provisions of California Code of Civil Procedure Sections 644(a) and 645. The parties reserve the right to seek appellate review of any judgment or order.

(iii) If, and only if, any court of competent jurisdiction determines that both the jury trial waiver and the appointment of a referee or selection or use of the dispute resolution mechanisms set forth in subparagraphs (a) and (b) above are unlawful, impermissible or otherwise ineffective, then the parties hereto agree that any Dispute shall be expeditiously resolved by arbitration in accordance with the Federal Arbitration Act (Title 9 U.S. Code) (the "Act"). The Act will apply even though this Agreement provides that it is governed by the law of a specified state. Arbitration proceedings will be determined in accordance with the Act, the then-current rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("AAA"), and the terms of this provision. In the event of any inconsistency, the terms of this provision shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, Party A may designate another arbitration organization with similar procedures to serve as the provider of arbitration. The arbitration shall be administered by AAA and conducted, unless otherwise required by law, in any U.S. state where real or tangible personal property collateral for Party B is located or if there is no such collateral, in the state specified in the governing law section of this Agreement. Any Dispute shall be determined by one arbitrator; however, if the claim exceeds five million dollars (\$5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and have judgment entered and enforced. The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Agreement and each party shall bear such party's own costs arising from such arbitration and the fees of the arbitrators shall be borne equally by the parties.

(iv) Nothing in this Part 5(h) shall prejudice the right of any party or limit the right of any party to: (i) obtain provisional relief or other equitable remedies as shall otherwise be available under the New York Code of Civil Procedure and/or applicable Court Rules; (ii) exercise self-help remedies, such as but not limited to, setoff; (iii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iv) exercise any judicial or power of sale rights, or (v) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies. The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Dispute to arbitration or general reference to a referee.

- (i) **USA PATRIOT Act Notice.** Party A hereby notifies Party B that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Party B, which information includes the name and address of Party B and other information that will allow Party A to identify Party B in accordance with the Act.
- (j) **Additional Covenant of Party B.** Party B hereby covenants that it shall not terminate any Transaction hereunder unless it has funds immediately available to pay any and all termination payments owed by it upon such termination.

- (k) **Payment Agreement.** Party B acknowledges and agrees that, pursuant to the Covered Indenture: (i) this Agreement constitutes a Payment Agreement, and (ii) Party B's obligations hereunder constitute Parity Obligations (as each such term is defined in the Covered Indenture) as and to the extent provided in Section 4(f) of this Agreement.

**Part 6: Insurer Provisions**

Notwithstanding anything to the contrary in the Agreement, the following provisions shall apply to any Transactions identified as an insured transaction in the Interest Rate Swap Insurance Policy (the "Swap Insurance Policy") issued by Assured Guaranty Corp. (the "Insurer"), for the account of Party B, as insured, and for the benefit of Party A, as beneficiary, relates ("Insured Transactions").

- (i) **Designation of Early Termination Date.** Notwithstanding anything to the contrary in Section 6 of this Agreement, if any:

- (A) Event of Default occurs under this Agreement; or
- (B) Termination Event in respect of any Insured Transactions occurs under this Agreement (other than an Additional Termination Event described at (iii)(A) or (iii)(B) below),

then, in either case, neither Party A nor Party B, as appropriate, may designate an Early Termination Date in respect of any such Insured Transaction unless:

- (W) Insurer is in conservation, liquidation, receivership or a similar proceeding under the Maryland Insurance Law;
  - (X) Insurer has failed to pay any payment due to Party A under the terms and conditions of the Swap Insurance Policy;
  - (Y) (i) Any material provision of the Swap Insurance Policy is declared to be null and void or otherwise not valid and binding on Insurer by a court or other governmental agency of appropriate jurisdiction or (ii) the validity or enforceability thereof is contested by Insurer or any governmental agency or authority of appropriate jurisdiction, or Insurer denies in writing that it has any or further liability or obligation under the Swap Insurance Policy.or
  - (Z) Insurer has otherwise consented in writing to such designation.
- (ii) **Insurer-directed termination.** If any Event of Default or Termination Event under this Agreement occurs with respect to Party A or to Party B, then Insurer (so long as it has not failed to pay any payment due to Party A under the terms and conditions of the Swap Insurance Policy) shall have the right (but not the obligation) upon notice to Party A and Party B to designate an Early Termination Date with respect to all Insured Transactions with the same effect as if such designation were made by the Non-defaulting Party or the party that is not the Affected Party, as the case may be. For purposes of the foregoing sentence, an Event of Default with respect to Party B shall be considered to be continuing, notwithstanding any payment by Insurer under the Swap Insurance Policy. The parties acknowledge that, except as the Swap Insurance Policy may be otherwise

endorsed, unless Insurer designates an Early Termination Date following such Event of Default or Termination Event (as opposed to merely consenting to such designation by one of the parties) payments due from Party B because an Early Termination Date has been designated will not be insured by the Swap Insurance Policy.

(iii) ***Additional Termination Event.*** Additional Termination Event will apply. The following shall constitute Additional Termination Events:

(A) Insurer fails to meet its payment obligations under the Swap Insurance Policy and such failure is continuing with respect to Insurer under the Swap Insurance Policy.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

(B) An Insurer Event occurs; provided however that additionally:

(W) an Event of Default has occurred or is continuing with respect to Party B as the Defaulting Party; or

(X) a Termination Event has occurred or is continuing with respect to Party B as the Affected Party; or

(Y) Party A has notified Party B that an Insurer Event has occurred, no other Event of Default or Termination Event, in either case, with respect to Party B is then continuing, and Party B has not, within thirty (30) days of receiving such notice from Party A, taken one of the following actions: (1) provided a Credit Support Provider acceptable to Party A or other provider of credit support for its obligations hereunder whose obligations are pursuant to a Credit Support Document or other documentation reasonably acceptable to Party A, or (2) elected to deliver collateral pursuant to the ISDA Credit Support Annex between Party A and Party B in order to secure its obligations under any Insured Transactions; or

(Z) (I) The unenhanced rating of the COPs (without giving effect to bond insurance) is withdrawn, suspended or falls below (x) Baa3 as determined by Moody's Investors Service, Inc. ("Moody's") or (y) BBB- as determined by Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies, Inc. ("S&P").

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

As used herein, "Insurer Event" means the Insurer fails at any time during the term of this Agreement to have at least (a) a claims paying ability rating of at least A- or higher from S&P or (b) a financial strength rating of at least A3 or higher from Moody's.

(C) The rating of the long-term, unsecured, unenhanced senior debt (not taking into account any third party credit enhancement) of Party A is withdrawn, suspended or falls to or below (1) Baa1 as determined by Moody's, or (2) BBB+ as determined by S&P. For the purpose of the foregoing Termination Event, the

Affected Party shall be Party A and all, and not less than all, Insured Transactions will be Affected Transactions.

- (iv) **No suspension of payments.** Notwithstanding Section 2(a)(iii) of this Agreement, Party A shall not suspend any payments due under an Insured Transaction under Section 2(a)(iii) unless the Insurer is in default in respect of any payment obligations under the Swap Insurance Policy.
- (v) **Representations and agreements.** Each party agrees that each of its representations and agreements in this Agreement is expressly made to and for the benefit of Insurer.
- (vi) **Third-party beneficiary.** Party A and Party B hereby each acknowledge and agree that Insurer shall be an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Agreement and the obligations of such party under any Insured Transaction, and as such, entitled to enforce this Agreement and any Insured Transaction against such party on its own behalf and otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by Insurer including, but not limited to, fees (including professional fees), costs and expenses incurred by Insurer which are related to, or resulting from any breach by such party of its obligations hereunder.
- (vii) **Policy coverage.** Party A and Party B hereby each acknowledge and agree that Insurer's obligation with respect to an Insured Transaction shall be limited to the terms of the Swap Insurance Policy.
- (viii) **Subrogation.** Party A and Party B hereby acknowledge that, to the extent of payments made by Insurer to Party A under the Swap Insurance Policy, Insurer shall be fully subrogated to the rights of Party A against Party B under the Insured Transaction to which such payments relate, including, but not limited to, the right to receive payment from Party B and the enforcement of any remedies and the availability of any collateral posted. Party A hereby agrees to assign to Insurer its right to receive payment from Party B under any Insured Transaction to the extent of any payment thereunder by Insurer to Party A. Party B hereby acknowledges and consents to the assignment by Party A to Insurer of any rights and remedies that Party A has under any Insured Transaction or any other document executed in connection herewith.
- (ix) **Isolation of Insured Transactions in designating an Early Termination Date.** Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of the Insured Transactions by Insurer or by Party A with the consent of Insurer pursuant to clause (i) above shall apply only to the Insured Transactions and not to any other Transaction under this Agreement, unless Party A shall designate an Early Termination Date in respect of such other Transaction. Nothing contained in this clause (ix) shall affect the rights of Party A under this Agreement to designate an Early Termination Date in respect of any Transaction other than the Insured Transactions, which designation shall not apply to the Insured Transactions unless expressly provided in such designation and unless Insurer shall have designated, or if consent is required pursuant to clause (i) above, consented to the designation by Party A of, an Early Termination Date in respect of the Insured Transactions in accordance with clause (i) above.

- (x) **No netting.** Notwithstanding Section 2(c) of this Agreement, in no event shall either Party A or Party B be entitled to net its payment obligations in respect of the Insured Transactions against the payment obligations of the other party in respect of other Transactions under this Agreement if such Transactions are not Insured Transactions, nor may either Party A or Party B net the payment obligations of the other party under Transactions that are not Insured Transactions against the payment obligations of such party under Insured Transactions, it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other Transactions. Section 6(e) of this Agreement shall apply to all Insured Transactions with the same effect as if the Insured Transactions constituted a single master agreement. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any Transactions other than the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all other Transactions unless otherwise specified in such other Transaction and agreed to in writing by Insurer.
- (xi) **No set-off or counterclaim.** In no event shall either Party A or Party B be entitled to:
- (A) set-off its payment obligations in respect of an Insured Transaction against the payment obligations of the other party (whether by counterclaim or otherwise) if such obligations are not Insured Transactions, or
  - (B) net the payment obligations of the other party that are not with respect to Insured Transactions against the payment obligations of such party under Insured Transactions,
- it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other obligations. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any obligation other than those under the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all other obligations unless otherwise specified in such other obligation and agreed to in writing by Insurer.
- (xii) **Expenses.** Party B agrees to reimburse Insurer immediately and unconditionally upon demand for all reasonable expenses incurred by Insurer in connection with the issuance of the Swap Insurance Policy and the enforcement by Insurer of Party B's obligations under this Agreement and any other documents executed in connection with the execution and delivery of this Agreement, including, but not limited to, fees (including professional fees), costs and expenses incurred by Insurer which are related to, or resulting from any breach by Party B of its obligations hereunder.
- (xiii) **Assignments.** Notwithstanding Section 7 of this Agreement, no Insured Transaction may be assigned by either Party A or Party B without the prior written consent of Insurer; provided that Party A may make such an assignment in respect of all Insured Transactions, in whole and not in part, to any of its Affiliates without the consent of Insurer if: (a) the Affiliate is organized in the United States; (b) no Event of Default in respect of Party A is then continuing or would result from such assignment or transfer;

(c) Party A provides Insurer with no less than five (5) Business Days prior written notice of such transfer; and (d) Party A (I) guarantees the assignee's payment obligations under this Agreement, in a manner reasonably satisfactory to Insurer, and (II) provides an opinion of counsel to Party A relating thereto, in form and substance reasonably satisfactory to Insurer. Any purported assignment of an Insured Transaction that does not comply with these provisions shall be void and of no effect.

(xiv) **Amendments/waivers.** Section 8(b) of the Agreement is hereby amended by (A) adding the phrase "and Insurer" following the word "parties" in the third line thereof and (B) adding the following sentence at the end of Section 8(b): No amendment, modification or waiver on respect of the Credit Support Documents will be effective unless in writing (including a writing evidenced by a facsimile transmission) and consented to in writing by Insurer or confirmed by an exchange of telexes or electronic messages on an electronic messaging system and consented to in writing by Insurer."

(xv) **Notices.** A copy of each notice or other communication between the parties with respect to this Agreement shall be forwarded to Insurer. For the purposes of Section 10(a) of this Agreement, for the Insured Transactions, a copy of all notices or communications to Party A or Party B shall also be sent to Insurer at:

Address: Assured Guaranty Corp.  
 1325 Avenue of the Americas  
 New York, New York 10019  
 Attention: Risk Management Department Public Finance Surveillance  
 Facsimile: (212) 581-3268

(xvi) **Agreement to Deliver Documents.** For the purposes of Section 4(a) of this Agreement, for the Insured Transactions, each party agrees to deliver the following documents in addition to the other documents specified in this Agreement, as applicable:

Party required to Deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party B	Swap Insurance Policy	Upon delivery of the certificates of participation to which the Insured Transaction relates.	No
Party B	Opinion of Insurer's Counsel with respect to the Swap Insurance Policy in form and substance satisfactory to Party A.	Upon delivery of the Swap Insurance Policy.	No
Party B	Consent and Acknowledgement of Release of Obligations under	Upon delivery of the Swap Insurance	No

Party required to Deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
	Prior Swap Insurance Policy by MBIA Insurance Company	Policy.	

(xvii) **Opinions.** All opinions delivered with respect to Insured Transactions pursuant to Section 4(a) of this Agreement shall also be delivered to Insurer at the address set forth in Section 10(a) of this Agreement

(xviii) **“Reference Market Makers.”** The definition of “Reference Market-makers” set forth in Section 12 of the Agreement shall be amended in its entirety to read as follows:

**“Reference Market-makers”** means four (4) leading dealers in the relevant swap market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among dealers having an office in the same city. The rating classification assigned to any outstanding long-term senior debt securities issued by such dealers shall be at least (1) “Aa2” or higher as determined by Moody’s Investors Service Inc., (2) “AA” or higher as determined by Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. or (3) an equivalent investment grade rating determined by a nationally-recognized rating service acceptable to both parties, provided, however, that, in any case, if Market Quotations cannot be determined by four (4) such dealers, the party making the determination of the Market Quotation may designate, with the consent of the other party and Insurer, one (1) or more leading dealers whose long-term senior debt bears a lower investment grade rating.

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**IN WITNESS WHEREOF**, the parties have executed this Schedule by their duly authorized officers as of the date hereof.

**BANK OF AMERICA, N.A.**

**CITY OF MODESTO, CALIFORNIA**

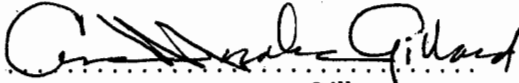
By: .....  
Name:  
Title:

By: .....  .....  
Name:  
Title:

IN WITNESS WHEREOF, the parties have executed this Schedule by their duly authorized officers as of the date hereof.

**BANK OF AMERICA, N.A.**

**CITY OF MODESTO, CALIFORNIA**

By:   
Name: **Ana Morales Gillard**  
Title: **Vice President**

By: .....  
Name:  
Title:

**EXHIBIT I**

[FORM OF OPINION OF ASSISTANT CITY ATTORNEY]

\_\_\_\_\_, 200\_

Bank of America, N.A.  
100 N. Tryon Street  
NC1-007-13-01  
Charlotte, NC 28255

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019

Ladies and Gentlemen:

This opinion is furnished to you in connection with the execution and delivery of the ISDA Master Agreement, the Credit Support Annex and U.S. Municipal Counterparty Schedule, each dated as of May \_\_\_, 2008 (collectively, the "Master Agreement"), by and between Bank of America, N.A. ("Party A") and the City of Modesto (the "City"), as supplemented by the amended confirmation of the transaction (the "Confirmation") originally entered into on September 27, 2006, as amended May \_\_\_, 2008, by and between Party A and the City. The Master Agreement together with the Confirmation shall constitute one agreement (the "Agreement").

I am Assistant City Attorney for the City and in that capacity I have examined originals or copies, certified or otherwise identified to my satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such investigations of fact and law as I have deemed necessary or advisable for the opinions expressed herein.

Upon the basis of the foregoing, I am of the opinion that:

1. The City is a municipal corporation of the State of California organized and validly existing under the Constitution, its Charter and laws of the State of California.
2. The execution, delivery and performance by Party B of the Agreement has been duly authorized by the City.
3. To the best of my knowledge without independent investigation, the execution, delivery and performance by the City of the Agreement do not violate, conflict with, or result in a breach of, any law, rule or regulation applicable to Party B, or any material contractual restriction, order or judgment binding on Party B or its assets which breach or default could have a material, adverse effect on the validity or enforceability of the Agreement or the City's performance of its obligations under the Agreement or the financial position or revenues of the City.
4. No authorization, consent, approval, exemption or license from, or filing of any registration with, any federal or state governmental authority is required to be have been

obtained or made by the City with respect to the authorization, execution, delivery and performance by the City of the Agreement which has not been obtained.

5. The City is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or financial assets (irrespective of their use or intended use) from (i) suit, (ii) jurisdiction of any court or, (iii) except to the extent provided in Part 5 of Division 3.6 of Title 1 of the Government Code of the State of California ("Part 5") (x) relief by way of injunction, order for specific performance or for recovery of property, (y) attachment of its financial assets (whether before or after judgment) or (z) execution or enforcement of any judgment to which it or its revenues or financial assets might otherwise be subject.

I have relied as to certain matters on information obtained from public officials, officers of the City and other sources believed by me to be responsible and I have assumed that the signatures (other than those of the City) on all documents examined by me are genuine, assumptions which I have not independently verified.

This opinion is limited to the laws of the State of California and the federal laws of the United States. The opinions in this letter are expressed solely as of the date hereof for your benefit and for the benefit of your successors and permitted assigns under the Agreement and may not be relied upon in any manner or for any other purpose or by any other person.

Very truly yours,

Assistant City Attorney

**EXHIBIT II**

[FORM OF OPINION OF SIDLEY AUSTIN LLP]

Bank of America, N.A.  
100 N. Tryon Street  
NC1-007-13-01  
Charlotte, NC 28255

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019

Ladies and Gentlemen:

We have acted as special counsel to the City of Modesto, California (the "City"), in connection with the International Swaps and Derivatives Association, Inc. Master Agreement, dated as of May 2008, (the "Master Agreement"), between the City of Modesto, California (the "City") and Bank of America, N.A. ("Party A"), as amended and supplemented by the U.S. Municipal Counterparty Schedule to the Master Agreement, dated as of May \_\_, 2008, which includes the International Swaps and Derivatives Association, Inc. Credit Support Annex, dated as of May 2008 (the "Credit Support Annex"), between the City and Party A (collectively, the "Schedule," and together with the Master Agreement, the "Swap Agreement") and the confirmation of the Transaction (as defined therein) entered into on September 27, 2006, as amended May 2008 (the "Confirmation"), between the City and Party A. In connection with the Transaction, Assured Guaranty Corp. (the "Insurer") has issued its Interest Rate Swap Insurance Policy No. \_\_\_\_\_ (the "Swap Insurance Policy") guaranteeing certain amounts payable by the City under the Swap Agreement. Capitalized terms used herein and not otherwise defined shall have the respective meanings given such terms in the Swap Agreement.

In such connection, we have reviewed the Swap Agreement, the Confirmation, the resolutions adopted by the City Council of the City on May 13, 2008, approving the Swap Agreement, an opinion of the City Attorney of the City, dated May \_\_\_\_\_, and addressed to you, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. We have not undertaken to verify independently, and have assumed, (i) the genuineness of such documents, certificates and opinions presented to us (whether as originals or as copies) and of the signatures (other than those of the City) thereon, (ii) the accuracy of the factual matters represented, warranted or certified and of the legal conclusions contained in the aforementioned opinion of the City Attorney of the City, (iii) the due and legal authorization, execution and delivery thereof by the City and by any parties other than the City, and (iv) the validity and enforceability of the Swap Agreement against Party A.

The opinions expressed herein apply only to the Swap Agreement and the interest rate swap Transaction established by the Confirmation and not to any other swap or other transaction whether entered into pursuant to the Master Agreement or otherwise. The opinions expressed herein are limited to those matters expressly set forth and are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. No opinion is to be inferred or implied beyond the matters expressly so stated. Such opinions are given as of the date hereof and may be affected by actions taken or omitted, events occurring or other facts of which we become aware, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling), after the date hereof. We have not undertaken to

determine, or to inform any person, whether any such actions are taken or omitted or events do occur or other matters coming to our attention after the date hereof, and we disclaim any obligation to update this letter in light of such actions, events or facts. Furthermore, except as noted below, we have assumed compliance by all parties with the covenants and agreements contained in the Swap Agreement.

Upon the basis of the foregoing, we are of the opinion that:

1. The Swap Agreement and the Confirmation have been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by Party A, the Swap Agreement and the Confirmation constitute legal, valid, and binding obligations of the City enforceable against the City in accordance with their terms.

2. The execution and delivery of the Swap Agreement and the Confirmation and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the City a material breach of or default under that certain Master Installment Purchase Contract, dated as of November 1, 1997, by and between the City and the Modesto Public Financing Authority, as amended and supplemented to the date hereof, and as to be amended and supplemented by the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (collectively, the "Contract").

3. The obligations of the City to make payments to Party A under the Swap Agreement and the Confirmation are special, limited obligations payable solely from Gross Revenues of the City's Water Utility System (as such terms are defined in the Contract) on a parity with the City's outstanding Parity Obligations (as such term is defined in the Contract) and any other obligations payable on a parity therewith heretofore or hereafter incurred by the City other than any obligation of the City to post collateral or its obligation to make any termination payment in connection with a termination of the Transaction as a result of the occurrence of any Event of Default or Termination Event under the Agreement (other than to the extent such termination payment is insured under the terms of the Swap Insurance Policy), which obligations shall be Subordinate Obligations payable solely from Gross Revenues of the City's Water Utility System on basis that is junior and subordinate to the City's outstanding Parity Obligations and any other obligations payable on a parity therewith heretofore or hereafter incurred by the City in accordance with the Contract. Amounts payable by the City as a termination payment in connection with a termination of the Transaction as a result of the occurrence of an Event of Default with respect to the City and the designation of an Early Termination Date by the Insurer pursuant to the Swap Agreement (which payments are insured under the terms of the Swap Insurance Policy) are special, limited obligations payable solely from Gross Revenues of the City's Water Utility System on a parity with the City's outstanding Parity Obligations and any other obligations payable on a parity therewith heretofore or hereafter incurred by the City. The general fund of the City is not liable, and neither the credit nor taxing power of the City is pledged, for the payment of amounts due to Party A from the City under the Swap Agreement and the Confirmation.

With respect to the opinions expressed herein, the rights and obligations under the Swap Agreement and the Confirmation are subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting the creditors' rights, to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against cities in the State of California.

We express no opinion with respect to any indemnification, contribution, choice of forum or waiver provisions contained in the foregoing documents. In addition, we express no opinion as to any provision of the Swap Agreement (i) purporting to create any security interest, (ii) providing that

every right and remedy shall be cumulative and in addition to every other right and remedy, or that any failure or delay in exercising any right, power or privilege shall not impair any right or remedy or constitute a waiver thereof, or (iii) regarding specific performance or the grant of any power of attorney.

Our opinion is subject, as to enforceability, to (i) general principles of equity, including concepts of reasonableness, materiality, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); in particular, a court might decline to enforce the conditions set forth in Section 2(a)(iii) of the Swap Agreement and a non-defaulting party's right set forth in Section 6 of the Swap Agreement to designate an Early Termination Date, if the condition or right were invoked in connection with a default deemed immaterial, (ii) the effect of applicable laws, regulations and judicial or other decisions upon the availability and enforceability of particular covenants and remedies, including the remedies of specific performance and self-help, and provisions imposing penalties and forfeitures, and (iii) a court's power to limit the non-defaulting party's recovery to actual damages and impose its own settlement procedures in lieu of the provisions of Section 6(e) of the Swap Agreement. In addition, the enforcement of the Swap Agreement may be conditioned upon the party seeking enforcement having acted in a commercially reasonable manner and in good faith in performing its obligations and exercising its rights and remedies thereunder and is subject to the discretion of a court to invalidate or decline to enforce any right, remedy or provision of the Swap Agreement (including, without limitation, the termination payment provisions thereof) determined by it to be a penalty.

This opinion is limited to the laws of the States of California and New York and the Federal laws of the United States. The opinions in this letter are expressed solely as of the date hereof for your benefit and may not be relied upon in any manner or for any purposes by any other person.

Respectfully submitted,

SIDLEY AUSTIN LLP

**EXHIBIT III**

[CWT Letterhead]

[Date]

[Counterparty]  
[Address]

Ladies and Gentlemen:

We have acted as a counsel to Bank of America, National Association (“BANA”) in connection with the ISDA Master Agreement dated as of [\_\_\_\_\_, 200\_] (the “ISDA Master Agreement”), including the Schedule (the “Schedule”) [and the Credit Support Annex] thereto and the Confirmation thereunder dated [\_\_\_\_\_, 200\_] (collectively the “Swap Agreement”), between BANA and [\_\_\_\_\_] (the “Counterparty”). We are rendering this opinion letter to you at the request of BANA pursuant to Part [2] of the Schedule.

In connection with this opinion, we have examined and relied upon:

- (a) The Swap Agreement; and
- (b) The BANA Assistant Secretary’s Certificate, dated [ ], 200[ ], including BANA’s Board of Director Resolutions, dated January 24, 2006 and attached as Exhibit A thereto; and BANA’s By-laws and Amended and Restated Articles of Association, each dated as of June 13, 2005.

In such examination we have assumed the genuineness of all signatures, the authenticity of all documents, agreements and instruments submitted to us as originals, the conformity to original documents, agreements and instruments of all documents, agreements and instruments submitted to us as copies or specimens, the authenticity of the originals of such documents, agreements and instruments submitted to us as copies or specimens, and the accuracy of the matters set forth in the documents, agreements and instruments we reviewed. As to matters of fact relevant to the opinion expressed herein, we have relied upon the representations and warranties contained in the Swap Agreement and certificates and oral or written statements and other information

obtained from BANA, the other parties to the transaction referenced herein, and public officials and assumed that each of the above was (as of the date made) and is (as of the date hereof) accurate. Except as expressly set forth herein, we have not undertaken any independent investigation (including, without limitation, conducting any review, search or investigation of any public files, records or dockets) to determine the existence or absence of the facts that are material to our opinion, and no inference as to our knowledge concerning such facts should be drawn from our reliance on the representations of BANA and others in connection with the preparation and delivery of this letter.

Other than with respect to BANA, we have assumed (x) the legal capacity of all natural persons and (y) that the Swap Agreement has been duly authorized, executed and delivered by all parties thereto, that all such parties are validly existing and in good standing under the laws of their respective jurisdictions of organization, that all such parties had the power and legal right to execute and deliver the Swap Agreement, and that the Swap Agreement constitutes the legal, valid and binding obligation of all such parties, enforceable against all such parties in accordance with its terms. We have also assumed that the Swap Agreement we have reviewed evidences the entire agreement between the parties, and has not been amended, modified or supplemented in writing or otherwise by any other agreement or understanding of the parties or by waiver of any material provision thereof.

We have also assumed that the Swap Agreement is in consideration of or relates to an obligation arising out of a transaction covering in the aggregate not less than U.S. \$1,000,000.

We express no opinion concerning the laws of any jurisdiction other than the laws of the State of New York and, to the extent expressly referred to in this letter, the federal laws of the United States of America.

We express no opinion herein as to: (i) the legality, validity, binding effect or enforceability of the Swap Agreement under applicable anti-gaming, anti-gambling, and anti-bucket shop laws, rules, and regulations; (ii) the legality, validity, binding effect or enforceability of the Swap Agreement (including the setoff provisions in [Part 4]() of the Schedule) to the extent it purports to relate to affiliates of BANA; and (iii) the creation, perfection or priority of any lien, security interest, or other encumbrance created or purported to be created pursuant to the Swap Agreement.

Based upon our examination of the documents set forth above and the assumptions set forth herein, subject to the limitations and qualifications set forth herein, and having regard for legal considerations which we deem relevant, we are of the following opinions:

1. BANA is a national banking association formed under the laws of the United States and is authorized to transact the business of banking. This opinion is rendered solely upon the certificate dated [\_\_\_\_\_, 200\_] issued by the Comptroller of the Currency in respect of BANA.

2. BANA has the corporate authority to execute, deliver and perform its obligations under the Swap Agreement.

3. The execution and delivery by BANA of the Swap Agreement and the performance of its obligations thereunder do not violate or conflict with its Articles of Association or By-laws.

4. The Swap Agreement has been duly authorized, executed and delivered by BANA.

5. The Swap Agreement constitutes the legal, valid and binding obligation of BANA enforceable against BANA in accordance with its terms.

Our opinion in paragraph 5 above is subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, receivership or other laws relating to or affecting creditors' rights generally, general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity), and to the discretion of a court or other authority or body to invalidate or decline to enforce any right, remedy or provision of the Swap Agreement (including without limitation the termination payment provisions thereof) determined by it to be a penalty. However, the enforcement of rights with respect to indemnification and contribution obligations and provisions relating to severability, provisions purporting to waive or limit rights to trial by jury, oral amendments to written agreements or rights of set-off, provisions relating to submission to jurisdiction, venue or service of process, or provisions purporting to prohibit, restrict or require the consent of the other party for the transfer of, or the creation, attachment or perfection of a security interest in, the Swap Agreement or an interest therein, may be limited by applicable law or considerations of public policy.

We call to your attention the fact that our only role in this matter has been to review the Swap Agreement in order to render an opinion with respect to that agreement. We did not participate in the negotiation or drafting of the Swap Agreement or any other agreement or document relating thereto, and we are not familiar with the parties thereto other than BANA.

We are furnishing this letter to you solely for your benefit in connection with the Swap Agreement. Without our prior written consent, this letter is not to be relied upon, used, circulated, quoted or otherwise referred to by, or assigned to, any other person (including any person that seeks to assert your rights in respect of this letter (other than your successor in interest by means of merger, consolidation, transfer of a business or other similar transaction)) or for any other purpose. In addition, we disclaim any obligation to update this letter for changes in fact or law, or otherwise.

Very truly yours,

(Bilateral Form)

(ISDA Agreements Subject to New York Law Only)

# ISDA®

International Swaps and Derivatives Association, Inc.

## CREDIT SUPPORT ANNEX

to the Schedule to the

### MASTER AGREEMENT

dated as of May 29, 2008

between

**BANK OF AMERICA, N.A.**

and

**CITY OF MODESTO, CALIFORNIA**

("Party A")

("Party B")

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:

#### **Paragraph 1. Interpretation**

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the "Pledgor" will be to the other party when acting in that capacity; *provided, however,* that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

#### **Paragraph 2. Security Interest**

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations, and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

**Paragraph 3. Credit Support Obligations**

(a) **Delivery Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Delivery Amount**" applicable to the Pledgor for any Valuation Date will equal the amount by which:

- (i) the Credit Support Amount  
exceeds
- (ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) **Return Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds the Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Return Amount**" applicable to the Secured Party for any Valuation Date will equal the amount by which:

- (i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party  
exceeds
- (ii) the Credit Support Amount.

"**Credit Support Amount**" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

**Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions**

(a) **Conditions Precedent.** Each Transfer obligation of the Pledgor under Paragraphs 3(a) and 5 and of the Secured Party under Paragraphs 3(b), 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

- (i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and
- (ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) **Transfer Timing.** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) **Calculations.** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) **Substitutions.**

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the "Substitute Credit Support"); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the "Substitution Date"); *provided* that the Secured Party only will be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

**Paragraph 5. Dispute Resolution**

If a party (a "Disputing Party") disputes (I) the Valuation Agent's calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the Valuation Agent (if the Valuation Agent is not the Disputing Party) and the other party (if the Valuation Agent is not that other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction); and

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support, the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

**Paragraph 6. Holding and Using Posted Collateral**

(a) **Care of Posted Collateral.** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) **Eligibility to Hold Posted Collateral; Custodians.**

(i) **General.** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) **Failure to Satisfy Conditions.** If the Secured Party or its Custodian fails to satisfy any conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) **Liability.** The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) **Use of Posted Collateral.** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

(i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and

(ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) **Distributions and Interest Amount.**

(i) **Distributions.** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Local Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).

(ii) **Interest Amount.** Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a

Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

**Paragraph 7. Events of Default**

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

**Paragraph 8. Certain Rights and Remedies**

(a) ***Secured Party's Rights and Remedies.*** If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required by law and cannot be waived.

(b) ***Pledgor's Rights and Remedies.*** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

- (i) the Pledgor may exercise all rights and remedies available to a pledgor under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;
- (iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and
- (iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:
  - (A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
  - (B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

#### **Paragraph 9. Representations**

Each party represents to the other party (which representations will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

- (i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;
- (ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral Transferred to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;
- (iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under relevant law for perfection of that interest); and
- (iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

#### **Paragraph 10. Expenses**

(a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.

(b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).

(c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

#### **Paragraph 11. Miscellaneous**

(a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obligated to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.

(c) **Further Protection.** The Pledgor promptly will give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).

(d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.

(e) **Demands and Notices.** All demands and notices made by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.

(f) **Specifications of Certain Matters.** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

#### **Paragraph 12. Definitions**

As used in this Annex:--

"Cash" means the lawful currency of the United States of America.

"Credit Support Amount" has the meaning specified in Paragraph 3.

"Custodian" has the meaning specified in Paragraphs 6(b)(i) and 13.

**"Delivery Amount"** has the meaning specified in Paragraph 3(a).

**"Disputing Party"** has the meaning specified in Paragraph 5.

**"Distributions"** means with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

**"Eligible Collateral"** means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

**"Eligible Credit Support"** means Eligible Collateral and Other Eligible Support.

**"Exposure"** means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; *provided* that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of "Market Quotation").

**"Independent Amount"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Interest Amount"** means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of that Cash on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

**"Interest Period"** means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

**"Interest Rate"** means the rate specified in Paragraph 13.

**"Local Business Day"**, unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

**"Minimum Transfer Amount"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Notification Time"** has the meaning specified in Paragraph 13.

**"Obligations"** means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

**"Other Eligible Support"** means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

**"Other Posted Support"** means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

**"Pledgor"** means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

**"Posted Collateral"** means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

**"Posted Credit Support"** means Posted Collateral and Other Posted Support.

**"Recalculation Date"** means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however*, that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.

**"Resolution Time"** has the meaning specified in Paragraph 13.

**"Return Amount"** has the meaning specified in Paragraph 3(b).

**"Secured Party"** means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

**"Specified Condition"** means, with respect to a party, any event specified as such for that party in Paragraph 13.

**"Substitute Credit Support"** has the meaning specified in Paragraph 4(d)(i).

**"Substitution Date"** has the meaning specified in Paragraph 4(d)(ii).

**"Threshold"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Transfer"** means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

(i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;

(ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;

(iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and

(iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

**"Valuation Agent"** has the meaning specified in Paragraph 13.

**"Valuation Date"** means each date specified in or otherwise determined pursuant to Paragraph 13.

**"Valuation Percentage"** means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

**"Valuation Time"** has the meaning specified in Paragraph 13.

**"Value"** means for any Valuation Date or other date for which Value is calculated and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
  - (A) Cash, the amount thereof; and
  - (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.

**Paragraph 13. Elections and Variables**

(a) Security Interest for "Obligations". The term "Obligations" as used in this Annex includes no additional obligations with respect to Party A or Party B.

(b) Credit Support Obligations.

(i) "Delivery Amount", "Return Amount" and "Credit Support Amount" will have the meanings specified in Paragraphs 3(a), 3(b) and 3, respectively provided, however, that the Return Amount shall be adjusted, as necessary, so that immediately following any return of Collateral that the Value of Posted Credit Support held by the Secured Party shall always be at least equal to the Credit Support Amount.

(ii) Eligible Collateral shall consist of those assets identified by the ICAD codes listed below, as they are defined in the Collateral Asset Definitions. Percentage shown is the Valuation Percentage applicable to the indicated combination of ICAD and Remaining Maturity.

ICAD Code	Remaining Maturity			
	One (1) year or under	More than one (1) year up to five (5) years and including five (5) years	More than five (5) years up to ten (10) years and including ten (10) years	More than ten (10) years
US-CASH	100%	N/A	N/A	N/A
US-TBILL	99.5%	N/A	N/A	N/A
US-TNOTE	99.5%	98%	95%	N/A
US-TBOND	99.5%	98%	95%	95%
US-STRIP	95%	95%	95%	95%
US-TIPS	95%	95%	95%	95%
US-GNMA	99.5%	98%	95%	95%
US-GNMAMBS	99.5%	98%	95%	95%

There shall be no "Other Eligible Support" for Party A or Party B for purposes of this Annex.

(iv) Thresholds.

(A) "Independent Amount" means with respect to Party A: Not Applicable.  
"Independent Amount" means with respect to Party B: Not applicable.

(B) "Threshold" means, on any day, with respect to a party as Pledgor, the amount set forth under the caption "Threshold" below opposite the rating classification assigned to that party's long-term unsecured, unsubordinated indebtedness or long-term deposits (without regard to any third party credit enhancement), as applicable, by the Rating Agencies on that day, as determined pursuant to terms of this provision (such party's "Credit Rating"). Where more than one Rating Agency rates a party's long-term unsecured unsubordinated indebtedness or long-

term deposits (without regard to any third party credit enhancement) and the ratings are split (including due to a withdrawal or suspension of a rating), the Threshold will be based on the lower of the two ratings. Where only one Rating Agency rates a party's long-term unsecured unsubordinated indebtedness or long-term deposits (without regard to any third party credit enhancement), the Threshold will be based on the rating of that Rating Agency. If at any time (1) no Rating Agency rates a party's long-term unsecured unsubordinated indebtedness or long-term deposits, as applicable, or (2) an Event of Default has occurred and is continuing with respect to a party, the Threshold for that party shall be zero. "Rating Agencies" means Moody's and S&P.

Credit Rating of Party A

<u>Threshold</u>	<u>By S&amp;P</u>	<u>by Moody's</u>
Infinite	A (and above)	A2 (and above)
\$ 0	A- (or below)	A3 (or below)

Credit Rating of Party B

<u>Threshold</u>	<u>By S&amp;P</u>	<u>by Moody's</u>
Infinite	BBB (and above)	Baa2 (and above)
\$ 0	BBB- (or below)	Baa3 (or below)

- (B) "Minimum Transfer Amount" means with respect to Party A: \$100,000  
"Minimum Transfer Amount" means with respect to Party B: \$100,000
- (D) Rounding. The Delivery Amount will be rounded up and the Return Amount will be rounded down to the nearest integral multiple of \$10,000.00, respectively.

(c) Valuation and Timing.

(i) "Valuation Agent" means, for the purposes of Paragraphs 3 and 5, the party making the demand under Paragraph 3, and, for the purposes of Paragraph 6(d), the Secured Party receiving or deemed to receive the Distributions or the Interest Amount, as applicable.

(ii) "Valuation Date" means: Each and every Local Business Day commencing on the first such date following the date hereof.

(iii) "Valuation Time" means:

the close of business in the city of the Valuation Agent on the Valuation Date or date of calculation, as applicable;

the close of business on the Local Business Day before the Valuation Date or date of calculation, as applicable;

provided that the calculations of Value and Exposure will be made as of approximately the same time on the same date.

- (iv) "Notification Time" means 1:00 p.m., New York time, on a Local Business Day.
  
- (d) Conditions Precedent and Secured Party's Rights and Remedies. The following Termination Event(s) will be a "Specified Condition" for each party (that party being the Affected Party if the Termination Event occurs with respect to that party) for purposes of Paragraphs 4(a), 6(c), 8(a) and 8(b): Illegality, Tax Event, Tax Event Upon Merger, Credit Event Upon Merger and Additional Termination Event.
  
- (e) Substitution.
  - (i) "Substitution Date" means the Local Business Day in New York on which the Secured Party is able to confirm irrevocable receipt of the Substitute Credit Support, provided that (x) such receipt is confirmed before 3:00 p.m. (New York time) on such Local Business Day in New York and (y) the Secured Party has received, before 1:00 p.m. (New York time) on the immediately preceding Local Business Day in New York, the notice of substitution described in Paragraph 4(d)(i).
  - (ii) Consent. The Pledgor is not required to obtain the Secured Party's consent for any substitution pursuant to Paragraph 4(d).
  
- (f) Dispute Resolution.
  - (i) "Resolution Time" means 1:00 p.m., New York time, on the Local Business Day following the date on which a notice is given that gives rise to a dispute under Paragraph 5.
  - (ii) Value. For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support will be calculated as follows: for Cash, the U.S. dollar value thereof, and for each item of Eligible Collateral (except for Cash), an amount in U.S. dollars equal to the product of (i) either (A) the bid price for such security quoted on such day by a principal market-maker for such security selected in good faith by the Secured Party or (B) the most recent publicly available bid price for such security as reported by a quotation service or in a medium selected in good faith and in a commercially reasonable manner by Secured Party, multiplied by (ii) the percentage figure listed in Paragraph 13(b)(ii) hereof with respect to such security.
  - (iii) Alternative. The provisions of Paragraph 5 will apply.
  
- (g) Holding and Using Posted Collateral.
  - (i) Eligibility to Hold Posted Collateral; Custodians. Party A and its Custodian, and Party B and its Custodian, will be entitled to hold Posted Collateral, as applicable, pursuant to Paragraph 6(b); provided that the following conditions applicable to each party are satisfied:
    - (A) Party A, as the Secured Party, is not a Defaulting Party; provided however, if Party A is a Defaulting Party then Party A must appoint a Custodian to hold Posted Collateral.
    - (B) Party B, as the Secured Party, is not a Defaulting Party; provided however, if Party B is a Defaulting Party then Party B must appoint a Custodian to hold Posted Collateral.

(C) Each party hereby covenants and agrees that it will cause all Posted Collateral received from the other party to be entered in one or more accounts (each, a "Collateral Account") with a domestic office of a commercial bank, trust company or financial institution organized under the laws of the United States (or any state or a political subdivision thereof) having assets of at least \$10 billion and a long term debt or deposit rating of at least (i) Baa2 from Moody's and (ii) BBB from S&P (a "Qualified Institution"), each of which accounts may include property of other parties but will bear a title indicating the Secured Party's interest in said account and the Posted Collateral in such account. In addition the Secured Party may direct the Pledgor to transfer or deliver Eligible Collateral directly into the Secured Party's Collateral Account(s). If otherwise qualified, the Secured Party may act as such Qualified Institution and the Secured Party may move the Collateral Accounts from one Qualified Institution to another upon reasonable notice to the Pledgor. The Secured Party shall cause statements concerning the Posted Collateral transferred or delivered by the Pledgor to be sent to the Pledgor on request, which may not be made more frequently than once in each calendar month.

Initially the Custodian, for Party A is:- Not applicable.

Initially the Custodian, for Party B is:- Not applicable.

(ii) Use of Posted Collateral. The provisions of Paragraph 6(c) will apply to Party A and will apply to Party B.

(h) Distributions and Interest Amount.

(i) The "Interest Rate", with respect to Eligible Collateral in the form of Cash, for any day, will be the rate opposite the caption "Federal funds (effective)" for such day as published by the Federal Reserve Publication H.15 (519) or any successor publication as published by the Board of Governors of the Federal Reserve System.

(ii) The "Transfer of Interest Amount" will be made within 3 Local Business Days after the last Local Business Day of each calendar month.

(iii) Alternative Interest Amount. The provisions of Paragraph 6(d)(ii) will apply.

(iii) Paragraph 12 is hereby amended by replacing the definition of "Interest Period" with the following:

"Interest Period" means the period from (and including) the first day of each calendar month to (and including) the last day of each calendar month."

(i) Additional Representations. None.

(j) Other Eligible Support and Other Posted Support. Not Applicable.

(k) Demands and Notices. All demands, specifications and notices made by a party to this Annex will be made to the following:

Party A: Bank of America, N.A.

Sears Tower  
233 South Wacker Drive, Suite 2800  
Chicago, Illinois 60606-6306

Telephone No.: (312) 234-3030  
Facsimile: (312) 234-2731

Party B: City of Modesto  
Financial Services  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, California 95353  
Attention: Director of Finance  
Telephone No.: (209) 577-5371  
Facsimile No.: (209) 571-5880

With a copy to:

City Attorney's Office  
c/o City of Modesto  
City Hall  
1010 Tenth Street, Sixth Floor  
Modesto, California 95354  
Attention: Director  
Telephone No.: (209) 577-5284  
Facsimile No.: (209) 544-8260

(l) Addresses for Transfers.

Party A: Cash/Interest Payments: (USD Only)  
Bank of America, New York  
ABA 026009593  
Account # 6550-619389  
F/O Bank of America, Charlotte-Collateral

Eligible Collateral (other than cash):  
BK AMERICA NC/INV  
ABA# 053 000 196

Party B: Cash:

Eligible Collateral (other than cash):

(m) Other Provisions.

(i) This Credit Support Annex is a Security Agreement under the New York UCC.

- (ii) The definitions and provisions contained in the Collateral Asset Definitions First Edition - 2003 (the "Collateral Asset Definitions"), as published by the International Swaps and Derivatives Association, Inc., ("ISDA") are incorporated into this Annex. In the event of any inconsistency between any of the following, the first listed shall prevail (i) this Annex, (ii) the Agreement and (iii) the Collateral Asset Definitions.
- (iii) Paragraph 12 is hereby amended by adding, in alphabetical order, the following:
  - "Moody's" means Moody's Investor Services, Inc., or any successor to the rating business of such entity."
  - "S&P" means Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor to the rating business of such entity."
- (iv) At any time when the Pledgor's Credit Rating is either "BBB-" or below by S&P or "Baa3" or below by Moody's, or no long-term unsecured unsubordinated indebtedness or long-term deposits, as applicable, of the Pledgor is rated by either Rating Agency, or an Event of Default has occurred and is continuing with respect to the Pledgor:
  - (A) With respect to any Transfer of Eligible Credit Support demanded under Paragraph 3(a), Paragraph 4(b) of this Annex shall be deemed to be amended as follows: (I) replace the word "next" in the third line thereof with the word "same" and (II) replace the word "second" in the last line thereof with the word "next."
  - (B) Paragraph 5 of this Annex shall be deemed to be amended by deleting clause (2) thereof in its entirety and inserting in lieu thereof the following:
    - "(2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than (X) the date the Transfer otherwise would have been due if no dispute had existed in the case of (I) above, or (Y) the close of business on the Local Business Day following the date of Transfer in the case of (II) above,"
  - (C) Paragraph 7 of this Annex shall be deemed to be amended by deleting clause (i) thereof in its entirety and inserting in lieu thereof the following:
    - "(i) (x) the Pledgor fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Credit Support required to be made by it, or (y) the Secured Party fails (or fails to cause its Custodian) to make, when due, any Transfer of Posted Credit Support or Interest Amount, as applicable, required to be made by it and, in the case of clause (y) above, that failure continues for two Local Business Days after notice of that failure is given to the Secured Party;"
  - (D) Notwithstanding Paragraph 13(c)(iv), "Notification Time" means 9:00 a.m., New York time, on a Local Business Day.

The deemed amendments to this Annex set forth above shall cease to be effective on the date that all the conditions set forth in the first sentence of this provision no longer exist, but shall be reinstated from time to time if any of those conditions exists at a later time.


- (v) Parties Not Obligated To Post Collateral. Notwithstanding anything in the Credit Support Annex to the contrary, Party B shall not be obligated to post Collateral hereunder unless an Insurer Event has occurred as defined in Part 6(iii)(B) of the Schedule and Party B elects to post Collateral to preclude the occurrence of an Additional Termination Event with respect to Party B thereunder; provided further that Party B may deliver collateral only if and to the extent that Parity Obligations then due have been paid.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Annex by their duly authorized officers as of the date hereof.

**BANK OF AMERICA, N.A.**

**CITY OF MODESTO, CALIFORNIA**

By:   
Name: .....  
Title: **Ana Morales Gillard**  
Date: **Vice President**

By: .....  
Name: .....  
Title: .....  
Date: .....

IN WITNESS WHEREOF, the parties have executed this Annex by their duly authorized officers as of the date hereof.

**BANK OF AMERICA, N.A.**

**CITY OF MODESTO, CALIFORNIA**

By: .....  
Name:  
Title:  
Date:

By:  .....  
Name:  
Title:  
Date:

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

CERTIFIED COPY OF CONFIRMATION

I, Stephanie Lopez, hereby certify that I am the City Clerk of the City of Modesto (the "City"), a charter city and municipal corporation duly organized under the Constitution and the laws of the State of California, and that as such I am authorized to execute this Certificate on behalf of the City.

I hereby further certify that the attached hereto is a true and correct copy of the Confirmation of Bank of America, N.A., accepted and confirmed by the City, dated September 27, 2006.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

Dated: May 30, 2008

CITY OF MODESTO

By:   
Stephanie Lopez  
City Clerk



To: City of Modesto, California  
1010 Tenth Street Suite 5200  
Modesto, CA 95353  
United States

Attn: Wayne Padilla  
Fax: (209) 571-5880  
Telephone: (209) 577-5371

From: Bank of America, N.A.  
233 South Wacker Drive - Suite 2800  
Chicago, Illinois 60606  
U.S.A.

Department: Swaps Operations  
Telephone: (+1) 312 234 2732  
Fax: (+1) 866 255 1444

Date: 29<sup>th</sup> May 2008

Our Reference No: 4812575  
Internal Tracking No: 13399840

Dear Sir/Madam,

**Re: Termination of the Transaction between City of Modesto, California and Bank of America, N.A. (our ref: 4812575) with an Effective Date of 2<sup>nd</sup> November 2006, Termination Date of 1<sup>st</sup> October 2036 and an Amortized Notional Amount of USD 46,275,000 (the "Transaction")**

The purpose of this letter agreement (this "*Confirmation*") is to confirm the terms and conditions on which the Transaction (the terms of which are set out in the Confirmation with our Reference Number 4812575 (the "*Transaction Confirmation*")) will be terminated. Capitalised terms used but not defined herein will have the meanings ascribed to them in the Transaction Confirmation.

This Confirmation supplements, forms part of and is subject to, the ISDA Agreement between you and us referred to in the Transaction Confirmation (the "*Agreement*"). This letter agreement constitutes a "*Confirmation*" as referred to in the Agreement. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

The terms on which the Transaction will terminate are as follows:

Notwithstanding the Termination Date for the Transaction specified in the Transaction Confirmation, the Transaction will terminate on 29<sup>th</sup> May 2008 and all future obligations of Bank of America, N.A. and City of Modesto, California under the Transaction with effect from and including 1<sup>st</sup> June 2008 (the "*Early Termination Date*") will be terminated.

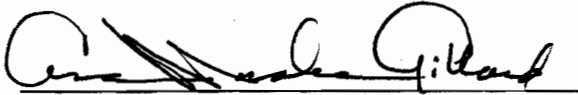
This Confirmation shall be governed by, and construed in accordance with, the Governing Law stated in the Agreement or the Transaction Confirmation, as the case may be.

Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via telecopier an executed copy of this Confirmation in its entirety to the attention of Global FX and Derivative Operations (fax no. (+1) 866 255 1444).

Bank of America, N.A.

Accepted and confirmed as of the date first written:

City of Modesto, California



Authorized Signatory  
**Ana Morales Gillard**  
**Vice President**



Name: \_\_\_\_\_

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

*CONFIRMED*

Acknowledged and Agreed:  
MBIA Insurance Corporation  
By: .....  
Name:  
Title:

Our Reference Number: 4812575  
Internal Tracking Numbers: 13399840



To: The City of Modesto  
1010 Tenth Street Suite 5200  
Modesto CA 95353  
United States

Attn: Wayne Padilla  
Telephone: 209 577 5371  
Fax: 209 571 5880

From: Bank of America, N.A.  
233 South Wacker Drive - Suite 2800  
Chicago  
Illinois 60606  
U.S.A.

Department: Swaps Operations  
Telephone: (+1) 312 234 2732  
Fax: (+1) 866 255 1444

Date: 27th September 2006

Our Reference No: 4812575

Reference Name: Richard Perillo  
Internal Tracking No: 13399840

Dear Sir/Madam,

The purpose of this letter agreement is to confirm the terms and conditions of the Transaction entered into between The City of Modesto and Bank of America, N.A. (each a "party" and together "the parties") on the Trade Date specified below (the "Transaction"). This letter

agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below (the "Agreement").

The definitions and provisions contained in the 2000 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc., (the "Definitions") are incorporated into this Confirmation. In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will govern.

This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated as of 27th September 2006, as amended and supplemented from time to time, between the parties. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

In this Confirmation "Party A" means Bank of America, N.A. and "Party B" means The City of Modesto.

**General Terms:**

The terms of the particular Transaction to which this Confirmation relates are as follows:

Notional Amount: As per Schedule A below.

Trade Date: 27th September 2006

Effective Date: 2nd November 2006

Termination Date: 1st October 2036

**Fixed Amounts:**

Fixed Rate Payer: Party B

Fixed Rate Payer  
Payment Dates: The 1st of each Month, commencing on 1st December 2006 and ending on the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention

**Fixed Rate Payer**  
**Period End Dates:** The 1st of each Month, commencing on 1st December 2006 and ending on the Termination Date. No Adjustment.

**Fixed Rate:** 3.48000 per cent

**Fixed Rate Day**  
**Count Fraction:** 30/360

**Floating Amounts:**

**Floating Rate Payer:** Party A

**Floating Rate Payer**  
**Payment Dates:** The 1st of each Month, commencing on 1st December 2006 and ending on the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention

**Floating Rate Payer**  
**Period End Dates:** The 1st of each Month, commencing on 1st December 2006 and ending on the Termination Date. No Adjustment.

**Floating Rate for initial**  
**Calculation Period:** to be determined

**Floating Rate:** A rate, expressed as a percentage, equal to 63.7 per cent. of the Relevant Rate for a Reset Date

**Floating Rate Option:** USD-LIBOR-BBA

**Designated Maturity:** 1 Month

**Spread:** plus 0.15400 per cent

Floating Rate Day  
Count Fraction: Actual/Actual

Reset Dates: Thursday of each week

Method of  
Averaging: Weekly Weighted

**Business Days:** New York and London

**Calculation Agent:** Party A

**Recording of Conversations:**

Each party to this Transaction acknowledges and agrees to the tape recording of conversations between the parties to this Transaction whether by one or other or both of the parties or their agents, and that any such tape recordings may be submitted in evidence in any Proceedings relating to the Agreement and/or this Transaction.

**Other Provisions:**

**Optional Termination by Party B.** Party B shall have the right, with the prior written consent of the Insurer, to terminate the Transaction (provided that no Event of Default, Potential Event of Default or Termination Event has occurred) by providing (i) at least five (5) General Business Days' prior written notice to Party A of its election to terminate the Transaction and (ii) evidence reasonably satisfactory to Party A that any and all amounts owed to Party A in connection with such early termination shall be paid on the due date thereof. On the Optional Termination Date set forth in such notice, an amount, determined by Party A, shall be payable by Party B or Party A, as the case may be, in respect of such termination. If such amount is not acceptable to Party B, then Party A shall determine such amount in accordance with Section 6 of the Master Agreement, assuming Market Quotation and Second Method apply and Party B is the sole Affected Party. "General Business Days" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in the City of New York.

**Adjustment Event.** In connection with any reduction of the outstanding principal amount of the Related Bonds (as defined below), other than pursuant to the Amortization Schedule hereof, Party B shall have the right to reduce the Notional Amount of this Transaction by an amount equal to an amount necessary to make the Notional Amount of this Transaction equal to the remaining outstanding principal amount of the Related Bonds as they are then expected to further amortize pursuant to the Amortization Schedules then-to-be-attached to the Confirmation of this Transaction on the date of such reduction of the Related Bonds (the "Adjustment Event Date") by providing (i) at least thirty (30) days' prior written notice (the "Adjustment Event Notice"), prior to the Adjustment Event Date, to Party A and Insurer of its election to terminate such portion of this Transaction and (ii) evidence satisfactory to Party A and Insurer that Party B has (or will have on the Adjustment Event Date) sufficient funds available to pay any amounts which may be payable by it to Party A in connection with such early termination of this Transaction (the "Adjustment Payment"). On the Adjustment Event Date set forth in the Adjustment Event Notice, an amount, determined by Party A, shall be payable by Party B or Party A, as the case may be, in respect of such termination. If such amount is not acceptable to Party B, then Party A shall determine such amount in accordance with Section 6 of the Master Agreement, assuming (i) Market Quotation and Second Method apply, (ii) Party B is the sole Affected Party (for all purposes other than the election to terminate), (iii) the Adjustment Event Date is the Early Termination Date, (iv) this Transaction (or portion hereof) is the sole Affected Transaction and (v) the Notional Amount for purposes of calculating the Settlement Amount shall be the amount of such reduction. Notwithstanding anything herein to the contrary, the parties will be obligated to pay any accrued amounts that would otherwise be due on the Adjustment Event Date. "Related Bonds" means the Water Revenue Certificates of Participation, 2006 Series A.

Party B agrees that it shall not terminate this Transaction in whole or in part pursuant to this provision unless it has or will have on the Adjustment Event Date, sufficient funds available to pay any Adjustment Payment. In the event that either Party A or Insurer is not satisfied that Party B has (or will have on the Adjustment Event Date) sufficient funds available to pay any Adjustment Payment, the Notional Amount of this Transaction shall not be reduced, no portion of this Transaction shall be terminated.

**Account Details:**

As advised under separate cover with reference to this Confirmation, each party shall provide appropriate payment instructions to the other party in writing and such instructions shall be deemed to be incorporated into this Confirmation.

**Offices:**

The Office of Party A for this

Transaction is: Charlotte - NC, United States  
Please send reset notices to fax no. (+1) 866 218 8487

The Office of Party B for this  
Transaction is: Modesto - CA, United States

### **SCHEDULE A**

<b>Calculation Period scheduled to commence on:</b>	<b>Notional Amount:</b>
2nd November 2006	USD 46,275,000.00
1st December 2006	USD 46,275,000.00
1st January 2007	USD 46,275,000.00
1st February 2007	USD 46,275,000.00
1st March 2007	USD 46,275,000.00
1st April 2007	USD 46,275,000.00
1st May 2007	USD 46,275,000.00
1st June 2007	USD 46,275,000.00
1st July 2007	USD 46,275,000.00
1st August 2007	USD 46,275,000.00
1st September 2007	USD 46,275,000.00
1st October 2007	USD 46,275,000.00
1st November 2007	USD 46,275,000.00
1st December 2007	USD 46,275,000.00

1st January 2008	USD 46,275,000.00
1st February 2008	USD 46,275,000.00
1st March 2008	USD 46,275,000.00
1st April 2008	USD 46,275,000.00
1st May 2008	USD 46,275,000.00
1st June 2008	USD 46,275,000.00
1st July 2008	USD 46,275,000.00
1st August 2008	USD 46,275,000.00
1st September 2008	USD 46,275,000.00
1st October 2008	USD 46,025,000.00
1st November 2008	USD 46,025,000.00
1st December 2008	USD 46,025,000.00
1st January 2009	USD 46,025,000.00
1st February 2009	USD 46,025,000.00
1st March 2009	USD 46,025,000.00
1st April 2009	USD 46,025,000.00
1st May 2009	USD 46,025,000.00
1st June 2009	USD 46,025,000.00
1st July 2009	USD 46,025,000.00
1st August 2009	USD 46,025,000.00
1st September 2009	USD 46,025,000.00
1st October 2009	USD 45,750,000.00
1st November 2009	USD 45,750,000.00

1st December 2009	USD 45,750,000.00
1st January 2010	USD 45,750,000.00
1st February 2010	USD 45,750,000.00
1st March 2010	USD 45,750,000.00
1st April 2010	USD 45,750,000.00
1st May 2010	USD 45,750,000.00
1st June 2010	USD 45,750,000.00
1st July 2010	USD 45,750,000.00
1st August 2010	USD 45,750,000.00
1st September 2010	USD 45,750,000.00
1st October 2010	USD 45,475,000.00
1st November 2010	USD 45,475,000.00
1st December 2010	USD 45,475,000.00
1st January 2011	USD 45,475,000.00
1st February 2011	USD 45,475,000.00
1st March 2011	USD 45,475,000.00
1st April 2011	USD 45,475,000.00
1st May 2011	USD 45,475,000.00
1st June 2011	USD 45,475,000.00
1st July 2011	USD 45,475,000.00
1st August 2011	USD 45,475,000.00
1st September 2011	USD 45,475,000.00
1st October 2011	USD 45,200,000.00

1st November 2011	USD 45,200,000.00
1st December 2011	USD 45,200,000.00
1st January 2012	USD 45,200,000.00
1st February 2012	USD 45,200,000.00
1st March 2012	USD 45,200,000.00
1st April 2012	USD 45,200,000.00
1st May 2012	USD 45,200,000.00
1st June 2012	USD 45,200,000.00
1st July 2012	USD 45,200,000.00
1st August 2012	USD 45,200,000.00
1st September 2012	USD 45,200,000.00
1st October 2012	USD 44,900,000.00
1st November 2012	USD 44,900,000.00
1st December 2012	USD 44,900,000.00
1st January 2013	USD 44,900,000.00
1st February 2013	USD 44,900,000.00
1st March 2013	USD 44,900,000.00
1st April 2013	USD 44,900,000.00
1st May 2013	USD 44,900,000.00
1st June 2013	USD 44,900,000.00
1st July 2013	USD 44,900,000.00
1st August 2013	USD 44,900,000.00
1st September 2013	USD 44,900,000.00

1st October 2013	USD 44,600,000.00
1st November 2013	USD 44,600,000.00
1st December 2013	USD 44,600,000.00
1st January 2014	USD 44,600,000.00
1st February 2014	USD 44,600,000.00
1st March 2014	USD 44,600,000.00
1st April 2014	USD 44,600,000.00
1st May 2014	USD 44,600,000.00
1st June 2014	USD 44,600,000.00
1st July 2014	USD 44,600,000.00
1st August 2014	USD 44,600,000.00
1st September 2014	USD 44,600,000.00
1st October 2014	USD 44,275,000.00
1st November 2014	USD 44,275,000.00
1st December 2014	USD 44,275,000.00
1st January 2015	USD 44,275,000.00
1st February 2015	USD 44,275,000.00
1st March 2015	USD 44,275,000.00
1st April 2015	USD 44,275,000.00
1st May 2015	USD 44,275,000.00
1st June 2015	USD 44,275,000.00
1st July 2015	USD 44,275,000.00
1st August 2015	USD 44,275,000.00

1st September 2015	USD 44,275,000.00
1st October 2015	USD 43,950,000.00
1st November 2015	USD 43,950,000.00
1st December 2015	USD 43,950,000.00
1st January 2016	USD 43,950,000.00
1st February 2016	USD 43,950,000.00
1st March 2016	USD 43,950,000.00
1st April 2016	USD 43,950,000.00
1st May 2016	USD 43,950,000.00
1st June 2016	USD 43,950,000.00
1st July 2016	USD 43,950,000.00
1st August 2016	USD 43,950,000.00
1st September 2016	USD 43,950,000.00
1st October 2016	USD 43,600,000.00
1st November 2016	USD 43,600,000.00
1st December 2016	USD 43,600,000.00
1st January 2017	USD 43,600,000.00
1st February 2017	USD 43,600,000.00
1st March 2017	USD 43,600,000.00
1st April 2017	USD 43,600,000.00
1st May 2017	USD 43,600,000.00
1st June 2017	USD 43,600,000.00
1st July 2017	USD 43,600,000.00

1st August 2017	USD 43,600,000.00
1st September 2017	USD 43,600,000.00
1st October 2017	USD 43,250,000.00
1st November 2017	USD 43,250,000.00
1st December 2017	USD 43,250,000.00
1st January 2018	USD 43,250,000.00
1st February 2018	USD 43,250,000.00
1st March 2018	USD 43,250,000.00
1st April 2018	USD 43,250,000.00
1st May 2018	USD 43,250,000.00
1st June 2018	USD 43,250,000.00
1st July 2018	USD 43,250,000.00
1st August 2018	USD 43,250,000.00
1st September 2018	USD 43,250,000.00
1st October 2018	USD 42,875,000.00
1st November 2018	USD 42,875,000.00
1st December 2018	USD 42,875,000.00
1st January 2019	USD 42,875,000.00
1st February 2019	USD 42,875,000.00
1st March 2019	USD 42,875,000.00
1st April 2019	USD 42,875,000.00
1st May 2019	USD 42,875,000.00
1st June 2019	USD 42,875,000.00

1st July 2019	USD 42,875,000.00
1st August 2019	USD 42,875,000.00
1st September 2019	USD 42,875,000.00
1st October 2019	USD 42,500,000.00
1st November 2019	USD 42,500,000.00
1st December 2019	USD 42,500,000.00
1st January 2020	USD 42,500,000.00
1st February 2020	USD 42,500,000.00
1st March 2020	USD 42,500,000.00
1st April 2020	USD 42,500,000.00
1st May 2020	USD 42,500,000.00
1st June 2020	USD 42,500,000.00
1st July 2020	USD 42,500,000.00
1st August 2020	USD 42,500,000.00
1st September 2020	USD 42,500,000.00
1st October 2020	USD 42,125,000.00
1st November 2020	USD 42,125,000.00
1st December 2020	USD 42,125,000.00
1st January 2021	USD 42,125,000.00
1st February 2021	USD 42,125,000.00
1st March 2021	USD 42,125,000.00
1st April 2021	USD 42,125,000.00
1st May 2021	USD 42,125,000.00

1st June 2021	USD 42,125,000.00
1st July 2021	USD 42,125,000.00
1st August 2021	USD 42,125,000.00
1st September 2021	USD 42,125,000.00
1st October 2021	USD 41,725,000.00
1st November 2021	USD 41,725,000.00
1st December 2021	USD 41,725,000.00
1st January 2022	USD 41,725,000.00
1st February 2022	USD 41,725,000.00
1st March 2022	USD 41,725,000.00
1st April 2022	USD 41,725,000.00
1st May 2022	USD 41,725,000.00
1st June 2022	USD 41,725,000.00
1st July 2022	USD 41,725,000.00
1st August 2022	USD 41,725,000.00
1st September 2022	USD 41,725,000.00
1st October 2022	USD 41,300,000.00
1st November 2022	USD 41,300,000.00
1st December 2022	USD 41,300,000.00
1st January 2023	USD 41,300,000.00
1st February 2023	USD 41,300,000.00
1st March 2023	USD 41,300,000.00
1st April 2023	USD 41,300,000.00

1st May 2023	USD 41,300,000.00
1st June 2023	USD 41,300,000.00
1st July 2023	USD 41,300,000.00
1st August 2023	USD 41,300,000.00
1st September 2023	USD 41,300,000.00
1st October 2023	USD 39,025,000.00
1st November 2023	USD 39,025,000.00
1st December 2023	USD 39,025,000.00
1st January 2024	USD 39,025,000.00
1st February 2024	USD 39,025,000.00
1st March 2024	USD 39,025,000.00
1st April 2024	USD 39,025,000.00
1st May 2024	USD 39,025,000.00
1st June 2024	USD 39,025,000.00
1st July 2024	USD 39,025,000.00
1st August 2024	USD 39,025,000.00
1st September 2024	USD 39,025,000.00
1st October 2024	USD 36,650,000.00
1st November 2024	USD 36,650,000.00
1st December 2024	USD 36,650,000.00
1st January 2025	USD 36,650,000.00
1st February 2025	USD 36,650,000.00
1st March 2025	USD 36,650,000.00

1st April 2025	USD 36,650,000.00
1st May 2025	USD 36,650,000.00
1st June 2025	USD 36,650,000.00
1st July 2025	USD 36,650,000.00
1st August 2025	USD 36,650,000.00
1st September 2025	USD 36,650,000.00
1st October 2025	USD 34,175,000.00
1st November 2025	USD 34,175,000.00
1st December 2025	USD 34,175,000.00
1st January 2026	USD 34,175,000.00
1st February 2026	USD 34,175,000.00
1st March 2026	USD 34,175,000.00
1st April 2026	USD 34,175,000.00
1st May 2026	USD 34,175,000.00
1st June 2026	USD 34,175,000.00
1st July 2026	USD 34,175,000.00
1st August 2026	USD 34,175,000.00
1st September 2026	USD 34,175,000.00
1st October 2026	USD 31,625,000.00
1st November 2026	USD 31,625,000.00
1st December 2026	USD 31,625,000.00
1st January 2027	USD 31,625,000.00
1st February 2027	USD 31,625,000.00

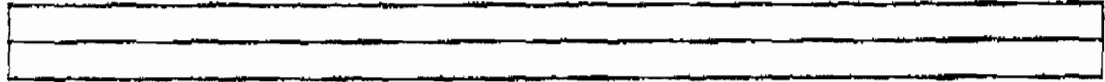
1st March 2027	USD 31,625,000.00
1st April 2027	USD 31,625,000.00
1st May 2027	USD 31,625,000.00
1st June 2027	USD 31,625,000.00
1st July 2027	USD 31,625,000.00
1st August 2027	USD 31,625,000.00
1st September 2027	USD 31,625,000.00
1st October 2027	USD 28,975,000.00
1st November 2027	USD 28,975,000.00
1st December 2027	USD 28,975,000.00
1st January 2028	USD 28,975,000.00
1st February 2028	USD 28,975,000.00
1st March 2028	USD 28,975,000.00
1st April 2028	USD 28,975,000.00
1st May 2028	USD 28,975,000.00
1st June 2028	USD 28,975,000.00
1st July 2028	USD 28,975,000.00
1st August 2028	USD 28,975,000.00
1st September 2028	USD 28,975,000.00
1st October 2028	USD 26,225,000.00
1st November 2028	USD 26,225,000.00
1st December 2028	USD 26,225,000.00
1st January 2029	USD 26,225,000.00

1st February 2029	USD 26,225,000.00
1st March 2029	USD 26,225,000.00
1st April 2029	USD 26,225,000.00
1st May 2029	USD 26,225,000.00
1st June 2029	USD 26,225,000.00
1st July 2029	USD 26,225,000.00
1st August 2029	USD 26,225,000.00
1st September 2029	USD 26,225,000.00
1st October 2029	USD 23,350,000.00
1st November 2029	USD 23,350,000.00
1st December 2029	USD 23,350,000.00
1st January 2030	USD 23,350,000.00
1st February 2030	USD 23,350,000.00
1st March 2030	USD 23,350,000.00
1st April 2030	USD 23,350,000.00
1st May 2030	USD 23,350,000.00
1st June 2030	USD 23,350,000.00
1st July 2030	USD 23,350,000.00
1st August 2030	USD 23,350,000.00
1st September 2030	USD 23,350,000.00
1st October 2030	USD 20,375,000.00
1st November 2030	USD 20,375,000.00
1st December 2030	USD 20,375,000.00

1st January 2031	USD 20,375,000.00
1st February 2031	USD 20,375,000.00
1st March 2031	USD 20,375,000.00
1st April 2031	USD 20,375,000.00
1st May 2031	USD 20,375,000.00
1st June 2031	USD 20,375,000.00
1st July 2031	USD 20,375,000.00
1st August 2031	USD 20,375,000.00
1st September 2031	USD 20,375,000.00
1st October 2031	USD 17,275,000.00
1st November 2031	USD 17,275,000.00
1st December 2031	USD 17,275,000.00
1st January 2032	USD 17,275,000.00
1st February 2032	USD 17,275,000.00
1st March 2032	USD 17,275,000.00
1st April 2032	USD 17,275,000.00
1st May 2032	USD 17,275,000.00
1st June 2032	USD 17,275,000.00
1st July 2032	USD 17,275,000.00
1st August 2032	USD 17,275,000.00
1st September 2032	USD 17,275,000.00
1st October 2032	USD 14,075,000.00
1st November 2032	USD 14,075,000.00

1st December 2032	USD 14,075,000.00
1st January 2033	USD 14,075,000.00
1st February 2033	USD 14,075,000.00
1st March 2033	USD 14,075,000.00
1st April 2033	USD 14,075,000.00
1st May 2033	USD 14,075,000.00
1st June 2033	USD 14,075,000.00
1st July 2033	USD 14,075,000.00
1st August 2033	USD 14,075,000.00
1st September 2033	USD 14,075,000.00
1st October 2033	USD 10,750,000.00
1st November 2033	USD 10,750,000.00
1st December 2033	USD 10,750,000.00
1st January 2034	USD 10,750,000.00
1st February 2034	USD 10,750,000.00
1st March 2034	USD 10,750,000.00
1st April 2034	USD 10,750,000.00
1st May 2034	USD 10,750,000.00
1st June 2034	USD 10,750,000.00
1st July 2034	USD 10,750,000.00
1st August 2034	USD 10,750,000.00
1st September 2034	USD 10,750,000.00
1st October 2034	USD 7,300,000.00

1st November 2034	USD 7,300,000.00
1st December 2034	USD 7,300,000.00
1st January 2035	USD 7,300,000.00
1st February 2035	USD 7,300,000.00
1st March 2035	USD 7,300,000.00
1st April 2035	USD 7,300,000.00
1st May 2035	USD 7,300,000.00
1st June 2035	USD 7,300,000.00
1st July 2035	USD 7,300,000.00
1st August 2035	USD 7,300,000.00
1st September 2035	USD 7,300,000.00
1st October 2035	USD 3,725,000.00
1st November 2035	USD 3,725,000.00
1st December 2035	USD 3,725,000.00
1st January 2036	USD 3,725,000.00
1st February 2036	USD 3,725,000.00
1st March 2036	USD 3,725,000.00
1st April 2036	USD 3,725,000.00
1st May 2036	USD 3,725,000.00
1st June 2036	USD 3,725,000.00
1st July 2036	USD 3,725,000.00
1st August 2036	USD 3,725,000.00
1st September 2036	USD 3,725,000.00



Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via telecopier an executed copy of this Confirmation in its entirety to the attention of Global FX and Derivative Operations (fax no. (+1) 866 255 1444).

Accepted and confirmed as of the date first written:  
The City of Modesto

Bank of America, N.A.

OB  
GB

*Mary Beth Knight*  
MARY BETH KNIGHT  
ASST. VICE PRESIDENT

Authorized Signatory

By: *Wayne Padina*  
Name: *MR. WAYNE PADINA*  
Title: *FINANCE DIRECTOR*

Our Reference Number: 4812575  
Internal Tracking No: 13399840



To: City of Modesto, California  
1010 Tenth Street Suite 5200  
Modesto, CA 95353  
United States  
Attn: Wayne Padilla  
Fax: (209) 571-5880  
Telephone: (209) 577-5371

From: Bank of America, N.A.  
233 South Wacker Drive - Suite 2800  
Chicago  
Illinois 60606  
U.S.A.

Department: Swaps Operations  
Telephone: (+1) 312 234 2732  
Fax: (+1) 866 255 1444

Date: 29<sup>th</sup> May 2008

Our Reference No: 50972649  
Reference Name: Mike Moss  
Internal Tracking No: 50972649

Dear Sir/Madam,

The purpose of this letter agreement is to confirm the terms and conditions of the Transaction entered into between City of Modesto, California and Bank of America, N.A. (each a "party" and together "the parties") on the Trade Date specified below (the "Transaction"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified in Paragraph 1 below (the "Agreement").

The definitions and provisions contained in the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc., (the "Definitions") are incorporated into this Confirmation. In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will govern.

**1.** This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated as of **29th May 2008**, as amended and supplemented from time to time, between the parties. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

In this Confirmation "Party A" means Bank of America, N.A., "Party B" means City of Modesto, California.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

Notional Amount:	As per Schedule A attached hereto
Trade Date:	29 <sup>th</sup> May 2008
Effective Date:	30 <sup>th</sup> May 2008
Termination Date:	1 <sup>st</sup> October 2036
Upfront Fee:	On 2 <sup>nd</sup> June 2008, subject to adjustment in accordance with the Modified Following Business Day Convention, Party B will pay Party A USD 8,600. This payment is reflected in, and has decreased, the Fixed Rate payable by Party B hereunder.

**Fixed Amounts:**

Fixed Rate Payer:	Party B
Fixed Rate Payer Payment Dates:	The 1st of each month, commencing on 1st July 2008 and ending on the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention
Fixed Rate Payer Period End Dates:	The 1st of each month, commencing on 1 <sup>st</sup> July 2008 and ending on the Termination Date. <b>No Adjustment.</b>
Fixed Rate:	3.4747 per cent
Fixed Rate Day Count Fraction:	30/360

**Floating Amounts:**

Floating Rate Payer:	Party A
Floating Rate Payer Payment Dates:	The 1st of each month, commencing on 1st July 2008 and ending on the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention
Floating Rate Payer Period End Dates:	The 1st of each month, commencing on 1 <sup>st</sup> July 2008 and ending on the Termination Date. <b>No Adjustment.</b>
Floating Rate for initial Calculation Period:	To be determined

Floating Rate Option:	USD-LIBOR-BBA
Designated Maturity:	1 Month
Floating Rate:	A rate, expressed as a percentage, equal to 63.7 per cent of the Relevant Rate for a Reset Date
Spread:	Plus 0.154%
Floating Rate Day Count Fraction:	Actual / Actual (ISDA)
Reset Dates:	Thursday of each week
Method of Averaging:	Weekly Weighted

**Business Days:** New York and London

**Calculation Agent:** Party A, unless an Event of Default with respect to Party A is continuing, in which case the Calculation Agent will be a financial institution that would qualify as a Reference Market Maker, which shall be reasonably acceptable to Party A, selected by Party B.

**Recording of Conversations:**

Each party to this Transaction acknowledges and agrees to the tape recording of conversations between the parties to this Transaction whether by one or other or both of the parties or their agents, and that any such tape recordings may be submitted in evidence in any Proceedings relating to the Agreement and/or this Transaction.

**3. Other Provisions:**

In consideration of the early termination of the Transactions with our Internal Tracking No. 13399840, Bank of America, N.A. and City of Modesto, California have agreed to enter into this new Swap Transaction (our ref: 50972649) with an embedded Mark-to-Market value. This is reflected in, and has increased, the Fixed Rate payable by Party B hereunder

**A. Optional Termination by Party B.** Party B shall have the right, with the prior written consent of the Insurer, to terminate the Transaction (provided that no Event of Default, Potential Event of Default or Termination Event has occurred) by providing (i) at least five (5) General Business Days' prior written notice to Party A of its election to terminate the Transaction and (ii) evidence reasonably satisfactory to Party A that any and all amounts owed to Party A in connection with such early termination shall be paid on the due date thereof. On the Optional Termination Date set forth in such notice, an amount, determined by Party A, shall be payable by Party B or Party A, as the case may be, in respect of such termination. If such amount is not acceptable to Party B, then Party A shall determine such amount in accordance with Section 6 of the Master Agreement, assuming Market Quotation and Second Method apply and Party B is the

sole Affected Party. "General Business Days" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in the City of New York.

#### **B. Adjustment Event.**

(i) If on the Effective Date or any date thereafter (an "Adjustment Event Date"), the Notional Amount is greater than the outstanding principal amount of the Related Bonds, an Adjustment Event shall be deemed to have occurred and the Notional Amount will be reduced to the extent necessary to make such Notional Amount as of the Adjustment Event Date, equal to the outstanding principal amount of the Related Bonds on such date. As soon as Party B becomes aware of an anticipated Adjustment Event Date, it will promptly notify Party A and the Insurer of such Adjustment Event Date.

(ii) Upon such reduction in the Notional Amount, a payment (an "Adjustment Payment") will be due and owing by one party to the other party in an amount, determined by Party A, equal to the amount that would be payable under Section 6(e) of the Agreement as if (1) a Termination Event had occurred in respect of Party B, Party B was the only Affected Party with respect to such Termination Event, the Transaction was the Affected Transaction, and the relevant Adjustment Event Date was designated as the Early Termination Date, (2) the Notional Amount of the Transaction was an amount equal to the difference between (X) the Notional Amount and (Y) the outstanding principal amount of the Related Bonds on the Adjustment Event Date, and (3) any requirement set forth in the Agreement that quotations be obtained from Reference Market-makers was met by having Party A provide a single quotation, provided, however, if Party B disputes such quotation, Party A shall seek bids from Reference Market-makers consistent with the provisions of Section 6 of the Agreement. If an Adjustment Payment is a positive number, Party B will pay an amount equal to such Adjustment Payment to Party A; if an Adjustment Payment is a negative number, Party A will pay an amount equal to the absolute value of such Adjustment Payment to Party B. An Adjustment Payment shall be paid by the relevant party on the date on which the Adjustment Event occurs.

(iii) Notwithstanding the foregoing, no Adjustment Payment will be payable by Party B to Party A (in which case, no reduction in Notional Amount will occur), unless Party B provides (1) evidence reasonably satisfactory to Party A and the Insurer that (A) such Adjustment Payment will be made by Party B on the Adjustment Event Date, and (B) such Adjustment Payment will not cause Party B to be in violation of, or in default under the Covered Indenture and (2) at least (5) General Business Days prior written notice of any Adjustment Event Date to Party A and the Insurer.

(iv) Party A agrees that if the Notional Amount of this Transaction has changed, it will provide a new schedule incorporating such changes for attachment to the Insurance Policy following approval by the Insurer.

**"Related Bonds"** means the Water Refunding Certificates of Participation, 2008 Series A

#### **4. Account Details**

As advised under separate cover with reference to this Confirmation, each party shall provide appropriate payment instructions to the other party in writing and such instructions shall be deemed to be incorporated into this Confirmation.

5.

**Offices:**

The Office of Party A for this  
Transaction is:

Charlotte, N.C. – United States

Please send reset notices to (+1) 866 218 8487

The Office of Party B for this  
Transaction is:

Modesto, California, United States

**SCHEDULE A**

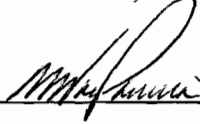
<b>Calculation Period Scheduled to Commence on:</b>	<b>Notional Amount (USD):</b>
5/30/2008	47,625,000
10/1/2008	47,335,000
10/1/2009	47,050,000
10/1/2010	46,765,000
10/1/2011	46,480,000
10/1/2012	46,170,000
10/1/2013	45,860,000
10/1/2014	45,520,000
10/1/2015	45,180,000
10/1/2016	44,815,000
10/1/2017	44,450,000
10/1/2018	44,055,000
10/1/2019	43,660,000
10/1/2020	43,265,000
10/1/2021	42,840,000
10/1/2022	42,390,000
10/1/2023	40,090,000
10/1/2024	37,680,000
10/1/2025	35,165,000
10/1/2026	32,570,000
10/1/2027	29,865,000
10/1/2028	27,055,000
10/1/2029	24,110,000
10/1/2030	21,055,000
10/1/2031	17,870,000
10/1/2032	14,575,000
10/1/2033	11,145,000
10/1/2034	7,575,000
10/1/2035	3,870,000

Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via telecopier an executed copy of this Confirmation to the attention of Global Derivative Operations (fax no. (+1 866) 255 1444).

**Bank of America, N.A.**

**Accepted and confirmed as of the date first written:**

**City of Modesto, California**



\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Name:

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

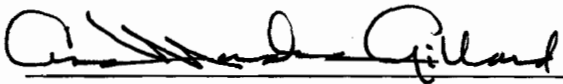
Our Reference Number: 50972649  
Internal Tracking No: 50972649

Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via telecopier an executed copy of this Confirmation to the attention of Global Derivative Operations (fax no. (+1 866) 255 1444).

**Bank of America, N.A.**

**Accepted and confirmed as of the date first written:**

**City of Modesto, California**



Authorized Signatory  
**Ana Morales Gillard**  
**Vice President**

Name: \_\_\_\_\_


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

Our Reference Number: 50972649  
Internal Tracking No: 50972649

**ASSISTANT SECRETARY'S CERTIFICATE  
OF  
BANK OF AMERICA, NATIONAL ASSOCIATION**

The undersigned, Allison L. Gilliam, an Assistant Secretary of Bank of America, National Association (the "Association"), a national banking association organized and existing under the laws of the United States of America and having its principal place of business in the City of Charlotte, County of Mecklenburg, State of North Carolina, does hereby certify that:

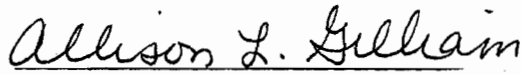
1. The following person has been duly elected or appointed and has duly qualified as an officer of the Association, holds the office set forth opposite her name, and the specimen signature set forth opposite her name below is genuine:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Ana Morales Gillard	Vice President	

2. The Association is authorized to transact the business of banking as a national banking association and its Articles of Association and By-laws, each dated as of June 13, 2005, have not been modified or amended as of the date of this Certificate.
3. A true and complete copy of the Association's Board of Director Resolutions (the "Transaction Resolutions") dated January 24, 2006, is attached as Exhibit A hereto, and the same is in full force and effect as of the date of this Certificate.
4. The person whose specimen signature appears in paragraph 1 of this Certificate qualifies as an "Authorized Officer" of the Association, as such term is defined and used in the Transaction Resolutions.

IN WITNESS WHEREOF, I have hereupon set my hand and affixed the seal of said Association this 29<sup>th</sup> day of May, 2008.



  
Allison L. Gilliam

**BANK OF AMERICA, NATIONAL ASSOCIATION  
BOARD OF DIRECTORS  
RESOLUTIONS**

**JANUARY 24, 2006**

**RESOLVED**, that within the scope of their respective authorities, any Authorized Officer of Bank of America, National Association (the "Association") is hereby empowered to be responsible and to designate key officers to be responsible for the overall supervision, coordination, execution and delivery, including the maintenance of appropriate books and records, of all transactions, contracts, agreements, arrangements and commitments by which the business and activities of the functional area, group, unit, department or division of the Association under the Authorized Officers control are conducted on behalf of the Association, including, to the extent permitted by federal law or regulation, purchasing, investing in, or otherwise acquiring (including purchasing on margin and borrowing funds through or from approved third parties and securing payment thereof with property of the Association to the extent permitted by law), possessing, selling (including short sales), placing as agent, effecting transactions pursuant to repurchase and reverse repurchase agreements, transferring, lending, borrowing, exchanging or otherwise disposing of, an generally underwriting, dealing and trading in (A) securities, mortgages and instruments, whether on a current, mandatory forward or optional commitment basis, including: (1) United States government securities and federal agency securities, on a when-issued or current settlement basis; (2) mortgage-backed pass-through securities, guaranteed as to payment of principal and interest by the Government National Mortgage Association, Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; (3) asset-backed securities and mortgage related securities, including collateralized mortgage obligations, mortgage-backed debt securities and mortgage-backed pass-through securities not enumerated in clause A(2) above; (4) whole mortgage loans whether residential, commercial or project related, and instruments and participation certificates evidencing an interest in any such loans; (5) money market instruments, including federal funds, deposits, redeposits, bankers acceptances, certificates of deposit, deposit notes, bank notes and commercial paper (both foreign and domestic); (6) municipal securities, including general obligation and revenue bonds and variable rate demand notes; (7) equity securities and corporate debt obligations, whether secured, unsecured or convertible, including bonds, debentures and notes; (B) foreign currencies and foreign currency-denominated securities, deposits and money market instruments including currency swaps, cross-currency interest rate swaps, Eurocurrency deposits and redeposits, certificates of deposit, notes and floating rate notes (FRN's) and bonds; (C) foreign government and government agency securities; (D) derivative products, including interest rate swaps, caps, collars, floors, swap options, forward rate agreements, commodity derivatives, equity derivatives and the like and futures and options (exchange listed or over-the-counter) on securities, securities and other indices, financial instruments, commodities, foreign currencies and the like.

**FURTHER RESOLVED**, that such authority with respect to such transactions, contracts, agreements, arrangements or commitments or with respect to any transactions deemed by such key officers to be proper in connection therewith includes the authority to give written (including telecopied, telexed, telegraphic and electronic) or oral instructions, to pay in cash or by check and/or draft drawn upon the funds of the Association such sums as may be necessary, and to bind the obligate the Association to and for the carrying out of any such transaction, contract, agreement, arrangement or commitment which shall be entered into by any such officers for and on behalf of the Association; to deliver securities or other documents; to authorize or order the transfer or delivery of securities or other documents; to enter into and bind the Association to the terms of any and all agreements with appropriate clearing organizations; to affix the seal of the Association to any documents, instruments or agreements or otherwise; to endorse in the name of the Association or otherwise any securities in order to pass title thereto; to direct the sale or exercise all rights with respect to any securities; to sign for the Association all releases, powers of attorney and/or other documents in connection with any such transaction, contract, agreement, arrangement or commitment and to agree to any terms or conditions in connection therewith; to accept delivery of any securities, documents or other items; to appoint any other person or persons to do any and all things which any of such officers is empowered to do; and generally to do and take any and all action necessary or considered desirable in connection with any such transaction, contract, agreement, arrangement or commitment.

#### **Authorized Officers**

**RESOLVED**, that the Authorized Officers of the Association for the purpose of these resolutions shall be the Chief Executive Officer, any Vice Chairman of the Board, the President, any Division President, the Chief Financial Officer, the Principal Financial Executive, any Executive Vice President (or other officer of equivalent or higher rank or grade), the Treasurer, any Deputy Treasurer, the Chief Investment Officer and any Senior Vice President/Treasury or Corporate Investments Group of the Association or any individual designated by one the foregoing officers, and that each Authorized Officer may execute and deliver any document and take any action the officer deems appropriate in connection with anything authorized by any of the foregoing resolutions.

**Financial Guaranty Insurance Policy**

**Obligor:** City Modesto, California **Policy No.:** D-2008-463

**Insured Transaction:** Certain scheduled payments due by the Obligor under the ISDA Master Agreement dated as of May 29, 2008 by and between the Obligor and the Beneficiary, subject to the terms set forth in the Confirmation(s) No. 50972649 together with the Schedule each dated May 29, 2008 attached thereto (collectively, the "Master Agreement") **Beneficiary:** Bank of America, N.A.

**Effective Date:** May 30, 2008

Assured Guaranty Corp., a Maryland insurance corporation ("Assured Guaranty"), in consideration of the payment of the Premium and on the terms and subject to the conditions of this Policy (which includes each endorsement hereto), hereby unconditionally and irrevocably agrees to pay to the Beneficiary, that portion of the Insured Payments which shall become Due for Payment but shall be unpaid by reason of Nonpayment.

Assured Guaranty will make such Insured Payments to the Beneficiary on the later to occur of (i) the date such applicable Insured Payment becomes Due for Payment, or (ii) on the Business Day next following the day on which Assured Guaranty shall have Received a completed Notice of Nonpayment. If a Notice of Nonpayment by Assured Guaranty is incomplete or does not in any instance conform to the terms and conditions of this Policy, it shall be deemed not Received, and Assured Guaranty shall promptly give notice to the Beneficiary. Upon receipt of such notice, the Beneficiary may submit an amended Notice of Nonpayment. Assured Guaranty will disburse the Insured Payments to the Beneficiary only upon receipt by Assured Guaranty, in form reasonably satisfactory to it of (i) evidence of the Beneficiary's right to receive such payments, and (ii) evidence, including without limitation any appropriate instruments of assignment, that all of the Beneficiary's rights to payment which are Due for Payment shall thereupon vest in Assured Guaranty. Upon and to the extent of such disbursement, Assured Guaranty shall become the owner of all rights and shall be fully subrogated to all of the Beneficiary's rights to payment under the Master Agreement. Payment by Assured Guaranty to the Beneficiary shall discharge the obligation of Assured Guaranty under this Policy to the extent of such payment.

This Policy is non-cancelable by Assured Guaranty for any reason. The Premium on this Policy is not refundable for any reason. This Policy does not insure against any risk other than Nonpayment.

Except to the extent expressly modified by any endorsement hereto, the following terms shall have the meanings specified for all purposes of this Policy. "Avoided Payment" means any amount previously distributed to the Beneficiary in respect of any Insured Payment by or on behalf of the Obligor, which amount has been recovered from the Beneficiary pursuant to the United States Bankruptcy Code in accordance with a final, nonappealable order of a court having competent jurisdiction that such payment constitutes an avoidable preference with respect to the Beneficiary. "Business Day" shall have the meaning set forth in the Master Agreement. "Due for Payment" means, with respect to an Insured Payment, each Payer Payment Date or Early Termination Date, as applicable, on which such amount is due and payable pursuant to the terms of the Master Agreement. "Early Termination Amount" shall mean, without duplication of any Unpaid Amount (as defined in the Master Agreement) previously constituting an Insured Payment, any and all amounts payable by the Obligor in respect of the Insured Payments in accordance with the Master Agreement as a result of an Early Termination Date designated by Assured Guaranty. "Early Termination Date" shall have the meaning set forth in the Master Agreement. "Insured Payments" shall mean (i) any and all amounts which are required to be paid by the Obligor in respect of the Insured Transaction on any Payer Payment Date in accordance with Section 2(c) of the Master Agreement without regard to any amendment or modification unless otherwise consented to by Assured Guaranty, and (ii) if Assured Guaranty shall designate an Early Termination Date, any Early Termination Amounts to be paid by the Obligor on the Early Termination Date. Insured Payments shall not include any additional amounts owing by the Obligor to the Beneficiary solely as a result of any failure by the Obligor (or its agent) to pay such amounts when due and payable, including without limitation any such additional amounts as may be attributable to penalties, interest accruing at a default rate, amounts payable in respect of indemnification, or to any other additional amounts payable by the Obligor by reason of such failure. "Nonpayment" means in respect of any Insured Payments the failure of the Obligor to have provided sufficient funds to the Beneficiary for payment in full of Insured Payments that are Due for Payment. It is further understood that the term "Nonpayment" in respect of an Insured Payment includes any Avoided Payment. "Payer Payment Date" means the Fixed Rate Payer Payment Date or the Floating Rate Payer Payment Date (each as defined in the Master Agreement) payable by the Obligor, as applicable, as more fully described in the Confirmation. "Receipt" or "Received" means actual receipt or notice of or, if notice is given by overnight or other delivery service, or by certified or registered United States mail, by a delivery receipt signed by a person authorized to accept delivery on behalf of the person to whom the notice was given. Notices to Assured Guaranty may be mailed by registered mail or personally delivered or telecopied to it at 1325 Avenue of the Americas, New York, New York 10019, Telephone Number: (212) 974- 0100, Facsimile Number: (212) 581-3268, Attention: Risk Management Department - Public Finance Surveillance, with a copy to the General

**Assured Guaranty Corp.**

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100info@assuredguaranty.com  
fax 212 581 3268

www.assuredguaranty.com

Counsel, or to such other address as shall be specified by Assured Guaranty. A Notice of Nonpayment will be deemed to be Received by Assured Guaranty on a given Business Day if it is Received prior to 12:00 noon (New York City time) on such Business Day; otherwise it will be deemed Received on the next Business Day. "Term" shall mean the period from and including the Effective Date to and including the date on which all Insured Payments (including Avoided Payments) have been paid.

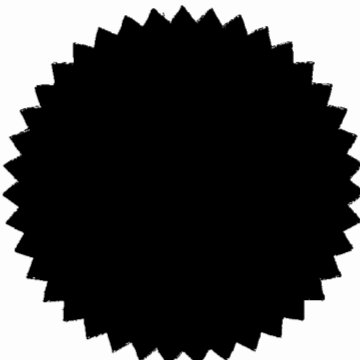
At any time during the Term of this Policy, Assured Guaranty may appoint a fiscal agent (the "Fiscal Agent") for purposes of this Policy by written notice to the Beneficiary, specifying the name and notice address of such Fiscal Agent. From and after the date of Receipt of such notice by the Beneficiary, copies of all notices and documents required to be delivered to Assured Guaranty pursuant to this Policy shall be simultaneously delivered to the Fiscal Agent and to Assured Guaranty. All payments required to be made by Assured Guaranty under this Policy may be made directly by Assured Guaranty or by the Fiscal Agent on behalf of Assured Guaranty. The Fiscal Agent is the agent of Assured Guaranty only, and the Fiscal Agent shall in no event be liable to the Beneficiary for any acts of the Fiscal Agent or any failure of Assured Guaranty to deposit, or cause to be deposited, sufficient funds to make payments due under this Policy.

To the fullest extent permitted by applicable law, Assured Guaranty hereby waives, in each case for the benefit of the Beneficiary only, all rights and defenses of any kind (including, without limitation, the defense of fraud in the inducement or in fact or any other circumstance that would have the effect of discharging a surety, guarantor or any other person in law or in equity) that may be available to Assured Guaranty to deny or avoid payment of its obligations under this Policy in accordance with the express provisions hereof. Nothing in this paragraph will be construed (i) to waive, limit or otherwise impair, and Assured Guaranty expressly reserves, Assured Guaranty's rights and remedies, including, without limitation: its right to assert any claim or to pursue recoveries (based on contractual rights, securities law violations, fraud or other causes of action) against any person or entity, in each case, whether directly or acquired as a subrogee, assignee or otherwise, subsequent to making any payment to the Beneficiary, in accordance with the express provisions hereof, and/or (ii) to require payment by Assured Guaranty of any amounts that have been previously paid or that are not otherwise due in accordance with the express provisions of this Policy.

The Beneficiary has limited rights to terminate the Insured Transaction under the terms of the Master Agreement.

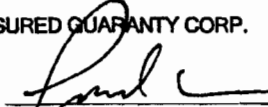
This Policy (which includes each endorsement hereto) sets forth in full the undertaking of Assured Guaranty with respect to the subject matter hereof, and may not be modified, altered or affected by any other agreement or instrument, including, without limitation, any modification thereto or amendment thereof. THIS POLICY IS NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW. This Policy will be governed by, and shall be construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, Assured Guaranty has caused this Policy to be affixed with its corporate seal, to be signed by its duly authorized officer, and to become effective and binding upon Assured Guaranty by virtue of such signature.



ASSURED GUARANTY CORP.

By:

  
Gordon Murray  
Director

Signature attested to by:

  
Counsel

**NOTICE OF NONPAYMENT**

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019  
Attention: Risk Management Department - Public Finance Surveillance and General Counsel

The undersigned, a duly authorized officer of the [BENEFICIARY] (the "Beneficiary"), hereby certifies to Assured Guaranty Corp. ("Assured Guaranty") with reference to Financial Guaranty Insurance Policy No. \_\_\_\_\_ (the "Policy"), that:

(i) The deficiency with respect to the Insured Payment that is Due for Payment and unpaid by reason of Nonpayment on [insert applicable payment date] is \$[insert applicable amount] (the "Deficiency Amount").

(ii) The Beneficiary is making a claim under the Policy for the Deficiency Amount.

(iii) The Beneficiary agrees that, following payment by Assured Guaranty made with respect to the Deficiency Amount which is the subject of this Notice of Nonpayment, it will (a) use such amounts to be applied directly to the payment of the applicable Insured Payment; (b) insure that such funds are not applied for any other purpose; and (c) cause an accurate record of such payment to be maintained with respect to the appropriate Insured Payment(s), the corresponding claim on the Policy, and the proceeds of such claim.

(iv) The Beneficiary, hereby assigns to Assured Guaranty all of its rights with respect to the Insured Transaction to the extent of any payments under the Policy, including without limitation any amounts due to the Beneficiary under the Master Agreement (as defined in the Policy); provided, that payments to Assured Guaranty in respect of the foregoing assignment shall in all cases be subject to and subordinate to the rights of the Beneficiary to receive all payments in respect of the Insured Transaction. The foregoing assignment is in addition to, and not in limitation of, rights of subrogation otherwise available to Assured Guaranty in respect of such payments. The Beneficiary shall take such action and deliver such instruments as may be reasonably requested or required by Assured Guaranty to effectuate the purpose or provisions of this paragraph (iv).

(v) The Beneficiary hereby appoints Assured Guaranty as agent and attorney-in-fact for the Beneficiary in any legal proceeding with respect to the Insured Transaction. The Beneficiary hereby agrees that, so long as Assured Guaranty shall not be in default in its payment obligations under the Policy, Assured Guaranty may at any time during the continuation of any proceeding by or against the Obligor (as defined in the Policy) under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding") direct all matters relating to such Insolvency Proceeding, including, without limitation, (A) all matters relating to any claim in connection with an Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment made with respect to the Insured Transaction (a "Preference Amount"), (B) the direction of any appeal of any order relating to any Preference Amount at the expense of Assured Guaranty but subject to reimbursement as provided in the Master Agreement, if any, and (C) the posting of any surety, supersedeas or performance bond pending any appeal. In addition, the Beneficiary hereby agrees that upon payment of the applicable Deficiency Amount(s) by Assured Guaranty, Assured Guaranty shall be fully subrogated to, and the Beneficiary hereby delegates and assigns, to the fullest extent permitted by law, the rights of the Beneficiary in the conduct of any Insolvency Proceeding, including without limitation all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.

(vi) Payment should be made by credit to the following account:

\_\_\_\_\_  
\_\_\_\_\_

Capitalized terms used in this Notice of Nonpayment and not otherwise defined herein shall have the respective meanings ascribed thereto in the Policy.

This Notice of Nonpayment may be revoked at any time by written notice of such revocation by the Beneficiary to Assured Guaranty.

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO FRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.**

IN WITNESS WHEREOF, the undersigned has executed and delivered this Notice of Nonpayment as of the \_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_.

[BENEFICIARY]

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

# ASSURED GUARANTY®

ENDURING FINANCIAL STRENGTH™  
AAA S&P • Aaa Moody's • AAA Fitch

## Endorsement to Financial Guaranty Insurance Policy (Early Termination Amount and Payer Payment Date)

Obligor:	City of Modesto, California	Policy No.	D-2008-463
Obligations:	Certain scheduled payments due by the Obligor under the ISDA Master Agreement dated as of May 29, 2008 by and between the Obligor and the Beneficiary, subject to the terms set forth in the Confirmation(s) No. 50972649 together with the Schedule each dated May 29, 2008 attached thereto (collectively, the "Master Agreement")	Beneficiary:	Bank of America, N.A.
		Effective Date:	May 30, 2008

Notwithstanding the terms and provisions contained in the Policy, the Policy to which this endorsement is attached and of which it forms a part is hereby amended to provide:

1. that the term "Early Termination Amount" shall mean, without duplication of any Unpaid Amount (as defined in the Master Agreement) previously constituting an Insured Payment, any and all amounts payable by the Obligor in respect of the Insured Transaction in accordance with the Master Agreement as a result of an Early Termination Date designated by Assured Guaranty.

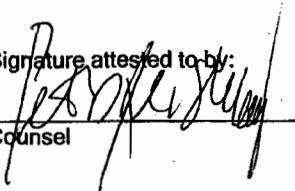
2. that the term "Payer Payment Date" means the Fixed Rate Payer Payment Date or the Floating Rate Payer Payment Date (each as defined in the Master Agreement), as applicable, as more fully described in the Confirmation.

Nothing herein shall be construed to waive, alter, reduce or amend coverage in any other section of the Policy. If found contrary to the Policy language, the terms of this endorsement shall supersede the Policy language.

IN WITNESS WHEREOF, Assured Guaranty has caused this endorsement to be affixed with its corporate seal, to be signed by its duly authorized officer and to become effective and binding upon Assured Guaranty on the Effective Date listed above by virtue of such signature.

ASSURED GUARANTY CORP.

By:   
Gordon Murray  
Director

Signature attested to by:  
  
Counsel

Form E-Special (Clarification of Terms) (05/08)

Assured Guaranty Corp.

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com



SIDLEY AUSTIN LLP  
555 CALIFORNIA STREET  
SAN FRANCISCO, CA 94104  
(415) 772 1200  
(415) 772 7400 FAX

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SINGAPORE  
SYDNEY  
TOKYO  
WASHINGTON, D.C.

FOUNDED 1866

May 30, 2008

Bank of America, N.A.  
100 N. Tryon Street  
NC1-007-13-01  
Charlotte, NC 28255

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019

Ladies and Gentlemen:

We have acted as special counsel to the City of Modesto, California (the "City"), in connection with the International Swaps and Derivatives Association, Inc. Master Agreement, dated as of May 29, 2008 (the "Master Agreement"), between the City of Modesto, California (the "City") and Bank of America, N.A. ("Party A"), as amended and supplemented by the U.S. Municipal Counterparty Schedule to the Master Agreement, dated as of May 29, 2008, which includes the International Swaps and Derivatives Association, Inc. Credit Support Annex, dated as of May 29, 2008 (the "Credit Support Annex"), between the City and Party A (collectively, the "Schedule," and together with the Master Agreement, the "Swap Agreement") and the confirmation of the Transaction (as defined therein) entered into on May 29, 2008, (the "Confirmation"), between the City and Party A. In connection with the Transaction, Assured Guaranty Corp. (the "Insurer") has issued its Interest Rate Swap Insurance Policy No. D-2008-463 (the "Swap Insurance Policy") guaranteeing certain amounts payable by the City under the Swap Agreement. Capitalized terms used herein and not otherwise defined shall have the respective meanings given such terms in the Swap Agreement.

In such connection, we have reviewed the Swap Agreement, the Confirmation, the resolutions adopted by the City Council of the City on May 13, 2008, approving the Swap Agreement, an opinion of the City Attorney of the City, dated May 30, 2008, and addressed to you, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. We have not undertaken to verify independently, and have assumed, (i) the genuineness of such documents, certificates and opinions presented to us (whether as originals or as copies) and of the signatures (other than those of the City) thereon, (ii) the accuracy of the factual matters represented, warranted or certified and of the legal conclusions contained in the aforementioned opinion of the City Attorney of the City, (iii) the due and legal authorization, execution and delivery thereof by the City and by any parties other than the City, and (iv) the validity and enforceability of the Swap Agreement against Party A.

The opinions expressed herein apply only to the Swap Agreement and the interest rate swap Transaction established by the Confirmation and not to any other swap or other transaction whether entered into pursuant to the Master Agreement or otherwise. The opinions expressed herein are limited to those matters expressly set forth and are based on an analysis of existing laws, regulations, rulings and

Bank of America, N.A.  
Assured Guaranty Corp.  
May 30, 2008  
Page 2

court decisions and cover certain matters not directly addressed by such authorities. No opinion is to be inferred or implied beyond the matters expressly so stated. Such opinions are given as of the date hereof and may be affected by actions taken or omitted, events occurring or other facts of which we become aware, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling), after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or other matters coming to our attention after the date hereof, and we disclaim any obligation to update this letter in light of such actions, events or facts. Furthermore, except as noted below, we have assumed compliance by all parties with the covenants and agreements contained in the Swap Agreement.

Upon the basis of the foregoing, we are of the opinion that:

1. The Swap Agreement and the Confirmation have been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by Party A, the Swap Agreement and the Confirmation constitute legal, valid, and binding obligations of the City enforceable against the City in accordance with their terms.

2. The execution and delivery of the Swap Agreement and the Confirmation and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the City a material breach of or default under that certain Master Installment Purchase Contract, dated as of November 1, 1997, by and between the City and the Modesto Public Financing Authority, as amended and supplemented to the date hereof, and as to be amended and supplemented by the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (collectively, the "Contract").

3. The obligations of the City to make payments to Party A under the Swap Agreement and the Confirmation are special, limited obligations payable solely from Gross Revenues of the City's Water Utility System (as such terms are defined in the Contract) on a parity with the City's outstanding Parity Obligations (as such term is defined in the Contract) and any other obligations payable on a parity therewith heretofore or hereafter incurred by the City other than any obligation of the City to post collateral or its obligation to make any termination payment in connection with a termination of the Transaction as a result of the occurrence of any Event of Default or Termination Event under the Agreement (other than to the extent such termination payment is insured under the terms of the Swap Insurance Policy), which obligations shall be Subordinate Obligations payable solely from Gross Revenues of the City's Water Utility System on basis that is junior and subordinate to the City's outstanding Parity Obligations and any other obligations payable on a parity therewith heretofore or hereafter incurred by the City in accordance with the Contract. Amounts payable by the City as a termination payment in connection with a termination of the Transaction as a result of the occurrence of an Event of Default with respect to the City and the designation of an Early Termination Date by the Insurer pursuant to the Swap Agreement (which payments are insured under the terms of the Swap Insurance Policy) are special, limited obligations payable solely from Gross Revenues of the City's Water Utility System on a parity with the City's outstanding Parity Obligations and any other obligations payable on a parity therewith heretofore or hereafter incurred by the City. The general fund of the City is

Bank of America, N.A.  
Assured Guaranty Corp.  
May 30, 2008  
Page 3

not liable, and neither the credit nor taxing power of the City is pledged, for the payment of amounts due to Party A from the City under the Swap Agreement and the Confirmation.

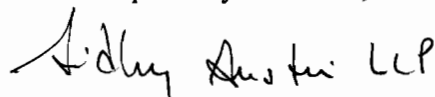
With respect to the opinions expressed herein, the rights and obligations under the Swap Agreement and the Confirmation are subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting the creditors' rights, to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against cities in the State of California.

We express no opinion with respect to any indemnification, contribution, choice of forum or waiver provisions contained in the foregoing documents. In addition, we express no opinion as to any provision of the Swap Agreement (i) purporting to create any security interest, (ii) providing that every right and remedy shall be cumulative and in addition to every other right and remedy, or that any failure or delay in exercising any right, power or privilege shall not impair any right or remedy or constitute a waiver thereof, or (iii) regarding specific performance or the grant of any power of attorney.

Our opinion is subject, as to enforceability, to (i) general principles of equity, including concepts of reasonableness, materiality, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); in particular, a court might decline to enforce the conditions set forth in Section 2(a)(iii) of the Swap Agreement and a non-defaulting party's right set forth in Section 6 of the Swap Agreement to designate an Early Termination Date, if the condition or right were invoked in connection with a default deemed immaterial, (ii) the effect of applicable laws, regulations and judicial or other decisions upon the availability and enforceability of particular covenants and remedies, including the remedies of specific performance and self-help, and provisions imposing penalties and forfeitures, and (iii) a court's power to limit the non-defaulting party's recovery to actual damages and impose its own settlement procedures in lieu of the provisions of Section 6(e) of the Swap Agreement. In addition, the enforcement of the Swap Agreement may be conditioned upon the party seeking enforcement having acted in a commercially reasonable manner and in good faith in performing its obligations and exercising its rights and remedies thereunder and is subject to the discretion of a court to invalidate or decline to enforce any right, remedy or provision of the Swap Agreement (including, without limitation, the termination payment provisions thereof) determined by it to be a penalty.

This opinion is limited to the laws of the States of California and New York and the Federal laws of the United States. The opinions in this letter are expressed solely as of the date hereof for your benefit and may not be relied upon in any manner or for any purposes by any other person.

Respectfully submitted,



# CADWALADER

Cadwalader, Wickersham & Taft LLP  
New York London Charlotte Washington Beijing

One World Financial Center, New York, NY 10281  
Tel 212 504 6000 Fax 212 504 6666  
www.cadwalader.com

May 30, 2008

City of Modesto  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, CA 95353

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, NY 10019

Ladies and Gentlemen:

We have acted as a counsel to Bank of America, National Association ("BANA") in connection with (i) the ISDA Master Agreement dated as of May 29, 2008 (the "ISDA Master Agreement"), including the Schedule (the "Schedule") and the Credit Support Annex thereto and the Confirmation thereunder dated May 29, 2008 (collectively the "Swap Agreement") between BANA and City of Modesto (the "Counterparty") and (ii) the unwind Confirmation (the "Termination Confirmation") dated May 29, 2008 between BANA and the Counterparty, relating to the ISDA Master Agreement dated as of September 27, 2006, including the schedule and the Credit Support Annex thereto and the Confirmation thereunder dated September 27, 2006 between BANA and the Counterparty. We are rendering this opinion letter to you at the request of BANA pursuant to Part 2 of the Schedule.

In connection with this opinion, we have examined and relied upon:

- (a) The Swap Agreement;
- (b) The Termination Confirmation;
- (c) The BANA Assistant Secretary's Certificate, dated May 29, 2008, including BANA's Board of Director Resolutions, dated January 24, 2006 and attached as Exhibit A thereto; and BANA's By-laws and Amended and Restated Articles of Association, each dated as of June 13, 2005; and

May 30, 2008

(d) The certificate dated May 28, 2008 issued by the Comptroller of the Currency in respect of BANA.

Items (a) to (b) above are referred to in this letter as the "Transaction Documents". In such examination we have assumed the genuineness of all signatures, the authenticity of all documents, agreements and instruments submitted to us as originals, the conformity to original documents, agreements and instruments of all documents, agreements and instruments submitted to us as copies or specimens, the authenticity of the originals of such documents, agreements and instruments submitted to us as copies or specimens, and the accuracy of the matters set forth in the documents, agreements and instruments we reviewed. As to matters of fact relevant to the opinion expressed herein, we have relied upon the representations and warranties contained in the Swap Agreement and certificates and oral or written statements and other information obtained from BANA, the other parties to the transaction referenced herein, and public officials and assumed that each of the above was (as of the date made) and is (as of the date hereof) accurate. Except as expressly set forth herein, we have not undertaken any independent investigation (including, without limitation, conducting any review, search or investigation of any public files, records or dockets) to determine the existence or absence of the facts that are material to our opinion, and no inference as to our knowledge concerning such facts should be drawn from our reliance on the representations of BANA and others in connection with the preparation and delivery of this letter.

Other than with respect to BANA, we have assumed (x) the legal capacity of all natural persons and (y) that the Transaction Documents have been duly authorized, executed and delivered by all parties thereto, that all such parties are validly existing and in good standing under the laws of their respective jurisdictions of organization, that all such parties had the power and legal right to execute and deliver the Transaction Documents, and that the Transaction Documents constitute the legal, valid and binding obligation of all such parties, enforceable against all such parties in accordance with its terms. We have also assumed that the Transaction Documents we have reviewed evidence the entire agreement between the parties, and have not been amended, modified or supplemented in writing or otherwise by any other agreement or understanding of the parties or by waiver of any material provision thereof.

We have also assumed that the Transaction Documents are in consideration of or relate to an obligation arising out of a transaction covering in the aggregate not less than U.S. \$1,000,000.

We express no opinion concerning the laws of any jurisdiction other than the laws of the State of New York and, to the extent expressly referred to in this letter, the federal laws of the United States of America.

We express no opinion herein as to: (i) the legality, validity, binding effect or enforceability of the Transaction Documents under applicable anti-gaming, anti-gambling, and anti-bucket shop laws, rules, and regulations; and (ii) the creation, perfection or priority of any lien, security interest, or other encumbrance created or purported to be created pursuant to the Transaction Documents.

Based upon our examination of the documents set forth above and the assumptions set forth herein, subject to the limitations and qualifications set forth herein, and having regard for legal considerations which we deem relevant, we are of the following opinions:

1. BANA is a national banking association formed under the laws of the United States and is authorized to transact the business of banking.
2. BANA has the corporate authority to execute, deliver and perform its obligations under the Transaction Documents.
3. The execution and delivery by BANA of the Transaction Documents and the performance of its obligations thereunder do not violate or conflict with its Articles of Association or By-laws.
4. The Transaction Documents have been duly authorized, executed and delivered by BANA.
5. The Transaction Documents constitute the legal, valid and binding obligation of BANA enforceable against BANA in accordance with its terms.

Our opinion in paragraph 5 above is subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, receivership or other laws relating to or affecting creditors' rights generally, general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity), and to the discretion of a court or other authority or body to invalidate or decline to enforce any right, remedy or provision of the Transaction Documents (including without limitation the termination payment provisions thereof) determined by it to be a penalty. However, the enforcement of rights with respect to indemnification and contribution obligations and provisions relating to severability, provisions purporting to waive or limit rights to trial by jury, oral amendments to written agreements or rights of set-off, provisions relating to submission to jurisdiction, venue or service of process, or provisions purporting to prohibit, restrict or require the consent of the other party for the transfer of, or the creation, attachment or perfection of a security interest in, the Transaction Documents or an interest therein, may be limited by applicable law or considerations of public policy.

We call to your attention the fact that our only role in this matter has been to review the Transaction Documents in order to render an opinion with respect to those agreements. We did not participate in the negotiation or drafting of the Transaction Documents or any other agreement or document relating thereto, and we are not familiar with the parties thereto other than BANA.

We are furnishing this letter to you solely for your benefit in connection with the Transaction Documents. Without our prior written consent, this letter is not to be relied upon, used, circulated, quoted or otherwise referred to by, or assigned to, any other person (including any person that seeks to assert your rights in respect of this letter (other than your successor in interest by means of merger, consolidation, transfer of a business or other similar transaction)) or

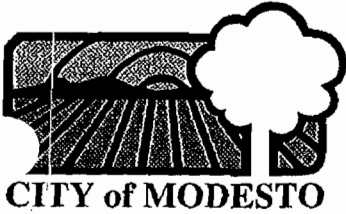
City of Modesto  
Assured Guaranty Corp.

May 30, 2008

for any other purpose. In addition, we disclaim any obligation to update this letter for changes in fact or law, or otherwise.

Very truly yours,

*Cadwalader, Wickersham & Taft LLP*



*Office of the  
City Attorney  
1010 Tenth Street  
Suite 6300  
P.O. Box 642  
Modesto, CA 95353  
209/577-5284  
209/544-8260 Fax*

*Hearing and Speech  
Impaired Only  
TDD 209/526-9211*

May 30, 2008

Bank of America, N.A.  
100 N. Tryon Street  
NC1-007-13-01  
Charlotte, NC 28255

Assured Guaranty Corp.  
1325 Avenue of the Americas  
New York, New York 10019

Ladies and Gentlemen:

This opinion is furnished to you in connection with the execution and delivery of the ISDA Master Agreement, the Credit Support Annex and U.S. Municipal Counterparty Schedule, each dated as of May 29, 2008 (collectively, the "Master Agreement"), by and between Bank of America, N.A. ("Party A") and the City of Modesto (the "City"), as supplemented by the amended confirmation of the transaction (the "Confirmation") originally entered into on September 27, 2006, as amended May 29, 2008, by and between Party A and the City. The Master Agreement together with the Confirmation shall constitute one agreement (the "Agreement").

I am the City Attorney for the City and in that capacity I have examined originals or copies, certified or otherwise identified to my satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such investigations of fact and law as I have deemed necessary or advisable for the opinions expressed herein.

Upon the basis of the foregoing, I am of the opinion that:

1. The City is a municipal corporation of the State of California organized and validly existing under the Constitution, its Charter and laws of the State of California.
2. The execution, delivery and performance by Party B of the Agreement has been duly authorized by the City.
3. To the best of my knowledge without independent investigation, the execution, delivery and performance by the City of the Agreement do not violate, conflict with, or result in a breach of, any law, rule or regulation applicable to Party B, or any material contractual


restriction, order or judgment binding on Party B or its assets which breach or default could have a material, adverse effect on the validity or enforceability of the Agreement or the City's performance of its obligations under the Agreement or the financial position or revenues of the City.

4. No authorization, consent, approval, exemption or license from, or filing of any registration with, any federal or state governmental authority is required to have been obtained or made by the City with respect to the authorization, execution, delivery and performance by the City of the Agreement which has not been obtained.
5. The City is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or financial assets (irrespective of their use or intended use) from (i) suit, (ii) jurisdiction of any court or, (iii) except to the extent provided in Part 5 of Division 3.6 of Title 1 of the Government Code of the State of California ("Part 5") (x) relief by way of injunction, order for specific performance or for recovery of property, (y) attachment of its financial assets (whether before or after judgment) or (z) execution or enforcement of any judgment to which it or its revenues or financial assets might otherwise be subject.

I have relied as to certain matters on information obtained from public officials, officers of the City and other sources believed by me to be responsible and I have assumed that the signatures (other than those of the City) on all documents examined by me are genuine, assumptions which I have not independently verified.

This opinion is limited to the laws of the State of California and the federal laws of the United States. The opinions in this letter are expressed solely as of the date hereof for your benefit and for the benefit of your successors and permitted assigns under the Agreement and may not be relied upon in any manner or for any other purpose or by any other person.

Very truly yours,



SUSANA ALCALA WOOD  
City Attorney



ENDURING FINANCIAL STRENGTH™  
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May 30, 2008

To the Addressees listed on Annex A hereto

Re: Financial Guaranty Insurance Policy No. D-2008-463 (the "Policy") relating to certain scheduled payment obligations, if any, of the City of Modesto, California, (the "Obligor") pursuant to the ISDA Master Agreement and the Schedule attached thereto, each dated as of May 29, 2008 by and between Bank of America, N.A. and the Obligor, subject to the terms set forth in Confirmation No. 50972649 dated May 29, 2008

Ladies and Gentlemen:

This opinion letter has been requested of the undersigned, in the capacity of the undersigned as a Director, Counsel of Assured Guaranty Corp., a Maryland corporation ("Assured Guaranty"), in connection with the issuance by Assured Guaranty of its Policy, effective as of the date hereof.

In connection with this opinion letter, I have examined an execution copy of the Policy and such documents, certificates, agreements and instruments and proceedings as I have considered necessary or appropriate under the circumstances to render the following opinion letter. As to all questions of fact material to this opinion letter, which have not been independently established by me, I have relied upon certificates or comparable documents of public officials or of officers and representatives of Assured Guaranty. In addition, I have assumed the genuineness of all signatures other than those of representatives of Assured Guaranty, the authenticity of all documents submitted to me as originals, the conformity to the original document of certified or photostatic copies thereof and the authenticity of the originals of such latter documents.

Based upon the foregoing, and subject to the limitations and qualifications hereinafter set forth, I am of the opinion that:

1. Assured Guaranty is a corporation duly incorporated and validly existing under the laws of the State of Maryland and has all requisite corporate power and authority to issue and to perform its obligations under the Policy in accordance with the terms thereof.

2. The execution and delivery by Assured Guaranty of the Policy, and the performance by Assured Guaranty of its obligations thereunder, have been duly authorized by all necessary corporate action on the part of Assured Guaranty.

3. The Policy has been validly executed and delivered by Assured Guaranty, and constitutes the legal, valid and binding obligation of Assured Guaranty, enforceable against Assured Guaranty in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, liquidation, rehabilitation, moratorium, arrangement, fraudulent conveyance or similar laws or enactments now or hereafter enacted affecting the enforcement of creditors' rights generally, as well as to equitable principles of general application limiting the availability of equitable remedies and the discretion of the court before which any proceeding therefor may be brought (regardless, in each case, of whether enforcement is sought in a proceeding in equity or at law).

I am licensed to practice law in the State of New York, and do not purport to be an expert as to, or to express any opinion concerning the laws of any other jurisdiction other than the laws of the State of New York and the federal laws of the United States of America to the extent specifically referred to herein. To the extent that the opinions set forth herein purport to deal with matters of Maryland law, the statements made therein are based solely upon my review of the corporate documents of Assured Guaranty, my reading of the Maryland General Corporation Law and, in respect of the opinion set forth in paragraph (1) above, my reading of the Maryland Insurance Code.

**Assured Guaranty Corp.**

1325 Avenue of the Americas  
New York, NY 10019

main 212 974 0100  
fax 212 581 3268

info@assuredguaranty.com

www.assuredguaranty.com

The opinions expressed herein are limited to the matters expressly set forth herein, and no opinion is implied or may be inferred beyond the matters expressly set forth herein. The opinions expressed herein are based solely on factual matters in existence as of the date hereof and laws and regulations in effect on the date hereof. I assume no obligation to revise or supplement this opinion letter should such factual matters change or should such laws or regulations be changed by legislative or regulatory action, judicial decision or otherwise, and I hereby express no opinion as to the effect any such changes may have on the foregoing opinions.

This opinion letter is being delivered to you solely for your benefit in connection with the issuance of the Policy, and may not be used, circulated, quoted or otherwise referred to or relied upon for any other purpose by any other person, in each case without my express prior written consent.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert H. Gray". The signature is written in a cursive style with a large initial "R" and "G".

**Annex A**

**City of Modesto, California  
Bank of America, N.A.**



SIDLEY AUSTIN LLP  
555 CALIFORNIA STREET  
SAN FRANCISCO, CA 94104  
(415) 772 1200  
(415) 772 7400 FAX

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May 30, 2008

City Council  
City of Modesto  
Modesto, California

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Ladies and Gentlemen:

We have acted as special counsel to the City of Modesto (the "City") in connection with the execution and delivery of \$47,625,000 principal amount of Water Revenue Certificates of Participation, 2008 Series A (the "Certificates"), evidencing and representing proportionate interests of the owners thereof in 2008 Payments (as that term is defined in the Trust Agreement referred to below) to be made by the City under and pursuant to that certain Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Installment Purchase Contract"), by and between the City and the Modesto Public Financing Authority (the "Authority"), as previously supplemented and as amended and supplemented by that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Supplemental Installment Purchase Contract"), by and between the City and the Authority. The Master Installment Purchase Contract, as previously supplemented and as amended and supplemented by the 2008 Supplemental Installment Purchase Contract, is referred to herein as the "Installment Purchase Contract." All of the Authority's rights to receive such 2008 Payments have been assigned by the Authority to The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), pursuant to that certain Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Authority and the Trustee. The Certificates have been executed by the Trustee pursuant to the terms of the Trust Agreement.

In our capacity as special counsel, we have reviewed relevant laws of the State of California, including the City Charter; executed copies of the Installment Purchase Contract and the Trust Agreement; certifications and resolutions of the City, the Authority, the Trustee, and others; opinions of counsel to the City, the Authority and the Trustee; and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. Our services as special counsel were limited to such examination and to rendering the opinions set

City Counsel  
City of Modesto  
May 30, 2008  
Page 2

forth below. We have assumed the genuineness of all documents and signatures presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents. Furthermore, we have assumed compliance with all covenants and agreements contained in the Installment Purchase Contract and the Trust Agreement, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest represented by the Certificates to be included in gross income for federal income tax purposes.

Certain requirements and procedures contained or referred to in the Installment Purchase Contract and the Trust Agreement or other relevant documents relating to the Certificates may be changed, and certain actions may be taken (including, without limitation, defeasance of the Certificates) or omitted, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of counsel nationally recognized in the area of municipal bonds. We express no opinion as to the effect of any change to any document pertaining to the Certificates or of any action taken or not taken where such change is made or action is taken or not taken without our approval or in reliance upon the advice of counsel other than ourselves with respect to the exclusion from gross income of the interest represented by the Certificates for federal income tax purposes.

With respect to the opinions expressed herein, the enforceability of the Installment Purchase Contract is subject to the limitations on the imposition of certain fees and charges by the City relating to the Water Utility System under Articles XIIC and XIID of the California Constitution. In addition, the rights and obligations under the Certificates, the Installment Purchase Contract and the Trust Agreement are subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting the enforcement of creditors' rights generally, to the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California. Furthermore, we express no opinion with respect to any indemnification, contribution, penalty, choice of forum or waiver provisions contained in the foregoing documents.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Master Installment Purchase Contract, the 2008 Supplemental Installment Purchase Contract and the Trust Agreement have been duly authorized, executed and delivered by the Authority; the Master Installment Purchase Contract and the 2008 Supplemental Installment Purchase Contract have been duly authorized, executed and delivered by the City; and, assuming (in the case of the Trust Agreement) due authorization, execution and delivery by the Trustee, such agreements are valid and binding obligations of the Authority and the City (as

City Counsel  
City of Modesto  
May 30, 2008  
Page 3

the case may be), enforceable against the Authority and the City (as the case may be) in accordance with their respective terms.

2. The Certificates, assuming due execution and delivery by the Trustee, are entitled to the benefits of the Trust Agreement.

3. The obligation of the City to make the 2008 Payments under the Installment Purchase Contract is a special obligation of the City payable solely from Gross Revenues (as such term is defined in the Installment Purchase Agreement). The general fund of the City is not liable, and neither the credit nor taxing power of the City is pledged, for the payment of the 2008 Payments under the Installment Purchase Contract.

4. Based on existing statutes, regulations, rulings and judicial decisions and assuming compliance by the City with certain covenants in the Installment Purchase Contract and with requirements of the Internal Revenue Code of 1986, as amended, regarding the use, expenditure and investment of Certificate proceeds and the timely payment of certain investment earnings to the United States Treasury, interest represented by the Certificates is not includable in the gross income of the owners of the Certificates for purposes of federal income taxation. Failure by the City to comply with the above covenants and requirements may cause interest represented by the Certificates to be included in gross income retroactive to the date of execution and delivery of the Certificates.

Interest represented by the Certificates will not be treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals or corporations; however, interest represented by the Certificates will be included as an adjustment in the calculation of the alternative minimum taxable income of corporations and may therefore affect the federal alternative minimum tax liability of corporations.

5. Interest represented by the Certificates is exempt from present State of California personal income taxes.

Other than as described herein, we neither addressed nor are we opining on the tax consequences to any person of the investment in, or the receipt of interest represented by, the Certificates.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

City Counsel  
City of Modesto  
May 30, 2008  
Page 4

This opinion is limited to the laws of the State of California and the federal laws of the United States. The opinions in this letter are expressed solely as of the date hereof for your benefit and may not be relied upon in any manner for any purposes by any other person.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sidley Austin LLP".



SIDLEY AUSTIN LLP  
555 CALIFORNIA STREET  
SAN FRANCISCO, CA 94104  
(415) 772 1200  
(415) 772 7400 FAX

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GENEVA	SYDNEY
HONG KONG	TOKYO
LONDON	WASHINGTON, D.C.

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May 30, 2008

Banc of America Securities LLC  
San Francisco, California

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Ladies and Gentlemen:

We have acted as special counsel to the City of Modesto (the "City"), a municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California, in connection with the execution and delivery of \$47,625,000 City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates"), evidencing and representing proportionate interests of the Owners thereof in certain payments (the "2008 Payments") to be made by the City to the Modesto Public Financing Authority (the "Authority") under that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Contract"), supplementing the Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), by and between the Authority and the City (such Master Contract, as heretofore supplemented and as amended and supplemented by the 2008 Contract being hereinafter referred to as the "Contract"). The right to receive such 2008 Payments has been assigned by the Authority to The Bank of New York Trust Company, N.A., as trustee (the "Trustee") and the Certificates have been executed by the Trustee pursuant to the terms of a Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Authority and the Trustee. This opinion is rendered pursuant to Section 8(f)(6) of the Purchase Contract, dated May 1, 2008 (the "Purchase Contract"), by and among Banc of America Securities LLC, as underwriter (the "Underwriter"), the City and the Authority, providing for the purchase of the Certificates. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract.

In our capacity as special counsel, we have examined a certified copy of the record of proceedings relating to the execution and delivery of the Certificates and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by

Banc of America Securities LLC

May 30, 2008

Page 2

independent investigation, and we have assumed, but did not independently verify, that the signatures on all documents and certificates that we reviewed are genuine.

Based on the foregoing, we are of the opinion that:

(i) The Certificates are not subject to registration pursuant to the registration requirements of the Securities Act of 1933, are municipal securities within the meaning of the Securities Exchange Act of 1934, as amended, and the Trust Agreement is exempt from qualification as an Trust Agreement pursuant to the Trust Indenture Act of 1939.

(ii) The Purchase Contract has been duly authorized, executed and delivered by the City and the Authority, and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding agreement of the City and the Authority enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought and to the limitations on legal remedies against public agencies in the State of California; and

(iii) The statements in the Official Statement under the captions "THE 2008 CERTIFICATES", "SECURITY FOR THE 2008 CERTIFICATES" and "TAX MATTERS" and in APPENDIX B - "DEFINITIONS AND SUMMARY OF PRINCIPAL LEGAL DOCUMENTS," and APPENDIX C "PROPOSED FORM OF OPINION OF SPECIAL COUNSEL" to the extent they purport to summarize certain provisions of the Contract, the Trust Agreement, the Liquidity Facility, the Remarketing Agreement, the Certificates and our opinion concerning certain tax matters relating to the Certificates, present a fair and accurate summary of such provisions and opinion for purposes of use in the Official Statement.

This letter is delivered to you as Underwriter of the Certificates and is solely for your benefit and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to, and may not, be relied upon by owners of Certificates.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

Respectfully submitted,





SIDLEY AUSTIN LLP  
555 CALIFORNIA STREET  
SAN FRANCISCO, CA 94104  
(415) 772 1200  
(415) 772 7400 FAX

BEIJING  
BRUSSELS  
CHICAGO  
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May 30, 2008

The Bank of New York Trust Company, N.A.  
San Francisco, California

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Ladies and Gentlemen:

We have acted as special counsel to the City of Modesto (the "City"), a municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California, in connection with the execution and delivery of \$47,625,000 City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A (the "Certificates"), evidencing and representing proportionate interests of the owners thereof in certain payments to be made by the City to the Modesto Public Financing Authority (the "Authority") under that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Contract"), supplementing the Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), by and between the Authority and the City (such Master Contract, as heretofore supplemented and as amended and supplemented by the 2008 Contract being hereinafter referred to as the "Contract"). The Certificates have been executed by the Trustee pursuant to the terms of a Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Authority and the Trustee. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Contract.

Pursuant to the provisions of the Contract, the City may at any time execute any Parity Obligations subject to the satisfaction of the conditions contained therein. The 2008 Contract constitutes a Parity Obligation under the Contract.

In 1997, the City and the Authority entered into the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Contract"), supplementing the Master Contract, under which the City is obligated to make certain payments (the "1997 Payments") to the Authority. Pursuant to a Trust Agreement, dated as of November 1, 1997 (the "1997 Trust Agreement"), by and between the Authority and State Street Bank and Trust Company of California, N.A. (which has been succeeded by the Trustee), as trustee, there were

The Bank of New York  
Trust Company, N. A.  
May 30, 2008  
Page 2

executed and delivered \$25,585,000 Refunding Revenue Certificates of Participation (1997 Water Utility System Refinancing Project) (the "1997 Certificates"), evidencing and representing proportionate interests of the owners thereof in the 1997 Payments to be made by the City to the Authority.

In our capacity as special counsel, we have examined a certified copy of the record of proceedings relating to the execution and delivery of the Certificates and the 1997 Certificates and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation, and we have assumed, but did not independently verify, that the signatures on all documents and certificates that we reviewed are genuine.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the opinion that:

1. The City has the right and power under applicable law to execute and deliver the 2008 Contract.
2. The 2008 Contract has been duly authorized, executed and delivered by the City in accordance with the Contract.
3. The 2008 Contract is in full force and effect, and constitutes the valid and binding special obligation of the City, enforceable in accordance with its terms.

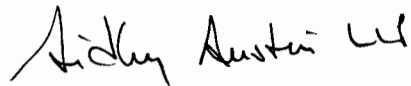
With respect to the opinions expressed herein, the rights and obligations under the 2008 Contract are subject to bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws affecting the enforcement of creditors' rights, to the application of equitable principles (regardless of whether such enforceability is considered in equity or at law), to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against cities in the State of California. In addition, we express no opinion with respect to any indemnification, contribution, penalty, choice of forum or waiver provisions contained in the foregoing document.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events. This letter is

The Bank of New York  
Trust Company, N. A.  
May 30, 2008  
Page 3

delivered to you solely for your benefit and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sidley Austin LLP".



SIDLEY AUSTIN LLP  
555 CALIFORNIA STREET  
SAN FRANCISCO, CA 94104  
(415) 772 1200  
(415) 772 7400 FAX

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May 30, 2008

Banc of America Securities LLC  
San Francisco, California

Bank of America, N.A.  
San Francisco, California

The Bank of New York Trust Company, N.A.  
San Francisco, California

Assured Guaranty Corp.  
New York, New York

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Ladies and Gentlemen:

We have delivered our final opinion, dated the date hereof, relating to the above-referenced Certificates. You are entitled to rely on such final opinion as though the same were addressed to you.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sidley Austin LLP".

STRADLING YOCCA CARLSON & RAUTH

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
660 NEWPORT CENTER DRIVE, SUITE 1600  
NEWPORT BEACH, CA 92660-6422  
TELEPHONE (949) 725-4000  
FACSIMILE (949) 725-4100

ORANGE COUNTY  
(949) 725-4000  
SAN DIEGO  
(858) 720-2150  
SAN FRANCISCO  
(415) 283-2240  
SANTA BARBARA  
(805) 564-0065  
SACRAMENTO  
(916) 449-2350

May 30, 2008

Banc of America Securities LLC  
San Francisco, California

Re: *\$47,625,000 City of Modesto, California Water Refunding Revenue Certificates of Participation 2008 Series A*

Ladies and Gentlemen:

We have acted as disclosure counsel for the City of Modesto (the "City") in connection with the sale to you (the "Underwriter") of \$47,625,000 Water Refunding Revenue Certificates of Participation, 2008 Series A (the "Certificates"), evidencing and representing proportionate interests of the owners thereof in 2008 Payments (as that term is defined in the Trust Agreement referred to below) to be made by the City under and pursuant to that certain Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), by and between the City and the Modesto Public Financing Authority (the "Authority"), as previously supplemented and as amended and supplemented by that certain 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Supplemental Installment Purchase Contract"), by and between the City and the Authority. The Master Contract, as previously supplemented and as amended and supplemented by the 2008 Supplemental Installment Purchase Contract, is referred to herein as the "Installment Purchase Contract." All of the Authority's rights to receive such 2008 Payments have been assigned by the Authority to The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), pursuant to that certain Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Authority and the Trustee. The Certificates have been executed by the Trustee pursuant to the terms of the Trust Agreement.

We understand that you have received and are relying upon statements and certificates of officers and representatives of the City, statements and certificates of officers and representatives of the Authority, Assured Guaranty Corp. ("Assured Guaranty"), Bank of America, N.A., and the Trustee.

This letter is being delivered in satisfaction of the requirements of Section 8(f)(12) of the Purchase Contract, dated May 29, 2008, by and among the City, the Authority and the Underwriter (the "Certificate Purchase Contract"), but no attorney-client relationship has existed or exists between the Underwriter and our firm in connection with the execution and delivery of the Certificates or by virtue of this letter.

In reaching the conclusions set forth herein, we have examined originals or copies certified or otherwise identified to our satisfaction of (i) the Certificate Purchase Contract, (ii) the Official

Statement of the City and the Authority relating to the Certificates, dated May 29, 2008 (the "Official Statement"), (iii) the Trust Agreement, (iv) the Installment Purchase Contract, (v) the letters, certificates and opinions described in Section 8(f) of the Certificate Purchase Contract, and (vi) such other documents, certificates, instructions and records as we have considered necessary or appropriate as a basis for our conclusions. We have assumed, but not independently verified, that the signatures on all documents, letters, opinions and certificates which we have examined are genuine, that all documents submitted to us are authentic and were duly and properly executed by the parties thereto and that all representations made in the documents that we have reviewed are true and accurate.

Based upon, and subject to the foregoing we are of the opinion that the Certificates are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Trust Agreement is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

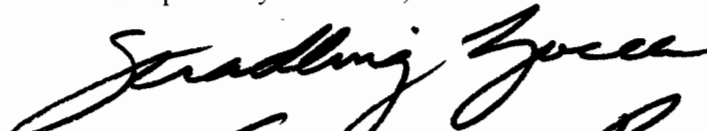
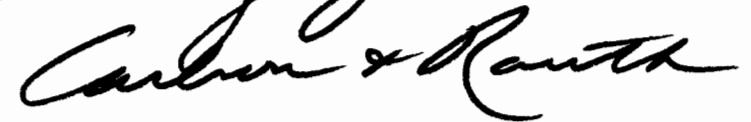
Although we have not undertaken to independently check, or to assume responsibility for, the accuracy, completeness or fairness of, the information contained in the Official Statement and are therefore unable to make any representation to you in that regard, we have participated in conferences prior to the date of the Official Statement with representatives of the City, the City Attorney, the Authority, counsel to the Authority, Sidley Austin LLP, Public Financial Management, Inc., the Underwriter, Orrick, Herrington & Sutcliffe LLP, the Liquidity Facility Provider and others, during which conferences the contents of the Official Statement and related matters were discussed. In reliance thereon on and on the records, documents, certificates described therein, we do not believe that the Official Statement (except for any financial or statistical data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion, Appendices A through F or any information about book-entry, The Depository Trust Company, Assured Guaranty, or the Certificate Insurance Policy, the Parity Reserve Fund Insurance Policy, the Liquidity Facility or the Liquidity Facility Provider included therein, as to which no view or opinion is expressed), as of its date and as of the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Finally, we advise you that, other than reviewing the various certificates and opinions required by Section 8(f) of the Purchase Contract we have not taken any steps since the date of the Official Statement to verify the accuracy of the statements contained in the Official Statement as of the date hereof.

This letter is being delivered to the Underwriter solely for its benefit in connection with the Underwriter's purchase of the Certificates and is not to be used, circulated, quoted or otherwise referred to for any other purpose; nor may it be relied upon by any other person without our prior written consent. This letter is limited to matters governed by the laws of the State of California and federal securities laws, and we assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction. No opinion is expressed herein as to the validity of the Certificates, the exclusion from gross income for federal income tax purposes of the interest represented by the Certificates or the compliance with, or applicability of, any "blue sky" laws of any state as they relate to the offer or sale of the Certificates.

Banc of America Securities LLC  
May 30, 2008  
Page Three

We have not undertaken any duty and expressly disclaim any responsibility to advise the Underwriter as to events occurring after the date hereof with respect to the Certificates or other matters discussed in the Official Statement. Our engagement with respect to the Certificates terminates upon their issuance.

Respectfully submitted,

STRADLING YOCCA CARLSON & RAUTH

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

660 NEWPORT CENTER DRIVE, SUITE 1600

NEWPORT BEACH, CA 92660-6422

TELEPHONE (949) 725-4000

FACSIMILE (949) 725-4100

ORANGE COUNTY  
(949) 725-4000

SAN DIEGO  
(858) 720-2150

SAN FRANCISCO  
(415) 283-2240

SANTA BARBARA  
(805) 564-0065

SANTA MONICA  
(310) 434-2788

May 30, 2008

Modesto Public Financing Authority  
Modesto, California

City of Modesto  
Modesto, California

*Re: \$47,625,000 City of Modesto, California Water Refunding Revenue Certificates of Participation 2008 Series A*

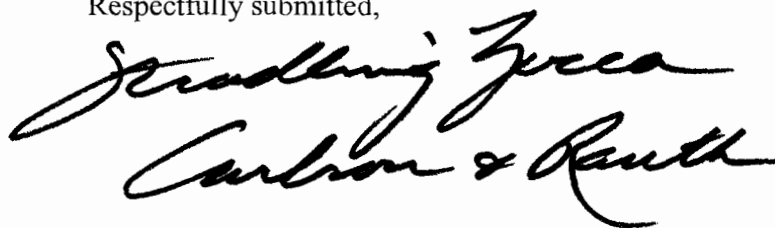
Ladies and Gentlemen:

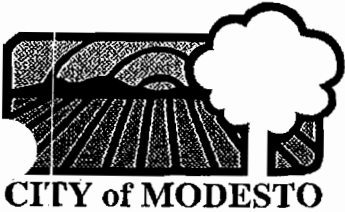
We have acted as disclosure counsel in connection with the sale and issuance of the above referenced certificates (the "Certificates") pursuant to a Purchase Contract, dated May 29, 2008 (the "Purchase Contract"), by and among Banc of America Securities LLC, as underwriter (the "Underwriter"), the Modesto Public Financing Authority (the "Authority") and the City of Modesto (the "City").

In our capacity as disclosure counsel, we have delivered to the Underwriter a letter (the "Letter") in which, among other things, we express certain conclusions concerning the Official Statement relating to the Certificates. In reaching the conclusions set forth in the Letter we have participated in conferences prior to the date of the Official Statement with representatives of the City, the City Attorney, the Authority, counsel to the Authority, Sidley Austin LLP, Public Financial Management, Inc., the Underwriter, Orrick, Herrington & Sutcliffe, LLP, the Liquidity Facility Provider and others; we have relied upon various documents, letters, certificates and opinions, including documents, letters, certificates and opinions provided by officers of and counsel to the Authority (the "Modesto Documents"); and we have assumed the accuracy of the representations contained in the Modesto Documents.

Pursuant to your request, you are authorized to rely on the conclusions set forth in the Letter to the extent and for the purposes for which the Letter was delivered to the Underwriter, as if the Letter were addressed to you, *provided* that neither you nor your representatives are authorized to rely on the Letter in connection with the delivery of the Modesto Documents or the making of the representations or conclusions set forth therein.

Respectfully submitted,

A handwritten signature in black ink, reading "Stradling Yocca Carlson & Rauth". The signature is written in a cursive, flowing style.



*Office of the  
City Attorney  
1010 Tenth Street  
Suite 6300  
P.O. Box 642  
Modesto, CA 95353  
209/577-5284  
209/544-8260 Fax*

*Hearing and Speech  
Impaired Only  
TDD 209/526-9211*

May 30, 2008

Modesto Public Financing Authority  
Modesto, California

Banc of America Securities LLC  
San Francisco, California

Bank of America, N.A.  
San Francisco, California

Assured Guaranty Corp.  
New York, New York

\$47,625,000  
CITY OF MODESTO  
WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Ladies and Gentlemen:

I have acted as counsel to the Modesto Public Financing Authority (the "Authority"), a joint exercise of powers authority organized and existing pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California, as amended. This opinion is rendered in connection with the execution and delivery of City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A, in the aggregate principal amount of \$47,625,000 (the "Certificates").

In rendering this opinion, I have examined: (i) the Joint Exercise of Powers Agreement, dated December 1, 1989 (the "Joint Exercise of Powers Agreement"), by and between the City of Modesto (the "City") and the Industrial Development Authority of the City of Modesto; (ii) the Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), as supplemented by the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Contract"), by and between the City and the Authority, and the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Contract," and, together with the Master Contract and the 1997 Contract, the "Contract"), by and

between the City and the Authority; (iii) the Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), by and between the Authority and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"); (iv) the Standby Certificate Purchase Agreement, dated as of May 1, 2008 (the "Standby Purchase Agreement"), by and among the Authority, the City and Bank of America, N.A, as Liquidity Facility Provider, (v) the Purchase Contract, dated May 29, 2008 (the "Purchase Contract," and together with the Contract, the Standby Purchase Agreement and the Trust Agreement, the "Authority Agreements"), by and among the City, the Authority and Banc of America Securities LLC, as Underwriter; (vi) Resolution No. 97-1 adopted by the Commission of the Authority on October 21, 1997 (the "1997 Authority Resolution"); (vii) Resolution No. 01-2008 adopted by the Commission of the Authority on May 13, 2008 (the "2008 Authority Resolution," and, together with the 1997 Authority Resolution, the "Authority Resolutions"); and (viii) the Official Statement, dated May 29, 2008 (the "Official Statement") relating to the Certificates.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract.

Based upon the foregoing and my review of such other information, documents and matters of law as I consider necessary, I am of the opinion that:

(i) Authority is a joint powers authority under Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California duly organized and validly existing under and by virtue of the Joint Exercise of Powers Agreement and the laws of the State of California;

(ii) the Authority Resolutions were duly adopted at meetings of the Commission of the Authority which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the Authority Resolutions are in full force and effect and have not been modified, amended or rescinded as of the date hereof;

(iii) to the best of my knowledge after reasonable investigation, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against or affecting the Authority, challenging the existence of the Authority or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Certificates or the collection of the Payments (as defined in the Contract) under the Contract or in any way contesting or affecting the validity or enforceability of the Authority Agreements or contesting the powers of the Authority or its authority to enter into, adopt or perform its obligations under any of the foregoing, or which would have a material adverse effect on the Authority's ability to perform its obligations under the Authority Agreements or contesting in any way the completeness or accuracy

of the Official Statement;

(iv) the adoption of the Authority Resolutions, the execution and delivery of the Authority Agreements and compliance by the Authority with the provisions of the foregoing, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute, on the part of the Authority, a breach or default under the Joint Exercise of Powers Agreement or any other agreement or other instrument to which the Authority is a party or by which it is, or its property, is bound or, to the best of my knowledge, any existing law, regulation, court order or consent decree to which the Authority is subject;

(v) the Authority Agreements have been duly authorized, executed and delivered by the Authority and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding agreements of the Authority enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought and to the limitations on legal remedies against public agencies in the State of California;

(vi) except as described in the Official Statement, no authorization, approval, consent, or other order of the State or any other governmental authority or agency within the State having jurisdiction over the Authority is required for the valid authorization, execution, delivery and performance by the Authority of the Authority Agreements or for the adoption of the Authority Resolutions which has not been obtained; and

(vii) to the best of my knowledge, the information contained in the Official Statement under the captions "THE AUTHORITY" and "LITIGATION" (solely as it relates to the Authority) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

This opinion is furnished to you solely for your benefit and I am not assuming any professional responsibility to any other person whatsoever. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose.

Respectfully submitted,

  
SUSANA ALCALA WOOD  
City Attorney



*Office of the  
City Attorney  
1010 Tenth Street  
Suite 5300  
P.O. Box 642  
Modesto, CA 95353  
209/577-5284  
209/544-8260 Fax*

*Hearing and Speech  
Impaired Only  
TDD 209/526-9211*

May 30, 2008

City of Modesto  
Modesto, California

Banc of America Securities LLC  
San Francisco, California

Bank of America, N.A.  
San Francisco, California

Assured Guaranty Corp.  
New York, New York

\$47,625,000

CITY OF MODESTO

WATER REFUNDING REVENUE CERTIFICATES OF PARTICIPATION  
2008 SERIES A

Ladies and Gentlemen:

As City Attorney of the City of Modesto (the "City"), I have reviewed the following documents in connection with the execution and delivery of the City of Modesto Water Refunding Revenue Certificates of Participation 2008 Series A, in the aggregate principal amount of \$47,625,000 (the "Certificates"): (i) a Master Installment Purchase Contract, dated as of November 1, 1997 (the "Master Contract"), as supplemented by the 1997 Supplemental Installment Purchase Contract, dated as of November 1, 1997 (the "1997 Contract"), by and between the City and the Modesto Public Financing Authority (the "Authority"), and the 2008 Supplemental Installment Purchase Contract, dated as of May 1, 2008 (the "2008 Contract," and, together with the Master Contract and the 1997 Contract, the "Contract"), by and between the City and the Authority; (ii) a Remarketing Agreement, dated as of May 1, 2008 (the "Remarketing Agreement"), between the City and Banc of America Securities LLC, as Remarketing Agent; (iii) a Reimbursement Agreement (Reserve Fund Surety), dated as of May 1, 2008 (the "Insurance Agreement"), by and between the City and Assured Guaranty Corp., as 2008 Certificate Insurer; (iv) a Standby Certificate Purchase Agreement, dated

as of May 1, 2008 (the "Standby Purchase Agreement"), among the City, the Authority and Bank of America, N.A., as Liquidity Facility Provider; (v) a Custodian Agreement, dated as of May 1, 2008 (the "Custodian Agreement"), among the Liquidity Facility Provider, the City and The Bank of New York Trust Company, N.A., as Custodian; (vi) a Purchase Contract, dated May 29, 2008 (the "Purchase Contract," and together with the Contract, the Remarketing Agreement, the Reimbursement Agreement, the Standby Purchase Agreement and the Custodian Agreement, the "City Agreements"), by and among Banc of America Securities LLC, the Authority and the City; (vi) Resolution No. 97-596 adopted by the City Council of the City on October 21, 1997 (the "1997 City Resolution"); (vii) Resolution No. 2008-294 adopted by the City Council of the City on May 13, 2008 (the "2008 City Resolution," and, together with the 1997 City Resolution, the "City Resolutions"); and (vii) an Official Statement, dated May 29, 2008 (the "Official Statement"), relating to the Certificates.

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Contract.

Based upon the foregoing and upon such other information and documents as I consider necessary to render this opinion, I am of the opinion that:

(i) the City is a charter city and a municipal corporation duly organized and validly existing under and by virtue of the laws of the State of California;

(ii) the City Resolutions were duly adopted at meetings of the City Council of the City which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the City Resolutions are in full force and effect and have not been modified, amended or rescinded as of the date hereof;

(iii) to the best of my knowledge after reasonable investigation, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against or affecting the City, challenging the existence of the City or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Certificates or the pledge of the Payments (as defined in the Contract) under the Contract or in any way contesting or affecting the validity or enforceability of the City Agreements or contesting the powers of the City or its authority to enter into, adopt or perform its obligations under any of the foregoing, or which would have a material adverse effect on the City's ability to perform its obligations under the City

Agreements or contesting in any way the completeness or accuracy of the Official Statement;

(iv) the adoption of the City Resolutions, the execution and delivery of City Agreements and compliance by the City with the provisions of the foregoing, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute, on the part of the City, a breach or default under any agreement or instrument to which the City is a party or by which it is, or its property, is bound or, to the best of my knowledge, any existing law, regulation, court order or consent decree to which the City is subject;

(v) the Official Statement has been duly authorized, executed and delivered, and the City Agreements have been duly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by the other parties thereto, the City Agreements constitute legal, valid and binding agreements of the City enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable principles if equitable remedies are sought and to the limitations on legal remedies against public agencies in the State of California;

(vi) except as described in the Official Statement, no authorization, approval, consent, or other order of the State or any other governmental authority or agency within the State having jurisdiction over the City is required for the valid authorization, execution, delivery and performance by the City of the City Agreements or for the adoption of the City Resolutions which has not been obtained; and

(vii) to the best of my knowledge, the information contained in the Official Statement under the captions "THE 2008 PROJECT," "THE WATER UTILITY SYSTEM" and "LITIGATION" (solely as it relates to the City) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

This opinion is furnished to you solely for your benefit and I am not assuming any professional responsibility to any other person whomsoever. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S Alcala Wood', written in a cursive style.

SUSANA ALCALA WOOD,

City Attorney

# JENSEN LAW OFFICE

121 LESLEE LANE  
ORINDA, CA 94563-4217  
925-284-7071  
pkjensen@att.net

30 May 2008

City of Modesto  
Modesto Public Financing Authority  
Modesto, California

Banc of America Securities LLC  
San Francisco, California

Bank of America, N.A.  
Los Angeles, California

Assured Guaranty Corp.  
New York, New York

OPINION RE: City of Modesto  
Water Refunding Revenue Certificates of Participation  
2008 Series A

Ladies and Gentlemen:

We have acted as special counsel to The Bank of New York Trust Company, N.A. (the "Trustee") in its capacity as Trustee under that certain Trust Agreement, dated as of May 1, 2008 (the "Trust Agreement"), between the Modesto Public Financing Authority and the Trustee. In that connection, we have examined certain records reflecting the actions taken pertaining to the authorization, execution and delivery of the Trust Agreement and the execution and delivery of the referenced Certificates of Participation (the "Certificates").

We have examined the original or copies, identified to our satisfaction, of the Trust Agreement, the Custodian Agreement, dated as of May 1 2008 (the "Custodian Agreement"), by and between Bank of America, N.A., City of Modesto and the Trustee in its capacity as the Custodian thereunder, and such other documents that we deemed necessary for the purpose of rendering the opinions set forth below. In examining such documents, we have not undertaken to independently verify the accuracy of the factual matters represented, warranted or certified in such documents. In making our examination, we assumed that each party to the documents other than the Trustee has the power to enter into and perform its obligations thereunder, has duly authorized, executed and delivered such documents, and that such documents constitute the legal, valid and binding obligations of such party. We express no opinion as to matters governed by any laws other than the substantive laws of the State of California (without reference to its conflicts of laws rules) and the federal laws of the United States of America which are in effect on the date hereof.

TO City of Modesto  
Modesto Public Financing Authority  
Banc of America Securities LLC  
Bank of America, N.A.  
Assured Guaranty Corp.

DATE 30 May 2008

P. 2

We call attention to the fact that the rights and obligations under the Trust Agreement, the Custodian Agreement and related documents are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases.

Based on the foregoing, and subject to the following qualifications, we are of the opinion that:

[1] The Trustee is a duly organized and validly existing national banking association in good standing under the laws of the United States of America having full powers and authority and being qualified to enter into, accept and administer the trust created under the Trust Agreement and to enter into the Trust Agreement and the Custodian Agreement.

[2] The performance by the Trustee of the duties required under the Trust Agreement and the Custodian Agreement has been duly authorized by all necessary corporate action on the part of the Trustee, and under present law does not contravene any law or government regulation or order presently binding on the Trustee or contravene any law or governmental regulation or order presently binding on the Trustee or the Articles of Association or the bylaws of the Trustee or contravene any provision of or constitute a default under any indenture, contract or other instrument to which the Trustee is a party or by which the Trustee is bound.

[3] The performance by the Trustee of the duties required under the Trust Agreement and the Custodian Agreement does not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental agency or authority.

[4] The Trust Agreement and the Custodian Agreement have been duly authorized, executed and delivered by the Trustee, and constitute the legal, valid and binding agreements of the Trustee enforceable in accordance with their terms.

[5] The Trustee has duly authorized the execution and delivery of the Trust Agreement and the Custodian Agreement.

[6] All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the Trust Agreement and the Custodian Agreement have been obtained and are in full force and effect.

TO City of Modesto  
Modesto Public Financing Authority  
Banc of America Securities LLC  
Bank of America, N.A.  
Assured Guaranty Corp.

DATE 30 May 2008

P. 3

We express no opinion as to any matter other than as expressly set forth above. We specifically express no opinion as to the status of the Certificates, the distribution thereof, or the interest thereon under (i) any federal or state securities or "Blue Sky" laws or (ii) any federal, state or local tax law. No opinion is expressed as to the perfection, validity, priority or enforceability of any security interest or lien created to secure the Certificates.

This opinion is as of the date hereof, and we undertake no obligation to advise you of any change in any matter set forth herein. Further, this opinion does not imply an approval or recommendation of any investment in any Certificate. Finally, this opinion is solely for the benefit of each addressee and its counsel, and may not be relied upon in any manner, or used, by any other person.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Law Offices of KATHLEEN C. JOHNSON  
111 East De La Guerra Street  
Santa Barbara, California 93101

Phone (805) 568-0780  
Fax (805) 568-0790

[kcj@kcjohnsonlaw.com](mailto:kcj@kcjohnsonlaw.com)

May 30, 2008

Modesto Public Financing Authority  
1010 Tenth Street, Suite 5200  
Modesto, California 95353

City of Modesto  
1010 Tenth Street, Suite 5200  
Modesto, California 95353

Banc of America Securities LLC  
600 Montgomery Street, Suite 1800  
San Francisco, California 94111

The Bank of New York Trust Company, N.A.  
550 Kearny Street, Suite 600  
San Francisco, California 94108

Assured Guaranty  
1325 Avenue of the Americas  
New York, New York 10019

*Re: Water Revenue Refunding Certificates of Participation, 2008 Series A  
Representing Proportionate Interests of the Owners Thereof in 2008  
Payments to be Made by the City of Modesto to the Modesto Public  
Financing Authority*

Ladies and Gentlemen:

We have acted as special counsel to Bank of America, N.A., a national banking association (the "Bank"), in connection with the execution and delivery of a Standby Certificate Purchase Agreement dated as of May 1, 2008 (the "Standby Certificate Purchase Agreement") among the Modesto Public Financing Authority (the "Authority"), the City of Modesto (the "City") and the Bank. The Standby Certificate Purchase Agreement will support payment of the Authority's Water Revenue Refunding Certificates of Participation, 2008 Series A (the "Certificates") issued pursuant to a Trust Agreement dated as of May 1, 2008 between the Authority and The Bank of New York Trust Company, as Trustee. All terms not otherwise defined herein shall have the meanings assigned to them in the Standby Certificate Purchase Agreement.

As to all matters of fact (including factual conclusions and characterizations and descriptions of purpose, intention or other state of mind), we have relied entirely upon (i) the representations of the parties set forth in the Related Documents and (ii) certificates delivered to us by the Bank and have assumed, without independent inquiry, the accuracy of those representations and certificates; provided, that we have no actual current knowledge of any existing facts or circumstances that would make such representations and certificates untrue or incorrect.

We have examined the Standby Certificate Purchase Agreement and the exhibits thereto (collectively, the "Bank Documents") and have also examined and relied upon the opinion of in-house counsel to the Bank, with respect to, among other things, the organization, existence and good standing of the Bank under the laws of the United States of America and the due authorization and proper execution and delivery of the Bank Documents. In addition, we have examined such other matters of fact and considered such questions of law as we have deemed necessary for the purpose of rendering the opinions set forth herein.

We have assumed the genuineness of all signatures, the conformity to the originals of all documents reviewed by us as copies, the authenticity and completeness of all original documents reviewed by us in original or copy form and the legal competence of each individual executing any document.

We have assumed that there are no agreements or understandings among the parties, written or oral, and no usage of trade or course of prior dealing among the parties which would, in either case, define, supplement or qualify the terms of any of the Related Documents.

The opinion set forth in paragraph 1 below with respect to the Bank is subject to the following general qualifications:

- (i) as to any agreement to which the Bank is a party, we assume that such agreement is the legal, valid and binding obligation of each party thereto (other than Bank);
- (ii) the enforceability of any obligation of Bank may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, marshaling or other similar laws and rules of law affecting the rights and remedies of creditors, including creditors of the Bank (including such as may deny giving effect to waivers of debtors' or guarantors' rights);
- (iii) the enforcement of any rights and the availability of any specific or equitable relief of any kind may in all cases be subject to an implied duty of good faith and fair dealing and to general principles of equity (regardless of whether such enforceability or relief is considered in a proceeding at law or in equity) and, as to any of your rights to collateral security, will be subject to a duty to act in a commercially reasonable manner and to satisfy certain other procedural requirements.

- (iv) The effect of judicial decisions permitting the introduction of extrinsic evidence to modify the terms or the interpretation of the Bank Documents.

Subject to the limitations set forth herein, we have made such examination of law as we have deemed necessary for the purposes of this opinion. The opinions expressed below are limited solely to the internal substantive laws of the State of California and the federal laws of the United States of America. No opinion is expressed herein as to the application or effect of federal securities laws or as to the securities or so-called "Blue Sky" laws of any state or other jurisdiction.

Based upon the foregoing, we are of the opinion that:

1. The Standby Certificate Purchase Agreement constitutes the legal, valid and binding obligations of the Bank enforceable against the Bank in accordance with its terms.

In addition to the foregoing, we have reviewed the information pertaining to the Standby Certificate Purchase Agreement contained in the Official Statement dated May \_\_, 2008 (the "Official Statement") under the heading "THE LIQUIDITY FACILITY AND THE LIQUIDITY PROVIDER" (excluding the information under the subheading "The Liquidity Provider"). Based upon such review, it is our opinion that the information contained under such heading of the Official Statement, as to the specific and limited provisions of the Standby Certificate Purchase Agreement and the Bank described therein, does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. We express no other opinion herein with respect to any other portion of the Official Statement.

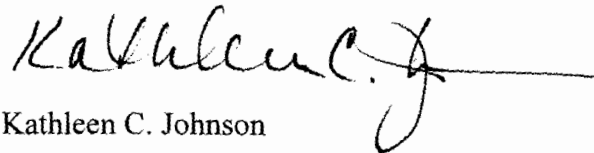
This opinion relates only to the matters expressly addressed above, is applicable only as to the date hereof, and we express no opinion with respect to any other matters. We disclaim any obligation to update this opinion for events occurring after the date hereof.

This opinion is solely for your benefit and your successors and assigns in connection with the transaction contemplated by the Related Documents and may not be relied on by, nor may copies be delivered to, any other person or for any other purpose without our prior written consent.

May 30, 2008  
Page 4

This opinion may be relied upon by Standard & Poor's, Moody's Investor Services and Fitch Ratings as if it were addressed to them.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathleen C. Johnson", with a long horizontal line extending to the right from the end of the signature.

Kathleen C. Johnson





Legal Department  
Los Angeles

Bank of America, N. A.  
Mail Code: CA9-193-24-01  
333 S. Hope Street  
Suite 2400  
Los Angeles, CA 90071  
Tel: (213) 621-8701  
Fax: (213) 621-8759

May 30, 2008

Modesto Public Financing Authority  
1010 Tenth Street, Suite 5200  
Modesto, California 95353

City of Modesto  
1010 Tenth Street, Suite 5200  
Modesto, California 95353

Banc of America Securities LLC  
600 Montgomery Street, Suite 1800  
San Francisco, California 94111

The Bank of New York Trust Company, N.A.  
550 Kearny Street, Suite 600  
San Francisco, California 94108

Assured Guaranty  
1325 Avenue of the Americas  
New York, New York 10019

*Re: Water Revenue Refunding Certificates of Participation, 2008 Series A  
Representing Proportionate Interests of the Owners Thereof in 2008  
Payments to be Made by the City of Modesto to the Modesto Public  
Financing Authority*

Ladies and Gentlemen:

I am an Assistant General Counsel of Bank of America, N.A. ("Bank of America") and have acted as such in connection with the execution and delivery of the Standby Certificate Purchase Agreement dated as of May 1, 2008 (the "Standby Certificate Purchase Agreement") among the Modesto Public Financing Authority (the "Authority"), the City of Modesto (the "City") and the Bank. The Standby Certificate Purchase Agreement will support payment of the Authority's Water Revenue Refunding Bonds, 2008 Series A issued pursuant to a Trust Agreement dated as



of May 1, 2008 between the Authority and Wells Fargo Bank, N.A., as Trustee. All terms not otherwise defined herein shall have the meanings assigned to them in the Standby Certificate Purchase Agreement.

In connection with the delivery of this opinion, I have examined (a) a copy of the Standby Certificate Purchase Agreement and (b) copies, certified or otherwise identified to my satisfaction, of such documents, corporate records, certificates of public officials and other instruments, and have conducted such investigation of fact and law, as I have deemed necessary or appropriate for the opinions expressed herein.

In rendering the opinions expressed below, I have assumed the due authorization, execution and delivery of the Standby Certificate Purchase Agreement by each party other than Bank of America, and I have assumed and have not verified that the signatures (other than signatures of Bank of America) on all documents that I have examined are genuine.

Based on the foregoing, I am of the opinion that:

(1) Bank of America is a national banking association, duly organized, validly existing and in good standing under the laws of the United States.

(2) Bank of America has full corporate power and authority to execute and deliver the Standby Certificate Purchase Agreement and to perform its obligations thereunder, and the Standby Certificate Purchase Agreement has been duly authorized, executed and delivered by Bank of America.

(3) No consents, authorizations or approvals are required for the execution and delivery by Bank of America of the Standby Certificate Purchase Agreement and the performance of its obligations thereunder, and no other action by, and no notice to or filing with, any governmental authority or regulatory body is required for such execution, delivery or performance.


(4) The execution, delivery and performance by Bank of America of the Standby Certificate Purchase Agreement does not and will not contravene any law or governmental regulation or order presently binding on Bank of America or its articles of incorporation or bylaws or contravene any provision of or constitute a default under any indenture, contract or other instrument to which Bank of America is a party or by which Bank of America is bound.

The opinions expressed herein are limited to the laws of the State of California and the Federal laws of the United States of America.

May 30, 2008  
Page 3

I am furnishing this letter to you in my capacity as Assistant General Counsel for Bank of America and this opinion may not be relied upon by or furnished to any other person without my prior written consent. This opinion may be relied upon by Standard & Poor's, Moody's Investors Service and Fitch Ratings as if it were addressed to them.

Very truly yours,



---

John S. Barry  
Assistant General Counsel



May 30, 2008

To the Addressees listed on Annex A hereto

Re: Financial Guaranty Insurance Policy No. D-2008-461 (the "Policy") relating to \$47,625,000 City of Modesto, California Water Refunding Revenue Certificates of Participation, 2008 Series A and Debt Service Reserve Fund Policy No. D-2008-462 (each a "Policy" and collectively, the "Policies")

Ladies and Gentlemen:

This opinion letter has been requested of the undersigned, in the capacity of the undersigned as a Director and Counsel of Assured Guaranty Corp., a Maryland corporation ("Assured Guaranty"), in connection with the issuance by Assured Guaranty of its Policies, effective as of the date hereof.

In connection with this opinion letter, I have examined an execution copy of each Policy and such documents, certificates, agreements and instruments and proceedings as I have considered necessary or appropriate under the circumstances to render the following opinion letter. As to all questions of fact material to this opinion letter, which have not been independently established by me, I have relied upon certificates or comparable documents of public officials or of officers and representatives of Assured Guaranty. In addition, I have assumed the genuineness of all signatures other than those of representatives of Assured Guaranty, the authenticity of all documents submitted to me as originals, the conformity to the original document of certified or photostatic copies thereof and the authenticity of the originals of such latter documents.

Based upon the foregoing, and subject to the limitations and qualifications hereinafter set forth, I am of the opinion that:

1. Assured Guaranty is a corporation duly incorporated and validly existing under the laws of the State of Maryland and has all requisite corporate power and authority to issue and to perform its obligations under each Policy in accordance with the terms thereof.
2. The execution and delivery by Assured Guaranty of the Policies, and the performance by Assured Guaranty of its obligations thereunder, have been duly authorized by all necessary corporate action on the part of Assured Guaranty.
3. Each Policy has been validly executed and delivered by Assured Guaranty, and each constitutes the legal, valid and binding obligation of Assured Guaranty, each enforceable against Assured Guaranty in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, liquidation, rehabilitation, moratorium, arrangement, fraudulent conveyance or similar laws or enactments now or hereafter enacted affecting the enforcement of creditors' rights generally, as well as to equitable principles of general application limiting the availability of equitable remedies and the discretion of the court before which any proceeding therefor may be brought (regardless, in each case, of whether enforcement is sought in a proceeding in equity or at law).

I am licensed to practice law in the State of New York, and do not purport to be an expert as to, or to express any opinion concerning the laws of any other jurisdiction other than the laws of the State of New York and the federal laws of the United States of America to the extent specifically referred to herein. To the extent that the opinions set forth herein purport to deal with matters of Maryland law, the statements made therein are based solely upon my review of the corporate documents of Assured Guaranty, my reading of the Maryland General Corporation Law and, in respect of the opinion set forth in paragraph (1) above, my reading of the Maryland Insurance Code.

Assured Guaranty Corp.

1325 Avenue of the Americas New York, NY 10019	main 212 974 0100 fax 212 581 3268	info@assuredguaranty.com	www.assuredguaranty.com
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The opinions expressed herein are limited to the matters expressly set forth herein, and no opinion is implied or may be inferred beyond the matters expressly set forth herein. The opinions expressed herein are based solely on factual matters in existence as of the date hereof and laws and regulations in effect on the date hereof. I assume no obligation to revise or supplement this opinion letter should such factual matters change or should such laws or regulations be changed by legislative or regulatory action, judicial decision or otherwise, and I hereby express no opinion as to the effect any such changes may have on the foregoing opinions.

This opinion letter is being delivered to you solely for your benefit in connection with the issuance of the Policies, and may not be used, circulated, quoted or otherwise referred to or relied upon for any other purpose by any other person, in each case without my express prior written consent.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Stuebel". The signature is written in a cursive style with a large initial "R".

City of Modesto, California, as Issuer  
Banc of America Securities, LLC, as Underwriter  
The Bank of New York Trust Company, N.A., as Trustee/Paying Agent  
Bank of America, N.A., as Liquidity Facility Provider

**CITY OF MODESTO, CALIFORNIA**  
**Water Revenue Certificates of Participation**  
**2008 Series A**  
**(Refunding of 2006 Bonds)**

**INTERESTED PARTIES LIST**  
(May 29, 2008)

**E-mail list (everyone except Bond Insurer and Rating Agencies):**

wpadilla@modestogov.com; bnewlin@modestogov.com; swood@modestogov.com;  
rstevens@modestogov.com; npinhey@modestogov.com; millerp@pfm.com;  
galluccib@pfm.com; wisloskis@pfm.com; pearsallj@pfm.com;  
scott.nagelson@bankofamerica.com; kim.nakahara@bankofamerica.com;  
ann.tran@bankofamerica.com; jknox@orrick.com; dbrennan@orrick.com;  
lwagner@orrick.com; jmurphy@sycr.com; shari.sacks@bankofamerica.com;  
merlean.c.locke@bankofamerica.com; kcj@kcjohnsonlaw.com;  
michael.moss@bankofamerica.com; shirley.l.delacanal@bankofamerica.com;  
jlibunao@bankofny.com; jellerman@bankofny.com; pkjensen@att.net;  
KCJ@kcjohnsonlaw.com; aplatis@assuredguaranty.com; NDiMarco@assuredguaranty.com;  
GMurray@assuredguaranty.com; PTremblay@assuredguaranty.com; mpobrien@winston.com;  
kawalker@winston.com; michael.wertz@moodys.com; Ishani.Goonasekera@moodys.com;  
lisa\_schroeer@standardandpoors.com; ian\_carroll@standardandpoors.com;  
james\_breeding@standardandpoors.com

**cc:**

etashman@sidley.com; tconner@sidley.com; kamcneil@sidley.com;

**CITY OF MODESTO**

Financial Services  
City Hall  
1010 Tenth Street, Suite 5200  
Modesto, CA 95353

Wayne Padilla, Director of Finance  
*E-mail: [wpadilla@modestogov.com](mailto:wpadilla@modestogov.com)*

(209) 577-5371  
Fax (209) 571-5880

Barry Newlin, Accounting Manager  
*E-mail: [bnewlin@modestogov.com](mailto:bnewlin@modestogov.com)*

(209) 577-5373  
Fax (209) 571-5128

City Attorney  
City Hall  
1010 Tenth Street, Suite 6300  
Modesto, CA 95353

Susana Alcala Wood, City Attorney  
*E-mail: [swood@modestogov.com](mailto:swood@modestogov.com)*

(209) 577-5284  
Fax (209) 544-8260

Rolly Stevens, Assistant City Attorney  
*E-mail: [rstevens@modestogov.com](mailto:rstevens@modestogov.com)*  
Public Works Department  
City Hall  
1010 Tenth Street, Suite 4600  
Modesto, CA 95353

(209) 577-5284  
Fax (209) 544-8260

Nick Pinhey, Director  
*E-mail: [npinhey@modestogov.com](mailto:npinhey@modestogov.com)*

(209) 577-5462  
Fax (209) 525-9311

## **BOND COUNSEL**

**Sidley Austin LLP**  
555 California Street, 20th Floor  
San Francisco, CA 94104

Eric Tashman  
*E-mail: [etashman@sidley.com](mailto:etashman@sidley.com)*

(415) 772-1214  
Fax (415) 772-7400

Ty Conner  
*E-mail: [tconner@Sidley.com](mailto:tconner@Sidley.com)*

(415) 772-7478  
Fax: (415) 772-7400

Katy A. McNeil, Legal Assistant  
*E-mail: [kamcneil@sidley.com](mailto:kamcneil@sidley.com)*

(415) 772-7446  
Fax: (415) 772-7400

## **FINANCIAL ADVISOR**

**Public Financial Management**  
50 California Street, Suite 2300  
San Francisco, CA 94111

Peter Miller, Managing Director  
*E-mail: [millerp@pfm.com](mailto:millerp@pfm.com)*

(415) 982-5544  
Fax (415) 982-4513

Brian Gallucci, Consultant  
*E-mail: [galluccib@pfm.com](mailto:galluccib@pfm.com)*

(415) 982-5544  
Fax (415) 982-4513

Steve Wisloski  
*E-mail: [wisloskis@pfm.com](mailto:wisloskis@pfm.com)*

(415) 982-5544  
Fax (415) 982-4513

Jeff Pearsall  
*E-mail: [pearsallj@pfm.com](mailto:pearsallj@pfm.com)*

(212) 809-4212  
Fax: (212) 809-5874

## UNDERWRITER

**Banc of America Securities LLC**  
600 Montgomery Street, Suite 1800  
CA5-801-18-36  
San Francisco, CA 94111

Scott Nagelson, Principal  
*E-mail: [scott.nagelson@bankofamerica.com](mailto:scott.nagelson@bankofamerica.com)*

(415) 953-7314  
Fax (415) 986-1194

Kim Nakahara, Vice President  
*E-mail: [kim.nakahara@bankofamerica.com](mailto:kim.nakahara@bankofamerica.com)*

(415) 953-9565  
Fax (415) 986-1194

Ann Tran  
*E-mail: [ann.tran@bankofamerica.com](mailto:ann.tran@bankofamerica.com)*

(415) 627-2014  
Fax (415) 986-1194

## UNDERWRITER'S COUNSEL

**Orrick, Herrington & Sutcliffe, LLP**  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105

John Knox  
*E-mail: [jknox@orrick.com](mailto:jknox@orrick.com)*

(415) 773-5626  
Fax (415) 773-5759

400 Capitol Mall  
Suite 3000  
Sacramento, CA 95814-4497

Laura Wagner  
*E-mail: [lwagner@orrick.com](mailto:lwagner@orrick.com)*

(916) 329-4932  
Fax (916) 329-4900

## BOND AND DISCLOSURE COUNSEL

**Stradling Yocca Carlson & Rauth**  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660

John Murphy  
*e-mail: [jmurphy@sycr.com](mailto:jmurphy@sycr.com)*

(949) 725-4000  
Fax (949) 725-4100

## STANDBY BOND PURCHASE AGREEMENT PROVIDER

**Bank of America N.A.**  
315 Montgomery Street  
CA5-704-13-11

San Francisco, CA 94104-1866

Shari Sacks, Vice President  
*E-mail: [shari.sacks@bankofamerica.com](mailto:shari.sacks@bankofamerica.com)*

(415) 953-9025

Fifth Avenue Plaza  
800 5<sup>th</sup> Avenue  
WA1-501-34-03  
Seattle, WA 98104-3176

Merlean C. Locke, Vice President  
*E-mail: [merlean.c.locke@bankofamerica.com](mailto:merlean.c.locke@bankofamerica.com)*

(206) 358-6453  
Fax (206) 358-8818

## **BANK COUNSEL**

**Kathleen Johnson, Attorney at Law**  
111 East De la Guerra Street  
Santa Barbara, CA 93101

Kathleen Johnson  
*Email: [kcj@kcjohnsonlaw.com](mailto:kcj@kcjohnsonlaw.com)*

(805) 568-0780  
Fax (805) 568-0790

## **2006 SWAP COUNTERPARTY**

**Bank of America N.A.**  
Hearst Tower  
214 North Tryon St.  
NC1-027-14-01  
Charlotte, NC 28255

Michael Moss, Principal  
*E-mail: [michael.moss@bankofamerica.com](mailto:michael.moss@bankofamerica.com)*

(415) 622-9430

Bank of America Corporate Center  
100 N. Tryon St., 13<sup>th</sup> Floor  
NC1-007-13-01  
Charlotte, NC 28266

Shirley De La Canal, VP; CAPITAL  
MARKETS SR DOC OFFICER  
*E-mail: [shirley.l.delacanal@bankofamerica.com](mailto:shirley.l.delacanal@bankofamerica.com)*

(704) 388-2356  
Fax (704) 409-1269

## TRUSTEE

### **The Bank of New York Trust Company, NA**

550 Kearny Street, Suite 600  
San Francisco, CA 94108

Josephine Libunao, Vice President  
*e-mail: [jlibunao@bankofny.com](mailto:jlibunao@bankofny.com)*

(415) 263-2418  
Fax (415) 399-1647

700 South Flower Street, Suite 500  
Los Angeles, CA 90071

Jennifer Ellerman  
*e-mail: [jellerman@bankofny.com](mailto:jellerman@bankofny.com)*

(213) 630-6430  
Fax (213) 630-6179

## TRUSTEE COUNSEL

Jensen Law Office  
121 Leslee Lane  
Orinda, California 94563

Phillip K. Jensen  
*e-mail: [pkjensen@att.net](mailto:pkjensen@att.net)*

(925) 284-7071  
Fax (925) 284-7071

## BOND INSURER

**Assured Guaranty**  
1325 Avenue of the Americas  
New York, NY 10019

Alexis Platis  
*Emal: [aplatis@assuredguaranty.com](mailto:aplatis@assuredguaranty.com)*

(212) 261-5550

## SWAP INSURER COUNSEL

**Winston & Strawn LLP**  
35 W. Wacker Drive, Suite 4000  
Chicago, IL 60601

Michael P. O'Brien  
*Emal: [mpobrien@winston.com](mailto:mpobrien@winston.com)*

(312) 558-8097  
Fax: (312) 558-5700

Ken Walker  
*Emal: [kawalker@winston.com](mailto:kawalker@winston.com)*

(312) 558-3211

**DO NOT SEND DOCUMENTS TO THE RATING AGENCIES**

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**Moody's**

One Front Street, Suite 1900  
San Francisco, CA 94111

Michael Wertz, Analyst (Long Term)  
*e-mail: [michael.wertz@moodys.com](mailto:michael.wertz@moodys.com)*

(415) 274-1722  
Fax (415) 274-1717

**Moody's**

7 World Trade Center at 250 Greenwich Street  
New York, NY 10007

Ishani Goonasekera, Structured Analyst  
*e-mail: [ishani.goonasekera@moodys.com](mailto:ishani.goonasekera@moodys.com)*

(212) 553-3806  
Fax (212) 298-6636

**Standard & Poor's**

One Market  
Steuart Tower, 15<sup>th</sup> Floor  
San Francisco, CA 94105-10000

Lisa Schroeer  
*e-mail: [lisa\\_schroeer@standardandpoors.com](mailto:lisa_schroeer@standardandpoors.com)*

(415) 371-5006  
Fax (415) 371-5090

Ian Carroll  
*e-mail: [ian\\_carroll@standardandpoors.com](mailto:ian_carroll@standardandpoors.com)*

(415) 371-5060  
Fax (415) 371-5090

**Standard & Poor's**

500 N. Akars Street, Suite 3200  
Dalas, TX 75201

James Breeding, Structured Rating Analyst  
*e-mail: [james\\_breeding@sandp.com](mailto:james_breeding@sandp.com)*

(214) 871-1407  
Fax (214) 871-1409

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**BANC OF AMERICA SECURITIES LLC  
MUNICIPAL SECURITIES DEPARTMENT**

**CLOSING MEMO**

---

**Issue Size:** \$47,625,000

**Description:** City of Modesto, California  
Water Refunding Revenue Certificates of Participation  
2008 Series A

**Closing Date:** May 30, 2008

**Delivery Date:** May 30, 2008

**Dated Date:** May 30, 2008

**Bond Type:** DTC - Full Book Entry

**Registration Information:** Cede & Co.

<b>Water Refunding Revenue Certificates of Participation, 2008 Series A</b>				
<b>Maturity</b>	<b>CUSIP</b>	<b>Principal Amount</b>	<b>Coupon</b>	<b>Price</b>
October 1, 2036	607804 AB7	47,625,000	---	100%

**CLOSING INFORMATION**

**Pre-Closing Date:** May 29, 2008 at 1:00 p.m.

**Location:** Sidley Austin LLP  
555 California Street, Suite 2000  
San Francisco, CA 94104

**Closing Date:** May 30, 2008 at 9:00 a.m.

**Location:** via conference call  
Call-in: 1.866.214.3171  
Passcode: 5405496#

**Bond Delivery Location:** Depository Trust Company  
55 Water Street  
New York, NY 10041

**Contact:** (212) 855-3752, 3753, 3754 or 3755

**DTC:** DTC Settlement Account # 0773

<u>Sources:</u>	
Bond Proceeds:	
Par Amount	47,625,000.00
Other Sources of Funds:	
Equity Contribution (Interest Earnings from DSRF)	110,715.03
Equity Contribution (Interest due 5.30)	11,841.26
Parity Debt Service Reserve Fund	1,834,515.50
	<u>1,957,071.79</u>
	<u>49,582,071.79</u>
<u>Uses:</u>	
Refunding Escrow Deposits:	
Cash Deposit	46,286,841.26
Other Fund Deposits:	
Parity Debt Service Reserve Fund	1,834,552.07
Capitalized Interest	110,715.03
	<u>1,945,267.10</u>
Delivery Date Expenses:	
Cost of Issuance	306,951.62
Underwriter's Discount	153,920.63
Bond Insurance Premium (85 bps)	826,615.80
Surety Bond Premium (3%)	62,475.38
	<u>1,349,963.43</u>
	<u>49,582,071.79</u>

**WIRE TRANSFERS**

**Internal Transfers by The Bank of New York, N.A. as 2006 Trustee**

On or before 12 noon Pacific Daylight Time on Thursday, May 29, 2008, The Bank of New York Trust Company, N.A., as Trustee for the 2006 COPs, will transfer **\$11,841.26** from the Series 2006 Debt Service Fund to the Series 2008 Escrow Fund.

On or before 12 noon Pacific Daylight Time on Thursday, May 29, 2008, The Bank of New York Trust Company, N.A., as Trustee for the 2006 COPs, will transfer **\$110,715.03** from the Parity Debt Service Reserve Fund to the Series 2008 Debt Service Fund.

**To the Trustee for the City of Modesto from Banc of America Securities LLC**

On Friday, May 30, 2008 Banc of America Securities LLC will wire transfer **\$46,581,988.19** to The Bank of New York Trust Company, N.A. as Trustee for the City of Modesto, which represents the par amount less underwriter's discount and bond insurance and surety bond premiums to be wired directly to the insurer as calculated in the table below pursuant to the wire instructions found below.

**Wire Deposit Calculation from Banc of America Securities LLC to The Bank of New York Trust Company, N.A.**

<b>From</b>	<b>Underwriter Banc of America Securities</b>
2008 Series A COP Proceeds	\$ 47,625,000.00
Less Underwriter's Discount	- 153,920.63
Less AGC Bond Insurance Premium:	- 826,615.80
Less AGC Surety Bond Premium:	- <u>62,475.38</u>
<b>TOTAL WIRE AMOUNT:</b>	<b><u>\$46,581,988.19</u></b>

**Wire Deposit to:**

Bank:	The Bank of New York
ABA:	#021 000 018
GLA:	111-565
Account Name:	Modesto 2008A COI FD
Account No.:	437137
REF:	Josephine Libunao 415-263-2418

**To Assured Guaranty from Banc of America Securities LLC**

On Friday, May 30, 2008 Banc of America Securities LLC will wire transfer **\$889,091.18** to Assured Guaranty which represents the bond insurance premium of \$826,615.80 and surety bond premium of \$62,475.38 on the 2008 Series A Certificates, pursuant to the wire instructions found below.

**Wire Deposit to:**

Bank:	JP Morgan Chase New York
Account Name:	Assured Guaranty Corp.
Account Number:	323-355919
ABA Number:	021-000-021
Reference Name:	City of Modesto, California Water Refunding Revenue Certificates of Participation 2008, Series A
P&I Policy No.:	D-2008-461
Surety Policy No.:	D-2008-462

**To Bank of America, N.A. from the City of Modesto**

On Friday, May 30, 2008, the City of Modesto will wire transfer to Bank of America, N.A., **\$63,524.80**, which represents the final net swap payment due on the Series 2006 Interest Rate Swap Agreement pursuant to the wire instructions found below:

**Wire Deposit to:**

Bank:	Bank of America, N.A., New York
SWIFT Code:	BOFAUS3N
ABA:	#026 009 593
For:	Bank of America NA Charlotte Global Derivative Settlements
SWIFT Code:	BOFAUS6SGDS
Account:	6550219386
Reference No.:	4812575
Contact:	Georgia Malamis (312) 234-3067

On Monday, June 2, 2008, the City of Modesto will wire transfer to Bank of America, N.A., **\$8,600.00**, which represents fees related to execution of the Series 2008 Interest Rate Swap Agreement, pursuant to the wire instructions found below:

**Wire Deposit to:**

Bank:	Bank of America, N.A., New York
SWIFT Code:	BOFAUS3N
ABA:	#026 009 593
For:	Bank of America NA Charlotte Global Derivative Settlements
SWIFT Code:	BOFAUS6SGDS
Account:	6550219386
Contact:	Georgia Malamis (312) 234-3067

**FLOW OF FUNDS**

Upon completion of internal transfers and receipt of the wire transfer from Banc of America Securities LLC, total funds on hand with The Bank of New York Trust Company, N.A. will be as follows:

Equity Contribution from the City (Regularly scheduled interest on 2006 COPs):	\$	11,841.26
Equity Contribution from the City (Interest Earnings from Parity DSRF):		110,715.03
Bond Proceeds (Wire transfer by Banc of America):		<u>46,581,988.19</u>
Total		\$46,704,544.48

The Bank of New York Trust Company, N.A. will deposit total funds on hand as follows:

Deposit to Series 2006 Debt Service Fund:	\$	46,286,841.26
Deposit to Parity Debt Service Reserve Fund:		36.57
Deposit to Series 2008 Debt Service Fund:		110,715.03
Costs of Issuance Fund:		<u>306,951.62</u>
Total		\$46,704,544.48

**REDEMPTION FLOW OF FUNDS**

Upon receipt of the wire transfer of \$46,581,988.19 from Banc of America Securities LLC and completion of internal transfers of **\$11,841.26**, The Bank of New York Trust Company, N.A. will have a total of **\$46,286,841.26** in the Series 2006 Debt Service Fund, sufficient to pay regularly scheduled interest on May 30, 2008 on the Series 2006 Certificates and the redemption price (100.0% of the principal amount on the Series 2006 Certificates).

Funds on Hand (internal transfer by The Bank of New York Trust Company):	\$	11,841.26
Bond Proceeds (wire transfer from Banc of America Securities):		<u>46,275,000.00</u>
Series 2006 Debt Service Fund:		\$46,286,841.26

**INTEREST ON THE SERIES 2008 CERTIFICATES**

On Friday, May 30, 2008, The Bank of New York Trust Company, N.A. will transfer from the Series 2008 Debt Service Fund to the Depository Trust Company, the amount of [**\$5,660.35**], equal to interest accrued on the Series 2008 Certificates at the initial rate of 1.45% from the date of delivery through but excluding the first interest payment date of June 2, 2008.

**PRINCIPAL CONTACTS**

<b>Issuer:</b>	<i>City of Modesto, California</i>	Wayne Padilla Barry Newlin	(209) 577-5371 (209) 577-5373
<b>Financial Advisor:</b>	<i>Public Financial Management</i>	Peter Miller Brian Gallucci	(415) 982-5544 (415) 982-5544
<b>Bond Counsel:</b>	<i>Sidley Austin LLP</i>	Eric Tashman Ty Conner Connie Tsai Katy McNeil	(415) 772-1214 (415) 772-7478 (415) 772-7475 (415) 772-7446
<b>Disclosure Counsel:</b>	<i>Stradling, Yocca, Carlson &amp; Rauth</i>	John Murphy	(949) 725-4160
<b>Underwriter:</b>	<i>Banc of America Securities LLC</i>	Scott Nagelson Kim Nakahara Ann Tran	(415) 953-7314 (415) 953-9565 (415) 627-2014
<b>Underwriter's Counsel:</b>	<i>Orrick, Herrington &amp; Sutcliffe, LLP</i>	John Knox  Laura Wagner	(415) 773-5626  (916) 329-4932
<b>Trustee:</b>	<i>The Bank of New York Trust Company</i>	Josephine Libunao	(415) 263-2418
<b>Insurer:</b>	<i>Assured Guaranty</i>	Peter Tremblay Alexis Platis Nicole Di Marco	(212) 261-5564 (212) 261-5550 (212) 261-5593
<b>SBPA Provider:</b>	<i>Bank of America, N.A.</i>	Shari Sacks Merlean Locke	(415) 953-9025 (206) 358-6453
<b>Swap Counterparty:</b>	<i>Bank of America, N.A.</i>	Mike Moss  Julie Bay	(415) 622-9430  (212) 548-6967
<b>DTC:</b>	<i>Closing Desk</i>		(212) 855-3752



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TABLE OF CONTENTS

City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Report	Page
Sources and Uses of Funds . . . . .	1
Bond Summary Statistics . . . . .	2
Summary of Bonds Refunded . . . . .	3
Bond Pricing . . . . .	4
Prior Bond Debt Service . . . . .	5
Bond Debt Service . . . . .	7
Net Debt Service . . . . .	8
Aggregate Debt Service . . . . .	20
Escrow Requirements . . . . .	21
Escrow Sufficiency . . . . .	22
Escrow Statistics . . . . .	23
Bond Solution . . . . .	24
Formula Verification . . . . .	25
Underwriter's Discount . . . . .	36
Form 8038 Statistics . . . . .	37
Proof of Arbitrage Yield . . . . .	40

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SOURCES AND USES OF FUNDS

City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Sources:

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Bond Proceeds:	
Par Amount	47,625,000.00
Other Sources of Funds:	
Equity Contribution (Interest Earnings from DSRF)	110,715.03
Equity Contribution (Interest due 5.30)	11,841.26
Parity Debt Service Reserve Fund	1,834,515.50
	<u>1,957,071.79</u>
	<u>49,582,071.79</u>

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Uses:

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Refunding Escrow Deposits:	
Cash Deposit	46,286,841.26
Other Fund Deposits:	
Parity Debt Service Reserve Fund	1,834,552.07
Capitalized Interest	110,715.03
	<u>1,945,267.10</u>
Delivery Date Expenses:	
Cost of Issuance	306,951.62
Underwriter's Discount	153,920.63
Bond Insurance Premium (85 bps)	826,615.80
Surety Bond Premium (3%)	62,475.38
	<u>1,349,963.43</u>
	<u>49,582,071.79</u>

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**BOND SUMMARY STATISTICS**

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Dated Date	05/30/2008
Delivery Date	05/30/2008
First Coupon	06/01/2008
Last Maturity	10/01/2036
Arbitrage Yield	4.047691%
True Interest Cost (TIC)	4.133655%
Net Interest Cost (NIC)	3.490178%
All-In TIC	4.182601%
Average Coupon	3.474700%
Average Life (years)	20.881
Duration of Issue (years)	12.943
Par Amount	47,625,000.00
Bond Proceeds	47,625,000.00
Total Interest	34,554,755.14
Net Interest	34,708,675.77
Total Debt Service	82,179,755.14
Maximum Annual Debt Service	3,914,823.64
Average Annual Debt Service	2,900,177.61
Underwriter's Fees (per \$1000)	
Average Takedown	1.500000
Management Fee	1.000000
Other Fee	0.731929
Total Underwriter's Discount	3.231929
Bid Price	99.676807

Bond Component	Par Value	Price	Average Coupon	Average Life
Term Bonds due 2036	47,625,000.00	100.000	3.475%	20.881
	47,625,000.00			20.881

	TIC	All-In TIC	Arbitrage Yield
Par Value	47,625,000.00	47,625,000.00	47,625,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount	-153,920.63	-153,920.63	
- Cost of Issuance Expense		-306,951.62	
- Other Amounts	-889,091.18	-889,091.18	-889,091.18
Target Value	46,581,988.19	46,275,036.57	46,735,908.82
Target Date	05/30/2008	05/30/2008	05/30/2008
Yield	4.133655%	4.182601%	4.047691%

SUMMARY OF BONDS REFUNDED

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Water Revenue Certificates of Participation:					
TERM2036	10/01/2008	3.480%	250,000.00	05/30/2008	100.000
	10/01/2009	3.480%	275,000.00	05/30/2008	100.000
	10/01/2010	3.480%	275,000.00	05/30/2008	100.000
	10/01/2011	3.480%	275,000.00	05/30/2008	100.000
	10/01/2012	3.480%	300,000.00	05/30/2008	100.000
	10/01/2013	3.480%	300,000.00	05/30/2008	100.000
	10/01/2014	3.480%	325,000.00	05/30/2008	100.000
	10/01/2015	3.480%	325,000.00	05/30/2008	100.000
	10/01/2016	3.480%	350,000.00	05/30/2008	100.000
	10/01/2017	3.480%	350,000.00	05/30/2008	100.000
	10/01/2018	3.480%	375,000.00	05/30/2008	100.000
	10/01/2019	3.480%	375,000.00	05/30/2008	100.000
	10/01/2020	3.480%	375,000.00	05/30/2008	100.000
	10/01/2021	3.480%	400,000.00	05/30/2008	100.000
	10/01/2022	3.480%	425,000.00	05/30/2008	100.000
	10/01/2023	3.480%	2,275,000.00	05/30/2008	100.000
	10/01/2024	3.480%	2,375,000.00	05/30/2008	100.000
	10/01/2025	3.480%	2,475,000.00	05/30/2008	100.000
	10/01/2026	3.480%	2,550,000.00	05/30/2008	100.000
	10/01/2027	3.480%	2,650,000.00	05/30/2008	100.000
	10/01/2028	3.480%	2,750,000.00	05/30/2008	100.000
	10/01/2029	3.480%	2,875,000.00	05/30/2008	100.000
	10/01/2030	3.480%	2,975,000.00	05/30/2008	100.000
	10/01/2031	3.480%	3,100,000.00	05/30/2008	100.000
	10/01/2032	3.480%	3,200,000.00	05/30/2008	100.000
	10/01/2033	3.480%	3,325,000.00	05/30/2008	100.000
	10/01/2034	3.480%	3,450,000.00	05/30/2008	100.000
	10/01/2035	3.480%	3,575,000.00	05/30/2008	100.000
	10/01/2036	3.480%	3,725,000.00	05/30/2008	100.000
			46,275,000.00		

BOND PRICING

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Bond Component	Maturity Date	Amount	Rate	Yield	Price
Term Bonds due 2036:					
	10/01/2008	290,000	3.4747%	3.475%	100.000
	10/01/2009	285,000	3.4747%	3.475%	100.000
	10/01/2010	285,000	3.4747%	3.475%	100.000
	10/01/2011	285,000	3.4747%	3.475%	100.000
	10/01/2012	310,000	3.4747%	3.475%	100.000
	10/01/2013	310,000	3.4747%	3.475%	100.000
	10/01/2014	340,000	3.4747%	3.475%	100.000
	10/01/2015	340,000	3.4747%	3.475%	100.000
	10/01/2016	365,000	3.4747%	3.475%	100.000
	10/01/2017	365,000	3.4747%	3.475%	100.000
	10/01/2018	395,000	3.4747%	3.475%	100.000
	10/01/2019	395,000	3.4747%	3.475%	100.000
	10/01/2020	395,000	3.4747%	3.475%	100.000
	10/01/2021	425,000	3.4747%	3.475%	100.000
	10/01/2022	450,000	3.4747%	3.475%	100.000
	10/01/2023	2,300,000	3.4747%	3.475%	100.000
	10/01/2024	2,410,000	3.4747%	3.475%	100.000
	10/01/2025	2,515,000	3.4747%	3.475%	100.000
	10/01/2026	2,595,000	3.4747%	3.475%	100.000
	10/01/2027	2,705,000	3.4747%	3.475%	100.000
	10/01/2028	2,810,000	3.4747%	3.475%	100.000
	10/01/2029	2,945,000	3.4747%	3.475%	100.000
	10/01/2030	3,055,000	3.4747%	3.475%	100.000
	10/01/2031	3,185,000	3.4747%	3.475%	100.000
	10/01/2032	3,295,000	3.4747%	3.475%	100.000
	10/01/2033	3,430,000	3.4747%	3.475%	100.000
	10/01/2034	3,570,000	3.4747%	3.475%	100.000
	10/01/2035	3,705,000	3.4747%	3.475%	100.000
	10/01/2036	3,870,000	3.4747%	3.475%	100.000
		47,625,000			

Dated Date	05/30/2008	
Delivery Date	05/30/2008	
First Coupon	06/01/2008	
Par Amount	47,625,000.00	
Original Issue Discount		
Production	47,625,000.00	100.000000%
Underwriter's Discount	-153,920.63	-0.323193%
Purchase Price	47,471,079.37	99.676807%
Accrued Interest		
Net Proceeds	47,471,079.37	

PRIOR BOND DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Period Ending	Principal	Coupon	Interest	Debt Service	Cash Flow	Other	Total	Bond Balance	Total Bond Value
06/30/2008			4,473.25	4,473.25	8,997.92		13,471.17	46,275,000	46,275,000
06/30/2009	250,000	3.480%	1,604,570.00	1,854,570.00	118,141.93		1,972,711.93	46,025,000	46,025,000
06/30/2010	275,000	3.480%	1,595,290.00	1,870,290.00	117,455.75		1,987,745.75	45,750,000	45,750,000
06/30/2011	275,000	3.480%	1,585,720.00	1,860,720.00	118,963.25		1,979,683.25	45,475,000	45,475,000
06/30/2012	275,000	3.480%	1,576,150.00	1,851,150.00	116,040.52		1,967,190.52	45,200,000	45,200,000
06/30/2013	300,000	3.480%	1,566,000.00	1,866,000.00	115,287.56		1,981,287.56	44,900,000	44,900,000
06/30/2014	300,000	3.480%	1,555,560.00	1,855,560.00	114,520.76		1,970,080.76	44,600,000	44,600,000
06/30/2015	325,000	3.480%	1,544,540.00	1,869,540.00	113,706.61		1,983,246.61	44,275,000	44,275,000
06/30/2016	325,000	3.480%	1,533,230.00	1,858,230.00	113,016.40		1,973,246.40	43,950,000	43,950,000
06/30/2017	350,000	3.480%	1,521,340.00	1,871,340.00	111,983.13		1,983,323.13	43,600,000	43,600,000
06/30/2018	350,000	3.480%	1,509,160.00	1,859,160.00	111,088.41		1,970,248.41	43,250,000	43,250,000
06/30/2019	375,000	3.480%	1,496,400.00	1,871,400.00	110,146.13		1,981,546.13	42,875,000	42,875,000
06/30/2020	375,000	3.480%	1,483,350.00	1,858,350.00	109,191.59		1,967,541.59	42,500,000	42,500,000
06/30/2021	375,000	3.480%	1,470,300.00	1,845,300.00	108,231.33		1,953,531.33	42,125,000	42,125,000
06/30/2022	400,000	3.480%	1,456,670.00	1,856,670.00	109,254.20		1,965,924.20	41,725,000	41,725,000
06/30/2023	425,000	3.480%	1,442,170.00	1,867,170.00	106,130.38		1,973,300.38	41,300,000	41,300,000
06/30/2024	2,275,000	3.480%	1,384,460.00	3,659,460.00	101,513.02		3,760,973.02	39,025,000	39,025,000
06/30/2025	2,375,000	3.480%	1,302,970.00	3,677,970.00	95,519.51		3,773,489.51	36,650,000	36,650,000
06/30/2026	2,475,000	3.480%	1,218,000.00	3,693,000.00	89,258.80		3,782,258.80	34,175,000	34,175,000
06/30/2027	2,550,000	3.480%	1,130,130.00	3,680,130.00	82,790.61		3,762,920.61	31,625,000	31,625,000
06/30/2028	2,650,000	3.480%	1,039,070.00	3,689,070.00	77,495.51		3,766,565.51	28,975,000	28,975,000
06/30/2029	2,750,000	3.480%	944,530.00	3,694,530.00	69,008.13		3,763,538.13	26,225,000	26,225,000
06/30/2030	2,875,000	3.480%	845,930.00	3,720,930.00	61,739.89		3,782,669.89	23,350,000	23,350,000
06/30/2031	2,975,000	3.480%	743,560.00	3,718,560.00	54,200.32		3,772,760.32	20,375,000	20,375,000
06/30/2032	3,100,000	3.480%	637,130.00	3,737,130.00	46,360.55		3,783,490.55	17,275,000	17,275,000
06/30/2033	3,200,000	3.480%	526,930.00	3,726,930.00	38,951.97		3,765,881.97	14,075,000	14,075,000
06/30/2034	3,325,000	3.480%	412,670.00	3,737,670.00	29,691.94		3,767,361.94	10,750,000	10,750,000
06/30/2035	3,450,000	3.480%	294,060.00	3,744,060.00	20,952.95		3,765,012.95	7,300,000	7,300,000
06/30/2036	3,575,000	3.480%	171,100.00	3,746,100.00	11,895.73		3,757,995.73	3,725,000	3,725,000
06/30/2037	3,725,000	3.480%	43,210.00	3,768,210.00	2,509.25		3,770,719.25		
	46,275,000		33,638,673.25	79,913,673.25	2,486,044.05		82,399,717.30		

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PRIOR BOND DEBT SERVICE

City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Note: DS for 2006 COPs is equal to the swap rate of 3.48% + 25 bps broker-dealer fee.

BOND DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Period Ending	Principal	Coupon	Interest	Debt Service	Bond Balance	Total Bond Value
06/30/2008			4,596.74	4,596.74	47,625,000	47,625,000
06/30/2009	290,000	3.4747%	1,648,108.16	1,938,108.16	47,335,000	47,335,000
06/30/2010	285,000	3.4747%	1,638,147.36	1,923,147.36	47,050,000	47,050,000
06/30/2011	285,000	3.4747%	1,628,244.40	1,913,244.40	46,765,000	46,765,000
06/30/2012	285,000	3.4747%	1,618,341.48	1,903,341.48	46,480,000	46,480,000
06/30/2013	310,000	3.4747%	1,607,859.48	1,917,859.48	46,170,000	46,170,000
06/30/2014	310,000	3.4747%	1,597,087.92	1,907,087.92	45,860,000	45,860,000
06/30/2015	340,000	3.4747%	1,585,621.40	1,925,621.40	45,520,000	45,520,000
06/30/2016	340,000	3.4747%	1,573,807.48	1,913,807.48	45,180,000	45,180,000
06/30/2017	365,000	3.4747%	1,561,414.40	1,926,414.40	44,815,000	44,815,000
06/30/2018	365,000	3.4747%	1,548,731.72	1,913,731.72	44,450,000	44,450,000
06/30/2019	395,000	3.4747%	1,535,354.08	1,930,354.08	44,055,000	44,055,000
06/30/2020	395,000	3.4747%	1,521,629.04	1,916,629.04	43,660,000	43,660,000
06/30/2021	395,000	3.4747%	1,507,903.96	1,902,903.96	43,265,000	43,265,000
06/30/2022	425,000	3.4747%	1,493,483.96	1,918,483.96	42,840,000	42,840,000
06/30/2023	450,000	3.4747%	1,478,137.40	1,928,137.40	42,390,000	42,390,000
06/30/2024	2,300,000	3.4747%	1,419,646.64	3,719,646.64	40,090,000	40,090,000
06/30/2025	2,410,000	3.4747%	1,337,180.40	3,747,180.40	37,680,000	37,680,000
06/30/2026	2,515,000	3.4747%	1,251,007.84	3,766,007.84	35,165,000	35,165,000
06/30/2027	2,595,000	3.4747%	1,161,765.96	3,756,765.96	32,570,000	32,570,000
06/30/2028	2,705,000	3.4747%	1,069,049.40	3,774,049.40	29,865,000	29,865,000
06/30/2029	2,810,000	3.4747%	972,626.48	3,782,626.48	27,055,000	27,055,000
06/30/2030	2,945,000	3.4747%	871,860.12	3,816,860.12	24,110,000	24,110,000
06/30/2031	3,055,000	3.4747%	766,982.12	3,821,982.12	21,055,000	21,055,000
06/30/2032	3,185,000	3.4747%	657,818.60	3,842,818.60	17,870,000	17,870,000
06/30/2033	3,295,000	3.4747%	544,601.32	3,839,601.32	14,575,000	14,575,000
06/30/2034	3,430,000	3.4747%	426,982.76	3,856,982.76	11,145,000	11,145,000
06/30/2035	3,570,000	3.4747%	304,557.44	3,874,557.44	7,575,000	7,575,000
06/30/2036	3,705,000	3.4747%	177,383.44	3,882,383.44	3,870,000	3,870,000
06/30/2037	3,870,000	3.4747%	44,823.64	3,914,823.64		
	47,625,000		34,554,755.14	82,179,755.14		

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Debt Service	Net Debt Service	Annual Net D/S
06/01/2008	4,596.74			-7.69		4,604.43			
07/01/2008	137,902.16	16,873.95	2,498.36	7.69		106,339.37	50,927.41		
08/01/2008	137,902.16						137,902.16		
09/01/2008	137,902.16						137,902.16		
10/01/2008	427,902.16	48,576.63	7,182.79		21,759.19		461,902.39		
11/01/2008	137,062.44						137,062.44		
12/01/2008	137,062.44						137,062.44		
01/01/2009	137,062.44	48,280.84	7,139.05				192,482.33		
02/01/2009	137,062.44						137,062.44		
03/01/2009	137,062.44						137,062.44		
04/01/2009	137,062.44	47,231.25	7,002.99		32,369.03		158,927.65		
05/01/2009	137,062.44						137,062.44		
06/01/2009	137,062.44						137,062.44		
06/30/2009								1,962,418.74	
07/01/2009	137,062.44	47,756.04	7,080.80				191,899.28		
08/01/2009	137,062.44						137,062.44		
09/01/2009	137,062.44						137,062.44		
10/01/2009	422,062.44	48,280.84	7,158.61		32,369.03		445,132.86		
11/01/2009	136,237.20						136,237.20		
12/01/2009	136,237.20						136,237.20		
01/01/2010	136,237.20	47,990.14	7,115.51				191,342.85		
02/01/2010	136,237.20						136,237.20		
03/01/2010	136,237.20						136,237.20		
04/01/2010	136,237.20	46,946.88	6,960.82		32,369.03		157,775.87		
05/01/2010	136,237.20						136,237.20		
06/01/2010	136,237.20						136,237.20		
06/30/2010								2,077,698.94	
07/01/2010	136,237.20	47,468.51	7,038.16				190,743.87		
08/01/2010	136,237.20						136,237.20		
09/01/2010	136,237.20						136,237.20		
10/01/2010	421,237.20	47,990.14	7,115.51		32,369.03		443,973.82		
11/01/2010	135,411.95						135,411.95		
12/01/2010	135,411.95						135,411.95		

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
01/01/2011	135,411.95	47,699.45	7,072.41				190,183.81	
02/01/2011	135,411.95						135,411.95	
03/01/2011	135,411.95						135,411.95	
04/01/2011	135,411.95	46,662.50	6,918.66		32,369.03		156,624.08	
05/01/2011	135,411.95						135,411.95	
06/01/2011	135,411.95						135,411.95	
06/30/2011								2,066,471.68
07/01/2011	135,411.95	47,180.97	6,995.53				189,588.45	
08/01/2011	135,411.95						135,411.95	
09/01/2011	135,411.95						135,411.95	
10/01/2011	420,411.95	47,699.45	7,072.41		32,369.03		442,814.78	
11/01/2011	134,586.71						134,586.71	
12/01/2011	134,586.71						134,586.71	
01/01/2012	134,586.71	47,408.75	7,029.30				189,024.76	
02/01/2012	134,586.71						134,586.71	
03/01/2012	134,586.71						134,586.71	
04/01/2012	134,586.71	46,893.44	6,933.90		32,369.03		156,045.02	
05/01/2012	134,586.71						134,586.71	
06/01/2012	134,586.71						134,586.71	
06/30/2012								2,055,817.17
07/01/2012	134,586.71	46,893.44	6,933.90				188,414.05	
08/01/2012	134,586.71						134,586.71	
09/01/2012	134,586.71						134,586.71	
10/01/2012	444,586.71	47,408.75	7,010.10		32,369.03		466,636.53	
11/01/2012	133,689.08						133,689.08	
12/01/2012	133,689.08						133,689.08	
01/01/2013	133,689.08	47,092.56	6,963.34				187,744.98	
02/01/2013	133,689.08						133,689.08	
03/01/2013	133,689.08						133,689.08	
04/01/2013	133,689.08	46,068.81	6,830.63		32,369.03		154,219.49	
05/01/2013	133,689.08						133,689.08	
06/01/2013	133,689.08						133,689.08	
06/30/2013								2,068,322.95

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
07/01/2013	133,689.08	46,580.68	6,906.53				187,176.29	
08/01/2013	133,689.08						133,689.08	
09/01/2013	133,689.08						133,689.08	
10/01/2013	443,689.08	47,092.56	6,982.42		32,369.03		465,395.03	
11/01/2013	132,791.45						132,791.45	
12/01/2013	132,791.45						132,791.45	
01/01/2014	132,791.45	46,776.36	6,935.54				186,503.35	
02/01/2014	132,791.45						132,791.45	
03/01/2014	132,791.45						132,791.45	
04/01/2014	132,791.45	45,759.48	6,784.77		32,369.03		152,966.67	
05/01/2014	132,791.45						132,791.45	
06/01/2014	132,791.45						132,791.45	
06/30/2014								2,056,168.20
07/01/2014	132,791.45	46,267.92	6,860.15				185,919.52	
08/01/2014	132,791.45						132,791.45	
09/01/2014	132,791.45						132,791.45	
10/01/2014	472,791.45	46,776.36	6,935.54		32,369.03		494,134.32	
11/01/2014	131,806.95						131,806.95	
12/01/2014	131,806.95						131,806.95	
01/01/2015	131,806.95	46,429.57	6,884.12				185,120.64	
02/01/2015	131,806.95						131,806.95	
03/01/2015	131,806.95						131,806.95	
04/01/2015	131,806.95	45,420.23	6,734.47		32,369.03		151,592.62	
05/01/2015	131,806.95						131,806.95	
06/01/2015	131,806.95						131,806.95	
06/30/2015								2,073,191.70
07/01/2015	131,806.95	45,924.90	6,809.29				184,541.14	
08/01/2015	131,806.95						131,806.95	
09/01/2015	131,806.95						131,806.95	
10/01/2015	471,806.95	46,429.57	6,884.12		32,369.03		492,751.61	
11/01/2015	130,822.46						130,822.46	
12/01/2015	130,822.46						130,822.46	
01/01/2016	130,822.46	46,082.77	6,832.70				183,737.93	

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
02/01/2016	130,822.46						130,822.46	
03/01/2016	130,822.46						130,822.46	
04/01/2016	130,822.46	45,581.88	6,739.97		32,369.03		150,775.28	
05/01/2016	130,822.46						130,822.46	
06/01/2016	130,822.46						130,822.46	
06/30/2016								2,060,354.62
07/01/2016	130,822.46	45,581.88	6,739.97				183,144.31	
08/01/2016	130,822.46						130,822.46	
09/01/2016	130,822.46						130,822.46	
10/01/2016	495,822.46	46,082.77	6,814.03		32,369.03		516,350.23	
11/01/2016	129,765.57						129,765.57	
12/01/2016	129,765.57						129,765.57	
01/01/2017	129,765.57	45,710.48	6,758.98				182,235.03	
02/01/2017	129,765.57						129,765.57	
03/01/2017	129,765.57						129,765.57	
04/01/2017	129,765.57	44,716.78	6,630.16		32,369.03		148,743.48	
05/01/2017	129,765.57						129,765.57	
06/01/2017	129,765.57						129,765.57	
06/30/2017								2,070,711.39
07/01/2017	129,765.57	45,213.63	6,703.83				181,683.03	
08/01/2017	129,765.57						129,765.57	
09/01/2017	129,765.57						129,765.57	
10/01/2017	494,765.57	45,710.48	6,777.50		32,369.03		514,884.52	
11/01/2017	128,708.68						128,708.68	
12/01/2017	128,708.68						128,708.68	
01/01/2018	128,708.68	45,338.19	6,722.30				180,769.17	
02/01/2018	128,708.68						128,708.68	
03/01/2018	128,708.68						128,708.68	
04/01/2018	128,708.68	44,352.58	6,576.16		32,369.03		147,268.39	
05/01/2018	128,708.68						128,708.68	
06/01/2018	128,708.68						128,708.68	
06/30/2018								2,056,388.33
07/01/2018	128,708.68	44,845.38	6,649.23				180,203.29	

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
08/01/2018	128,708.68						128,708.68	
09/01/2018	128,708.68						128,708.68	
10/01/2018	523,708.68	45,338.19	6,722.30		32,369.03		543,400.14	
11/01/2018	127,564.92						127,564.92	
12/01/2018	127,564.92						127,564.92	
01/01/2019	127,564.92	44,935.30	6,662.56				179,162.78	
02/01/2019	127,564.92						127,564.92	
03/01/2019	127,564.92						127,564.92	
04/01/2019	127,564.92	43,958.44	6,517.73		32,369.03		145,672.06	
05/01/2019	127,564.92						127,564.92	
06/01/2019	127,564.92						127,564.92	
06/30/2019								2,071,245.15
07/01/2019	127,564.92	44,446.87	6,590.15				178,601.94	
08/01/2019	127,564.92						127,564.92	
09/01/2019	127,564.92						127,564.92	
10/01/2019	522,564.92	44,935.30	6,662.56		32,369.03		541,793.75	
11/01/2019	126,421.17						126,421.17	
12/01/2019	126,421.17						126,421.17	
01/01/2020	126,421.17	44,532.40	6,602.83				177,556.40	
02/01/2020	126,421.17						126,421.17	
03/01/2020	126,421.17						126,421.17	
04/01/2020	126,421.17	44,048.35	6,513.21		32,369.03		144,613.70	
05/01/2020	126,421.17						126,421.17	
06/01/2020	126,421.17						126,421.17	
06/30/2020								2,056,222.65
07/01/2020	126,421.17	44,048.35	6,513.21				176,982.73	
08/01/2020	126,421.17						126,421.17	
09/01/2020	126,421.17						126,421.17	
10/01/2020	521,421.17	44,532.40	6,584.79		32,369.03		540,169.33	
11/01/2020	125,277.41						125,277.41	
12/01/2020	125,277.41						125,277.41	
01/01/2021	125,277.41	44,129.51	6,525.21				175,932.13	
02/01/2021	125,277.41						125,277.41	

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
03/01/2021	125,277.41						125,277.41	
04/01/2021	125,277.41	43,170.17	6,400.85		32,369.03		142,479.40	
05/01/2021	125,277.41						125,277.41	
06/01/2021	125,277.41						125,277.41	2,040,070.39
06/30/2021								
07/01/2021	125,277.41	43,649.84	6,471.97				175,399.22	
08/01/2021	125,277.41						125,277.41	
09/01/2021	125,277.41						125,277.41	
10/01/2021	550,277.41	44,129.51	6,543.09		32,369.03		568,580.98	
11/01/2021	124,046.79						124,046.79	
12/01/2021	124,046.79						124,046.79	
01/01/2022	124,046.79	43,696.02	6,478.82				174,221.63	
02/01/2022	124,046.79						124,046.79	
03/01/2022	124,046.79						124,046.79	
04/01/2022	124,046.79						124,046.79	
05/01/2022	124,046.79	42,746.10	6,337.97		32,369.03		140,761.83	
06/01/2022	124,046.79						124,046.79	
06/30/2022								2,053,799.22
07/01/2022	124,046.79	43,221.06	6,408.39				173,676.24	
08/01/2022	124,046.79						124,046.79	
09/01/2022	124,046.79						124,046.79	
10/01/2022	574,046.79	43,696.02	6,478.82		32,369.03		591,852.60	
11/01/2022	122,743.78						122,743.78	
12/01/2022	122,743.78						122,743.78	
01/01/2023	122,743.78	43,237.03	6,410.76				172,391.57	
02/01/2023	122,743.78						122,743.78	
03/01/2023	122,743.78						122,743.78	
04/01/2023	122,743.78						122,743.78	
05/01/2023	122,743.78	42,297.09	6,271.40		32,369.03		138,943.24	
06/01/2023	122,743.78						122,743.78	
06/30/2023								2,061,419.91
07/01/2023	122,743.78	42,767.06	6,341.08				171,851.92	
08/01/2023	122,743.78						122,743.78	

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
09/01/2023	122,743.78						122,743.78	
10/01/2023	2,422,743.78	43,237.03	6,410.76		32,369.03		2,440,022.54	
11/01/2023	116,083.94						116,083.94	
12/01/2023	116,083.94						116,083.94	
01/01/2024	116,083.94	40,891.07	6,062.93				163,037.94	
02/01/2024	116,083.94						116,083.94	
03/01/2024	116,083.94						116,083.94	
04/01/2024	116,083.94	40,446.60	5,980.64		32,369.03		130,142.15	
05/01/2024	116,083.94						116,083.94	
06/01/2024	116,083.94						116,083.94	
06/30/2024								3,847,045.75
07/01/2024	116,083.94	40,446.60	5,980.64				162,511.18	
08/01/2024	116,083.94						116,083.94	
09/01/2024	116,083.94						116,083.94	
10/01/2024	2,526,083.94	40,891.07	6,046.36		32,369.03		2,540,652.34	
11/01/2024	109,105.58						109,105.58	
12/01/2024	109,105.58						109,105.58	
01/01/2025	109,105.58	38,432.91	5,682.89				153,221.38	
02/01/2025	109,105.58						109,105.58	
03/01/2025	109,105.58						109,105.58	
04/01/2025	109,105.58	37,597.41	5,574.58		32,369.03		119,908.54	
05/01/2025	109,105.58						109,105.58	
06/01/2025	109,105.58						109,105.58	
06/30/2025								3,863,094.80
07/01/2025	109,105.58	38,015.16	5,636.52				152,757.26	
08/01/2025	109,105.58						109,105.58	
09/01/2025	109,105.58						109,105.58	
10/01/2025	2,624,105.58	38,432.91	5,698.45		32,369.03		2,635,867.91	
11/01/2025	101,823.19						101,823.19	
12/01/2025	101,823.19						101,823.19	
01/01/2026	101,823.19	35,867.66	5,318.10				143,008.95	
02/01/2026	101,823.19						101,823.19	
03/01/2026	101,823.19						101,823.19	

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Debt Service	Net Debt Service	Annual Net D/S
04/01/2026	101,823.19	35,087.93	5,202.49		32,369.03		109,744.58		
05/01/2026	101,823.19						101,823.19		
06/01/2026	101,823.19						101,823.19		
06/30/2026									3,870,529.00
07/01/2026	101,823.19	35,477.79	5,260.30				142,561.28		
08/01/2026	101,823.19						101,823.19		
09/01/2026	101,823.19						101,823.19		
10/01/2026	2,696,823.19	35,867.66	5,318.10		32,369.03		2,705,639.92		
11/01/2026	94,309.15						94,309.15		
12/01/2026	94,309.15						94,309.15		
01/01/2027	94,309.15	33,220.81	4,925.65				132,455.61		
02/01/2027	94,309.15						94,309.15		
03/01/2027	94,309.15						94,309.15		
04/01/2027	94,309.15	32,498.61	4,818.58		32,369.03		99,257.31		
05/01/2027	94,309.15						94,309.15		
06/01/2027	94,309.15						94,309.15		
06/30/2027									3,849,415.40
07/01/2027	94,309.15	32,859.71	4,872.12				132,040.98		
08/01/2027	94,309.15						94,309.15		
09/01/2027	94,309.15						94,309.15		
10/01/2027	2,799,309.15	33,220.81	4,925.65		32,369.03		2,805,086.58		
11/01/2027	86,476.60						86,476.60		
12/01/2027	86,476.60						86,476.60		
01/01/2028	86,476.60	30,461.75	4,516.57				121,454.92		
02/01/2028	86,476.60						86,476.60		
03/01/2028	86,476.60						86,476.60		
04/01/2028	86,476.60	30,130.65	4,455.27		32,369.03		88,693.49		
05/01/2028	86,476.60						86,476.60		
06/01/2028	86,476.60						86,476.60		
06/30/2028									3,854,753.87
07/01/2028	86,476.60	30,130.65	4,455.27				121,062.52		
08/01/2028	86,476.60						86,476.60		
09/01/2028	86,476.60						86,476.60		

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Debt Service	Net Service	Annual Net D/S
10/01/2028	2,896,476.60	30,461.75	4,504.23		32,369.03		2,899,073.55		
11/01/2028	78,340.01						78,340.01		
12/01/2028	78,340.01						78,340.01		
01/01/2029	78,340.01	27,595.61	4,080.43				110,016.05		
02/01/2029	78,340.01						78,340.01		
03/01/2029	78,340.01						78,340.01		
04/01/2029	78,340.01	26,995.70	4,002.66		32,369.03		76,969.34		
05/01/2029	78,340.01						78,340.01		
06/01/2029	78,340.01						78,340.01		
06/30/2029									3,850,114.72
07/01/2029	78,340.01	27,295.65	4,047.13				109,682.79		
08/01/2029	78,340.01						78,340.01		
09/01/2029	78,340.01						78,340.01		
10/01/2029	3,023,340.01	27,595.61	4,091.61		32,369.03		3,022,658.20		
11/01/2029	69,812.51						69,812.51		
12/01/2029	69,812.51						69,812.51		
01/01/2030	69,812.51	24,591.76	3,646.22				98,050.49		
02/01/2030	69,812.51						69,812.51		
03/01/2030	69,812.51						69,812.51		
04/01/2030	69,812.51	24,057.16	3,566.96		32,369.03		65,067.60		
05/01/2030	69,812.51						69,812.51		
06/01/2030	69,812.51						69,812.51		
06/30/2030									3,871,014.16
07/01/2030	69,812.51	24,324.46	3,606.59				97,743.56		
08/01/2030	69,812.51						69,812.51		
09/01/2030	69,812.51						69,812.51		
10/01/2030	3,124,812.51	24,591.76	3,646.22		32,369.03		3,120,681.46		
11/01/2030	60,966.51						60,966.51		
12/01/2030	60,966.51						60,966.51		
01/01/2031	60,966.51	21,475.72	3,184.21				85,626.44		
02/01/2031	60,966.51						60,966.51		
03/01/2031	60,966.51						60,966.51		
04/01/2031	60,966.51	21,008.85	3,114.99		32,369.03		52,721.32		

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
05/01/2031	60,966.51						60,966.51	
06/01/2031	60,966.51						60,966.51	
06/30/2031								3,862,196.86
07/01/2031	60,966.51	21,242.28	3,149.60				85,358.39	
08/01/2031	60,966.51						60,966.51	
09/01/2031	60,966.51				32,369.03		3,238,257.41	
10/01/2031	3,245,966.51	21,475.72	3,184.21				51,744.07	
11/01/2031	51,744.07						51,744.07	
12/01/2031	51,744.07						51,744.07	
01/01/2032	51,744.07	18,227.07	2,702.53				72,673.67	
02/01/2032	51,744.07						51,744.07	
03/01/2032	51,744.07						51,744.07	
04/01/2032	51,744.07	18,028.95	2,665.85		32,369.03		40,069.84	
05/01/2032	51,744.07						51,744.07	
06/01/2032	51,744.07						51,744.07	
06/30/2032								3,868,756.75
07/01/2032	51,744.07	18,028.95	2,665.85				72,438.87	
08/01/2032	51,744.07						51,744.07	
09/01/2032	51,744.07						51,744.07	
10/01/2032	3,346,744.07	18,227.07	2,695.15		32,369.03		3,335,297.26	
11/01/2032	42,203.13						42,203.13	
12/01/2032	42,203.13						42,203.13	
01/01/2033	42,203.13	14,866.23	2,198.20				59,267.56	
02/01/2033	42,203.13						42,203.13	
03/01/2033	42,203.13						42,203.13	
04/01/2033	42,203.13	14,543.05	2,156.30		32,369.03		26,533.45	
05/01/2033	42,203.13						42,203.13	
06/01/2033	42,203.13						42,203.13	
06/30/2033								3,850,244.06
07/01/2033	42,203.13	14,704.64	2,180.26				59,088.03	
08/01/2033	42,203.13						42,203.13	
09/01/2033	42,203.13						42,203.13	
10/01/2033	3,472,203.13	14,866.23	2,204.22		32,369.03		3,456,904.55	

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
11/01/2033	32,271.28						32,271.28	
12/01/2033	32,271.28						32,271.28	
01/01/2034	32,271.28	11,367.70	1,685.49				45,324.47	
02/01/2034	32,271.28						32,271.28	
03/01/2034	32,271.28						32,271.28	
04/01/2034	32,271.28	11,120.57	1,648.85		32,369.03		12,671.67	
05/01/2034	32,271.28						32,271.28	
06/01/2034	32,271.28						32,271.28	
06/30/2034								3,852,022.66
07/01/2034	32,271.28	11,244.13	1,667.17				45,182.58	
08/01/2034	32,271.28						32,271.28	
09/01/2034	32,271.28						32,271.28	
10/01/2034	3,602,271.28	11,367.70	1,685.49		32,369.03		3,582,955.44	
11/01/2034	21,934.04						21,934.04	
12/01/2034	21,934.04						21,934.04	
01/01/2035	21,934.04	7,726.36	1,145.59				30,805.99	
02/01/2035	21,934.04						21,934.04	
03/01/2035	21,934.04						21,934.04	
04/01/2035	21,934.04	7,558.40	1,120.68	-1,755.91	32,369.03		20,178.13	
05/01/2035	21,934.04			1,755.91			21,934.04	
06/01/2035	21,934.04						21,934.04	
06/30/2035								3,853,334.90
07/01/2035	21,934.04	7,642.38	1,133.14				30,709.56	
08/01/2035	21,934.04						21,934.04	
09/01/2035	21,934.04						21,934.04	
10/01/2035	3,726,934.04	7,726.36	1,145.59		32,369.03		3,703,436.96	
11/01/2035	11,205.91						11,205.91	
12/01/2035	11,205.91						11,205.91	
01/01/2036	11,205.91	3,947.33	585.27				15,738.51	
02/01/2036	11,205.91						11,205.91	
03/01/2036	11,205.91						11,205.91	
04/01/2036	11,205.91	3,904.42	577.33	-16,681.37	32,369.03		11,205.91	
05/01/2036	11,205.91			11,205.91				

NET DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Total Debt Service	Standby Bond Purchase Agreement (40 bps)	Remarketing Fee (7.5 bps)	General Fund	Parity Debt Service Reserve Fund	Capitalized Interest	Net Debt Service	Annual Net D/S
06/01/2036	11,205.91			5,475.46			5,730.45	3,844,307.20
06/30/2036		3,904.42	577.33				15,687.66	
07/01/2036	11,205.91						11,205.91	
08/01/2036	11,205.91						11,205.91	
09/01/2036	11,205.91						11,205.91	
10/01/2036	3,881,205.91	3,947.33	583.67		1,866,921.10		2,018,815.81	2,056,915.29
06/30/2037		4,027,468.91	596,743.15	0.00	3,668,976.94	110,943.80	83,024,046.46	83,024,046.46

AGGREGATE DEBT SERVICE

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Period Ending	Water Refunding Revenue Certificates	1997 Water Revenue COPs	Aggregate Debt Service
06/30/2008	4,596.74		4,596.74
06/30/2009	1,938,108.16	1,792,257.50	3,730,365.66
06/30/2010	1,923,147.36	1,794,687.50	3,717,834.86
06/30/2011	1,913,244.40	1,794,012.50	3,707,256.90
06/30/2012	1,903,341.48	1,795,512.50	3,698,853.98
06/30/2013	1,917,859.48	1,799,387.50	3,717,246.98
06/30/2014	1,907,087.92	1,799,821.88	3,706,909.80
06/30/2015	1,925,621.40	1,801,653.13	3,727,274.53
06/30/2016	1,913,807.48	1,800,409.38	3,714,216.86
06/30/2017	1,926,414.40	1,800,962.51	3,727,376.91
06/30/2018	1,913,731.72	1,803,056.26	3,716,787.98
06/30/2019	1,930,354.08	1,801,562.51	3,731,916.59
06/30/2020	1,916,629.04	1,801,353.13	3,717,982.17
06/30/2021	1,902,903.96	1,807,043.75	3,709,947.71
06/30/2022	1,918,483.96	1,808,378.13	3,726,862.09
06/30/2023	1,928,137.40	1,810,228.13	3,738,365.53
06/30/2024	3,719,646.64		3,719,646.64
06/30/2025	3,747,180.40		3,747,180.40
06/30/2026	3,766,007.84		3,766,007.84
06/30/2027	3,756,765.96		3,756,765.96
06/30/2028	3,774,049.40		3,774,049.40
06/30/2029	3,782,626.48		3,782,626.48
06/30/2030	3,816,860.12		3,816,860.12
06/30/2031	3,821,982.12		3,821,982.12
06/30/2032	3,842,818.60		3,842,818.60
06/30/2033	3,839,601.32		3,839,601.32
06/30/2034	3,856,982.76		3,856,982.76
06/30/2035	3,874,557.44		3,874,557.44
06/30/2036	3,882,383.44		3,882,383.44
06/30/2037	3,914,823.64		3,914,823.64
	82,179,755.14	27,010,326.31	109,190,081.45

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ESCROW REQUIREMENTS

City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Period Ending	Interest	Principal Redeemed	Total
05/30/2008	11,841.26	46,275,000.00	46,286,841.26
	11,841.26	46,275,000.00	46,286,841.26

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ESCROW SUFFICIENCY

City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Date	Escrow Requirement	Net Escrow Receipts	Excess Receipts	Excess Balance
05/30/2008	46,286,841.26	46,286,841.26		
	46,286,841.26	46,286,841.26	0.00	

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ESCROW STATISTICS

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Escrow	Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
2006DS	11,841.26				11,841.26		
BP	46,275,000.00				46,275,000.00		
	46,286,841.26				46,286,841.26	0.00	0.00

Delivery date 05/30/2008  
 Arbitrage yield 4.047691%

BOND SOLUTION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Period Ending	Proposed Principal	Proposed Debt Service	Debt Service Adjustments	Total Adj Debt Service	Revenue Constraints	Unused Revenues	Debt Serv Coverage
06/30/2008		4,597		4,597	13,471	8,874	293.05921%
06/30/2009	290,000	1,938,108	184,786	2,122,894	1,972,712	-150,182	92.92560%
06/30/2010	285,000	1,923,147	219,290	2,142,437	1,987,746	-154,691	92.77966%
06/30/2011	285,000	1,913,244	217,965	2,131,210	1,979,683	-151,526	92.89012%
06/30/2012	285,000	1,903,341	217,214	2,120,555	1,967,191	-153,365	92.76771%
06/30/2013	310,000	1,917,859	215,202	2,133,061	1,981,288	-151,773	92.88471%
06/30/2014	310,000	1,907,088	213,818	2,120,906	1,970,081	-150,826	92.88863%
06/30/2015	340,000	1,925,621	212,308	2,137,930	1,983,247	-154,683	92.76482%
06/30/2016	340,000	1,913,807	211,285	2,125,093	1,973,246	-151,846	92.85460%
06/30/2017	365,000	1,926,414	209,035	2,135,449	1,983,323	-152,126	92.87615%
06/30/2018	365,000	1,913,732	207,395	2,121,126	1,970,248	-150,878	92.88689%
06/30/2019	395,000	1,930,354	205,629	2,135,983	1,981,546	-154,437	92.76974%
06/30/2020	395,000	1,916,629	204,332	2,120,961	1,967,542	-153,419	92.76653%
06/30/2021	395,000	1,902,904	201,904	2,104,808	1,953,531	-151,277	92.81278%
06/30/2022	425,000	1,918,484	200,053	2,118,537	1,965,924	-152,613	92.79630%
06/30/2023	450,000	1,928,137	198,021	2,126,158	1,973,300	-152,858	92.81062%
06/30/2024	2,300,000	3,719,647	192,137	3,911,784	3,760,973	-150,811	96.14471%
06/30/2025	2,410,000	3,747,180	180,652	3,927,833	3,773,490	-154,343	96.07052%
06/30/2026	2,515,000	3,766,008	169,259	3,935,267	3,782,259	-153,008	96.11187%
06/30/2027	2,595,000	3,756,766	157,388	3,914,153	3,762,921	-151,233	96.13626%
06/30/2028	2,705,000	3,774,049	145,443	3,919,492	3,766,566	-152,926	96.09831%
06/30/2029	2,810,000	3,782,626	132,226	3,914,853	3,763,538	-151,315	96.13486%
06/30/2030	2,945,000	3,816,860	118,892	3,935,752	3,782,670	-153,082	96.11047%
06/30/2031	3,055,000	3,821,982	104,953	3,926,935	3,772,760	-154,175	96.07392%
06/30/2032	3,185,000	3,842,819	90,676	3,933,495	3,783,491	-150,004	96.18649%
06/30/2033	3,295,000	3,839,601	75,381	3,914,982	3,765,882	-149,100	96.19155%
06/30/2034	3,430,000	3,856,983	59,778	3,916,761	3,767,362	-149,399	96.18565%
06/30/2035	3,570,000	3,874,557	43,516	3,918,073	3,765,013	-153,060	96.09349%
06/30/2036	3,705,000	3,882,383	26,662	3,909,045	3,757,996	-151,050	96.13590%
06/30/2037	3,870,000	3,914,824	9,013	3,923,836	3,770,719	-153,117	96.09777%
	47,625,000	82,179,755	4,624,212	86,803,967	82,399,717	-4,404,250	

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Component	Formula	Vector	Value
INSURE	.85% of total adjusted Debt Service at 4.99%		826,615.80
SURETY	62,475.38		62,475.38
SBPA	.4% of Bond Value paid quarterly in arrears starting 7/1/2008	V1	
SBPA	.4% of 35 days of interest at 12% paid quarterly in arrears starting 7/1/2008	V2	
SBPA	Standby Bond Purchase Agreement (40 bps)	V3	
REMKT	.06% of Bond Value paid quarterly in arrears starting 7/1/2008	V4	
REMKT	Remarketing Fee (7.5 bps)	V5	
DSRF	1,834,515.50		1,834,515.50
CAPI	Adjusted Bond Interest starting 6/1/2008	V6	
DSRF2	Formula NETDSRF	V7	
AGGDSRF	Maximum annual aggregate Debt Service at 3.648435%		3,917,064.81
AGGDSRF	125% of average annual aggregate adjusted Debt Service at 3.648435%		4,892,953.49
AGGDSRF	10% of aggregate Par Amount		6,648,000.00
AGGDSRF	Aggregate Reserve Requirement		3,917,064.81
NETDSRF	Formula AGGDSRF	V8	
NETDSRF	- 3,917,028.24		-3,917,028.24
NETDSRF	Net Aggregate DSRF Requirement	V9	

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
05/30/2008									
06/01/2008		172.58	16,873.95	2,498.36	2,498.36	4,596.74			
07/01/2008	16,701.37					137,902.16			
08/01/2008						137,902.16			
09/01/2008						137,902.16			
10/01/2008	48,016.44	560.19	48,576.63	7,182.79	7,182.79	137,902.16			
11/01/2008						137,062.44			
12/01/2008						137,062.44			
01/01/2009	47,724.05	556.78	48,280.84	7,139.05	7,139.05	137,062.44			
02/01/2009						137,062.44			
03/01/2009						137,062.44			
04/01/2009	46,686.58	544.68	47,231.25	7,002.99	7,002.99	137,062.44			
05/01/2009						137,062.44			
06/01/2009						137,062.44			
07/01/2009	47,205.32	550.73	47,756.04	7,080.80	7,080.80	137,062.44	36.57	3,917,064.81	36.57

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2009						137,062.44			
09/01/2009						137,062.44			
10/01/2009	47,724.05	556.78	48,280.84	7,158.61	7,158.61	137,062.44			
11/01/2009						136,237.20			
12/01/2009						136,237.20			
01/01/2010	47,436.71	553.43	47,990.14	7,115.51	7,115.51	136,237.20			
02/01/2010						136,237.20			
03/01/2010						136,237.20			
04/01/2010	46,405.48	541.40	46,946.88	6,960.82	6,960.82	136,237.20			
05/01/2010						136,237.20			
06/01/2010						136,237.20			
07/01/2010	46,921.10	547.41	47,468.51	7,038.16	7,038.16	136,237.20			
08/01/2010						136,237.20			
09/01/2010						136,237.20			
10/01/2010	47,436.71	553.43	47,990.14	7,115.51	7,115.51	136,237.20			
11/01/2010						135,411.95			
12/01/2010						135,411.95			
01/01/2011	47,149.37	550.08	47,699.45	7,072.41	7,072.41	135,411.95			
02/01/2011						135,411.95			
03/01/2011						135,411.95			
04/01/2011	46,124.38	538.12	46,662.50	6,918.66	6,918.66	135,411.95			
05/01/2011						135,411.95			
06/01/2011						135,411.95			
07/01/2011	46,636.88	544.10	47,180.97	6,995.53	6,995.53	135,411.95			
08/01/2011						135,411.95			
09/01/2011						135,411.95			
10/01/2011	47,149.37	550.08	47,699.45	7,072.41	7,072.41	135,411.95			
11/01/2011						134,586.71			
12/01/2011						134,586.71			
01/01/2012	46,862.03	546.72	47,408.75	7,029.30	7,029.30	134,586.71			
02/01/2012						134,586.71			
03/01/2012						134,586.71			
04/01/2012	46,352.66	540.78	46,893.44	6,933.90	6,933.90	134,586.71			
05/01/2012						134,586.71			
06/01/2012						134,586.71			
07/01/2012	46,352.66	540.78	46,893.44	6,933.90	6,933.90	134,586.71			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2012						134,586.71			
09/01/2012						134,586.71			
10/01/2012	46,862.03	546.72	47,408.75	7,010.10	7,010.10	134,586.71			
11/01/2012						133,689.08			
12/01/2012						133,689.08			
01/01/2013	46,549.48	543.08	47,092.56	6,963.34	6,963.34	133,689.08			
02/01/2013						133,689.08			
03/01/2013	45,537.53	531.27	46,068.81	6,830.63	6,830.63	133,689.08			
04/01/2013						133,689.08			
05/01/2013	46,043.51	537.17	46,580.68	6,906.53	6,906.53	133,689.08			
06/01/2013						133,689.08			
07/01/2013	46,549.48	543.08	47,092.56	6,982.42	6,982.42	133,689.08			
08/01/2013						132,791.45			
09/01/2013	46,236.93	539.43	46,776.36	6,935.54	6,935.54	132,791.45			
10/01/2013						132,791.45			
11/01/2013	45,231.78	527.70	45,759.48	6,784.77	6,784.77	132,791.45			
12/01/2013						132,791.45			
01/01/2014	45,734.36	533.57	46,267.92	6,860.15	6,860.15	132,791.45			
02/01/2014						132,791.45			
03/01/2014	46,236.93	539.43	46,776.36	6,935.54	6,935.54	132,791.45			
04/01/2014						131,806.95			
05/01/2014	45,894.14	535.43	46,429.57	6,884.12	6,884.12	131,806.95			
06/01/2014						131,806.95			
07/01/2014	44,896.44	523.79	45,420.23	6,734.47	6,734.47	131,806.95			
08/01/2014						131,806.95			
09/01/2014	45,395.29	529.61	45,924.90	6,809.29	6,809.29	131,806.95			
10/01/2014						131,806.95			
11/01/2014						131,806.95			
12/01/2014						131,806.95			
01/01/2015						131,806.95			
02/01/2015						131,806.95			
03/01/2015						131,806.95			
04/01/2015						131,806.95			
05/01/2015						131,806.95			
06/01/2015						131,806.95			
07/01/2015						131,806.95			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2015						131,806.95			
09/01/2015						131,806.95			
10/01/2015	45,894.14	535.43	46,429.57	6,884.12	6,884.12	131,806.95			
11/01/2015						130,822.46			
12/01/2015						130,822.46			
01/01/2016	45,551.34	531.43	46,082.77	6,832.70	6,832.70	130,822.46			
02/01/2016						130,822.46			
03/01/2016						130,822.46			
04/01/2016	45,056.22	525.66	45,581.88	6,739.97	6,739.97	130,822.46			
05/01/2016						130,822.46			
06/01/2016						130,822.46			
07/01/2016	45,056.22	525.66	45,581.88	6,739.97	6,739.97	130,822.46			
08/01/2016						130,822.46			
09/01/2016						130,822.46			
10/01/2016	45,551.34	531.43	46,082.77	6,814.03	6,814.03	130,822.46			
11/01/2016						129,765.57			
12/01/2016						129,765.57			
01/01/2017	45,183.34	527.14	45,710.48	6,758.98	6,758.98	129,765.57			
02/01/2017						129,765.57			
03/01/2017						129,765.57			
04/01/2017	44,201.10	515.68	44,716.78	6,630.16	6,630.16	129,765.57			
05/01/2017						129,765.57			
06/01/2017						129,765.57			
07/01/2017	44,692.22	521.41	45,213.63	6,703.83	6,703.83	129,765.57			
08/01/2017						129,765.57			
09/01/2017						129,765.57			
10/01/2017	45,183.34	527.14	45,710.48	6,777.50	6,777.50	129,765.57			
11/01/2017						128,708.68			
12/01/2017						128,708.68			
01/01/2018	44,815.34	522.85	45,338.19	6,722.30	6,722.30	128,708.68			
02/01/2018						128,708.68			
03/01/2018						128,708.68			
04/01/2018	43,841.10	511.48	44,352.58	6,576.16	6,576.16	128,708.68			
05/01/2018						128,708.68			
06/01/2018						128,708.68			
07/01/2018	44,328.22	517.16	44,845.38	6,649.23	6,649.23	128,708.68			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2018						128,708.68			
09/01/2018						128,708.68			
10/01/2018	44,815.34	522.85	45,338.19	6,722.30	6,722.30	128,708.68			
11/01/2018						127,564.92			
12/01/2018						127,564.92			
01/01/2019	44,417.10	518.20	44,935.30	6,662.56	6,662.56	127,564.92			
02/01/2019						127,564.92			
03/01/2019						127,564.92			
04/01/2019	43,451.51	506.93	43,958.44	6,517.73	6,517.73	127,564.92			
05/01/2019						127,564.92			
06/01/2019						127,564.92			
07/01/2019	43,934.30	512.57	44,446.87	6,590.15	6,590.15	127,564.92			
08/01/2019						127,564.92			
09/01/2019						127,564.92			
10/01/2019	44,417.10	518.20	44,935.30	6,662.56	6,662.56	126,421.17			
11/01/2019						126,421.17			
12/01/2019						126,421.17			
01/01/2020	44,018.85	513.55	44,532.40	6,602.83	6,602.83	126,421.17			
02/01/2020						126,421.17			
03/01/2020						126,421.17			
04/01/2020	43,540.38	507.97	44,048.35	6,513.21	6,513.21	126,421.17			
05/01/2020						126,421.17			
06/01/2020						126,421.17			
07/01/2020	43,540.38	507.97	44,048.35	6,513.21	6,513.21	126,421.17			
08/01/2020						126,421.17			
09/01/2020						126,421.17			
10/01/2020	44,018.85	513.55	44,532.40	6,584.79	6,584.79	125,277.41			
11/01/2020						125,277.41			
12/01/2020						125,277.41			
01/01/2021	43,620.60	508.91	44,129.51	6,525.21	6,525.21	125,277.41			
02/01/2021						125,277.41			
03/01/2021						125,277.41			
04/01/2021	42,672.33	497.84	43,170.17	6,400.85	6,400.85	125,277.41			
05/01/2021						125,277.41			
06/01/2021						125,277.41			
07/01/2021	43,146.47	503.38	43,649.84	6,471.97	6,471.97	125,277.41			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2021						125,277.41			
09/01/2021						125,277.41			
10/01/2021	43,620.60	508.91	44,129.51	6,543.09	6,543.09	125,277.41			
11/01/2021						124,046.79			
12/01/2021						124,046.79			
01/01/2022	43,192.11	503.91	43,696.02	6,478.82	6,478.82	124,046.79			
02/01/2022						124,046.79			
03/01/2022	42,253.15	492.95	42,746.10	6,337.97	6,337.97	124,046.79			
04/01/2022						124,046.79			
05/01/2022						124,046.79			
06/01/2022	42,722.63	498.43	43,221.06	6,408.39	6,408.39	124,046.79			
07/01/2022						124,046.79			
08/01/2022	43,192.11	503.91	43,696.02	6,478.82	6,478.82	122,743.78			
09/01/2022						122,743.78			
10/01/2022	42,738.41	498.61	43,237.03	6,410.76	6,410.76	122,743.78			
01/01/2023						122,743.78			
02/01/2023	41,809.32	487.78	42,297.09	6,271.40	6,271.40	122,743.78			
03/01/2023						122,743.78			
04/01/2023	42,273.86	493.20	42,767.06	6,341.08	6,341.08	122,743.78			
05/01/2023						122,743.78			
06/01/2023	42,738.41	498.61	43,237.03	6,410.76	6,410.76	116,083.94			
07/01/2023						116,083.94			
08/01/2023	40,419.51	471.56	40,891.07	6,062.93	6,062.93	116,083.94			
09/01/2023						116,083.94			
10/01/2023	39,980.16	466.44	40,446.60	5,980.64	5,980.64	116,083.94			
11/01/2023						116,083.94			
12/01/2023	39,980.16	466.44	40,446.60	5,980.64	5,980.64	116,083.94			
01/01/2024						116,083.94			
02/01/2024						116,083.94			
03/01/2024						116,083.94			
04/01/2024						116,083.94			
05/01/2024						116,083.94			
06/01/2024						116,083.94			
07/01/2024						116,083.94			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2024						116,083.94			
09/01/2024						116,083.94			
10/01/2024	40,419.51	471.56	40,891.07	6,046.36	6,046.36	116,083.94			
11/01/2024						109,105.58			
12/01/2024						109,105.58			
01/01/2025	37,989.70	443.21	38,432.91	5,682.89	5,682.89	109,105.58			
02/01/2025						109,105.58			
03/01/2025	37,163.84	433.58	37,597.41	5,574.58	5,574.58	109,105.58			
04/01/2025						109,105.58			
05/01/2025	37,576.77	438.40	38,015.16	5,636.52	5,636.52	109,105.58			
06/01/2025						109,105.58			
07/01/2025	37,989.70	443.21	38,432.91	5,698.45	5,698.45	109,105.58			
08/01/2025						109,105.58			
09/01/2025	35,454.03	413.63	35,867.66	5,318.10	5,318.10	101,823.19			
10/01/2025						101,823.19			
11/01/2025	34,683.29	404.64	35,087.93	5,202.49	5,202.49	101,823.19			
12/01/2025						101,823.19			
01/01/2026	35,068.66	409.13	35,477.79	5,260.30	5,260.30	101,823.19			
02/01/2026						101,823.19			
03/01/2026	35,454.03	413.63	35,867.66	5,318.10	5,318.10	101,823.19			
04/01/2026						101,823.19			
05/01/2026	32,837.70	383.11	33,220.81	4,925.65	4,925.65	94,309.15			
06/01/2026						94,309.15			
07/01/2026	32,123.84	374.78	32,498.61	4,818.58	4,818.58	94,309.15			
08/01/2026						94,309.15			
09/01/2026	32,480.77	378.94	32,859.71	4,872.12	4,872.12	94,309.15			
10/01/2026						94,309.15			
11/01/2026						94,309.15			
12/01/2026						94,309.15			
01/01/2027						94,309.15			
02/01/2027						94,309.15			
03/01/2027						94,309.15			
04/01/2027						94,309.15			
05/01/2027						94,309.15			
06/01/2027						94,309.15			
07/01/2027						94,309.15			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2027						94,309.15			
09/01/2027						94,309.15			
10/01/2027	32,837.70	383.11	33,220.81	4,925.65	4,925.65	94,309.15			
11/01/2027						86,476.60			
12/01/2027						86,476.60			
01/01/2028	30,110.47	351.29	30,461.75	4,516.57	4,516.57	86,476.60			
02/01/2028						86,476.60			
03/01/2028						86,476.60			
04/01/2028	29,783.18	347.47	30,130.65	4,455.27	4,455.27	86,476.60			
05/01/2028						86,476.60			
06/01/2028						86,476.60			
07/01/2028	29,783.18	347.47	30,130.65	4,455.27	4,455.27	86,476.60			
08/01/2028						86,476.60			
09/01/2028						86,476.60			
10/01/2028	30,110.47	351.29	30,461.75	4,504.23	4,504.23	86,476.60			
11/01/2028						78,340.01			
12/01/2028						78,340.01			
01/01/2029	27,277.37	318.24	27,595.61	4,080.43	4,080.43	78,340.01			
02/01/2029						78,340.01			
03/01/2029						78,340.01			
04/01/2029	26,684.38	311.32	26,995.70	4,002.66	4,002.66	78,340.01			
05/01/2029						78,340.01			
06/01/2029						78,340.01			
07/01/2029	26,980.88	314.78	27,295.65	4,047.13	4,047.13	78,340.01			
08/01/2029						78,340.01			
09/01/2029						78,340.01			
10/01/2029	27,277.37	318.24	27,595.61	4,091.61	4,091.61	78,340.01			
11/01/2029						69,812.51			
12/01/2029						69,812.51			
01/01/2030	24,308.16	283.60	24,591.76	3,646.22	3,646.22	69,812.51			
02/01/2030						69,812.51			
03/01/2030						69,812.51			
04/01/2030	23,779.73	277.43	24,057.16	3,566.96	3,566.96	69,812.51			
05/01/2030						69,812.51			
06/01/2030						69,812.51			
07/01/2030	24,043.95	280.51	24,324.46	3,606.59	3,606.59	69,812.51			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2030						69,812.51			
09/01/2030						69,812.51			
10/01/2030	24,308.16	283.60	24,591.76	3,646.22	3,646.22	69,812.51			
11/01/2030						60,966.51			
12/01/2030						60,966.51			
01/01/2031	21,228.05	247.66	21,475.72	3,184.21	3,184.21	60,966.51			
02/01/2031						60,966.51			
03/01/2031						60,966.51			
04/01/2031	20,766.58	242.28	21,008.85	3,114.99	3,114.99	60,966.51			
05/01/2031						60,966.51			
06/01/2031						60,966.51			
07/01/2031	20,997.32	244.97	21,242.28	3,149.60	3,149.60	60,966.51			
08/01/2031						60,966.51			
09/01/2031						60,966.51			
10/01/2031	21,228.05	247.66	21,475.72	3,184.21	3,184.21	60,966.51			
11/01/2031						51,744.07			
12/01/2031						51,744.07			
01/01/2032	18,016.88	210.20	18,227.07	2,702.53	2,702.53	51,744.07			
02/01/2032						51,744.07			
03/01/2032						51,744.07			
04/01/2032	17,821.04	207.91	18,028.95	2,665.85	2,665.85	51,744.07			
05/01/2032						51,744.07			
06/01/2032						51,744.07			
07/01/2032	17,821.04	207.91	18,028.95	2,665.85	2,665.85	51,744.07			
08/01/2032						51,744.07			
09/01/2032						51,744.07			
10/01/2032	18,016.88	210.20	18,227.07	2,695.15	2,695.15	51,744.07			
11/01/2032						42,203.13			
12/01/2032						42,203.13			
01/01/2033	14,694.79	171.44	14,866.23	2,198.20	2,198.20	42,203.13			
02/01/2033						42,203.13			
03/01/2033						42,203.13			
04/01/2033	14,375.34	167.71	14,543.05	2,156.30	2,156.30	42,203.13			
05/01/2033						42,203.13			
06/01/2033						42,203.13			
07/01/2033	14,535.07	169.58	14,704.64	2,180.26	2,180.26	42,203.13			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
08/01/2033						42,203.13			
09/01/2033						42,203.13			
10/01/2033	14,694.79	171.44	14,866.23	2,204.22	2,204.22	42,203.13			
11/01/2033						32,271.28			
12/01/2033						32,271.28			
01/01/2034	11,236.60	131.09	11,367.70	1,685.49	1,685.49	32,271.28			
02/01/2034						32,271.28			
03/01/2034						32,271.28			
04/01/2034	10,992.33	128.24	11,120.57	1,648.85	1,648.85	32,271.28			
05/01/2034						32,271.28			
06/01/2034						32,271.28			
07/01/2034	11,114.47	129.67	11,244.13	1,667.17	1,667.17	32,271.28			
08/01/2034						32,271.28			
09/01/2034						32,271.28			
10/01/2034	11,236.60	131.09	11,367.70	1,685.49	1,685.49	32,271.28			
11/01/2034						21,934.04			
12/01/2034						21,934.04			
01/01/2035	7,637.26	89.10	7,726.36	1,145.59	1,145.59	21,934.04			
02/01/2035						21,934.04			
03/01/2035						21,934.04			
04/01/2035	7,471.23	87.16	7,558.40	1,120.68	1,120.68	21,934.04			
05/01/2035						21,934.04			
06/01/2035						21,934.04			
07/01/2035	7,554.25	88.13	7,642.38	1,133.14	1,133.14	21,934.04			
08/01/2035						21,934.04			
09/01/2035						21,934.04			
10/01/2035	7,637.26	89.10	7,726.36	1,145.59	1,145.59	21,934.04			
11/01/2035						11,205.91			
12/01/2035						11,205.91			
01/01/2036	3,901.81	45.52	3,947.33	585.27	585.27	11,205.91			
02/01/2036						11,205.91			
03/01/2036						11,205.91			
04/01/2036	3,859.40	45.03	3,904.42	577.33	577.33	11,205.91			
05/01/2036						11,205.91			
06/01/2036						11,205.91			

FORMULA VERIFICATION

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	V1	V2	V3	V4	V5	V6	V7	V8	V9
07/01/2036	3,859.40	45.03	3,904.42	577.33	577.33	11,205.91			
08/01/2036						11,205.91			
09/01/2036	3,901.81	45.52	3,947.33	583.67	583.67	11,205.91			
10/01/2036									
	3,981,045.64	46,423.26	4,027,468.91	596,743.15	596,743.15	34,554,755.14	36.57	3,917,064.81	36.57

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UNDERWRITER'S DISCOUNT

City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Underwriter's Discount	\$/1000	Amount
Average Takedown	1.50000	71,437.50
Management Fee	1.00000	47,625.00
Underwriter's Counsel	0.52493	25,000.00
SIFMA	0.03000	1,428.75
CDIAC	0.06299	3,000.00
Cal PSA	0.01000	476.25
DTC	0.00598	285.00
CUSIP	0.00292	139.00
Day Loan	0.01250	595.38
Municipal Service Fee	0.01260	600.00
Travel/Comm/Misc.	0.07000	3,333.75
	3.23193	153,920.63

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FORM 8038 STATISTICS

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Dated Date 05/30/2008  
 Delivery Date 05/30/2008

Bond Component	Date	Principal	Coupon	Price	Issue Price	Redemption at Maturity
Term Bonds due 2036:						
	10/01/2008	290,000.00	3.475%	100.000	290,000.00	290,000.00
	10/01/2009	285,000.00	3.475%	100.000	285,000.00	285,000.00
	10/01/2010	285,000.00	3.475%	100.000	285,000.00	285,000.00
	10/01/2011	285,000.00	3.475%	100.000	285,000.00	285,000.00
	10/01/2012	310,000.00	3.475%	100.000	310,000.00	310,000.00
	10/01/2013	310,000.00	3.475%	100.000	310,000.00	310,000.00
	10/01/2014	340,000.00	3.475%	100.000	340,000.00	340,000.00
	10/01/2015	340,000.00	3.475%	100.000	340,000.00	340,000.00
	10/01/2016	365,000.00	3.475%	100.000	365,000.00	365,000.00
	10/01/2017	365,000.00	3.475%	100.000	365,000.00	365,000.00
	10/01/2018	395,000.00	3.475%	100.000	395,000.00	395,000.00
	10/01/2019	395,000.00	3.475%	100.000	395,000.00	395,000.00
	10/01/2020	395,000.00	3.475%	100.000	395,000.00	395,000.00
	10/01/2021	425,000.00	3.475%	100.000	425,000.00	425,000.00
	10/01/2022	450,000.00	3.475%	100.000	450,000.00	450,000.00
	10/01/2023	2,300,000.00	3.475%	100.000	2,300,000.00	2,300,000.00
	10/01/2024	2,410,000.00	3.475%	100.000	2,410,000.00	2,410,000.00
	10/01/2025	2,515,000.00	3.475%	100.000	2,515,000.00	2,515,000.00
	10/01/2026	2,595,000.00	3.475%	100.000	2,595,000.00	2,595,000.00
	10/01/2027	2,705,000.00	3.475%	100.000	2,705,000.00	2,705,000.00
	10/01/2028	2,810,000.00	3.475%	100.000	2,810,000.00	2,810,000.00
	10/01/2029	2,945,000.00	3.475%	100.000	2,945,000.00	2,945,000.00
	10/01/2030	3,055,000.00	3.475%	100.000	3,055,000.00	3,055,000.00
	10/01/2031	3,185,000.00	3.475%	100.000	3,185,000.00	3,185,000.00
	10/01/2032	3,295,000.00	3.475%	100.000	3,295,000.00	3,295,000.00
	10/01/2033	3,430,000.00	3.475%	100.000	3,430,000.00	3,430,000.00
	10/01/2034	3,570,000.00	3.475%	100.000	3,570,000.00	3,570,000.00
	10/01/2035	3,705,000.00	3.475%	100.000	3,705,000.00	3,705,000.00
	10/01/2036	3,870,000.00	3.475%	100.000	3,870,000.00	3,870,000.00
		47,625,000.00			47,625,000.00	47,625,000.00

	Maturity Date	Interest Rate	Issue Price	Stated Redemption at Maturity	Weighted Average Maturity	Yield	Net Interest Cost
Final Maturity	10/01/2036	3.475%	3,870,000.00	3,870,000.00			
Entire Issue			47,625,000.00	47,625,000.00	20.8812	4.0477%	3.4747%

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FORM 8038 STATISTICS

City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Proceeds used for accrued interest	0.00
Proceeds used for bond issuance costs (including underwriters' discount)	460,872.25
Proceeds used for credit enhancement	889,091.18
Proceeds allocated to reasonably required reserve or replacement fund	1,834,552.07
Proceeds used to currently refund prior issues	46,275,000.00
Proceeds used to advance refund prior issues	0.00
Remaining weighted average maturity of the bonds to be currently refunded	20.8888
Remaining weighted average maturity of the bonds to be advance refunded	0.0000

FORM 8038 STATISTICS

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Refunded Bonds

Bond Component	Date	Principal	Coupon	Price	Issue Price
Water Revenue Certificates of Participation:					
TERM2036	10/01/2008	250,000.00	3.480%	100.000	250,000.00
TERM2036	10/01/2009	275,000.00	3.480%	100.000	275,000.00
TERM2036	10/01/2010	275,000.00	3.480%	100.000	275,000.00
TERM2036	10/01/2011	275,000.00	3.480%	100.000	275,000.00
TERM2036	10/01/2012	300,000.00	3.480%	100.000	300,000.00
TERM2036	10/01/2013	300,000.00	3.480%	100.000	300,000.00
TERM2036	10/01/2014	325,000.00	3.480%	100.000	325,000.00
TERM2036	10/01/2015	325,000.00	3.480%	100.000	325,000.00
TERM2036	10/01/2016	350,000.00	3.480%	100.000	350,000.00
TERM2036	10/01/2017	350,000.00	3.480%	100.000	350,000.00
TERM2036	10/01/2018	375,000.00	3.480%	100.000	375,000.00
TERM2036	10/01/2019	375,000.00	3.480%	100.000	375,000.00
TERM2036	10/01/2020	375,000.00	3.480%	100.000	375,000.00
TERM2036	10/01/2021	400,000.00	3.480%	100.000	400,000.00
TERM2036	10/01/2022	425,000.00	3.480%	100.000	425,000.00
TERM2036	10/01/2023	2,275,000.00	3.480%	100.000	2,275,000.00
TERM2036	10/01/2024	2,375,000.00	3.480%	100.000	2,375,000.00
TERM2036	10/01/2025	2,475,000.00	3.480%	100.000	2,475,000.00
TERM2036	10/01/2026	2,550,000.00	3.480%	100.000	2,550,000.00
TERM2036	10/01/2027	2,650,000.00	3.480%	100.000	2,650,000.00
TERM2036	10/01/2028	2,750,000.00	3.480%	100.000	2,750,000.00
TERM2036	10/01/2029	2,875,000.00	3.480%	100.000	2,875,000.00
TERM2036	10/01/2030	2,975,000.00	3.480%	100.000	2,975,000.00
TERM2036	10/01/2031	3,100,000.00	3.480%	100.000	3,100,000.00
TERM2036	10/01/2032	3,200,000.00	3.480%	100.000	3,200,000.00
TERM2036	10/01/2033	3,325,000.00	3.480%	100.000	3,325,000.00
TERM2036	10/01/2034	3,450,000.00	3.480%	100.000	3,450,000.00
TERM2036	10/01/2035	3,575,000.00	3.480%	100.000	3,575,000.00
TERM2036	10/01/2036	3,725,000.00	3.480%	100.000	3,725,000.00
					46,275,000.00

	Last Call Date	Issue Date	Remaining Weighted Average Maturity
Water Revenue Certificates of Participation	05/30/2008	11/02/2006	20.8888
All Refunded Issues	05/30/2008		20.8888

PROOF OF ARBITRAGE YIELD

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Debt Service	Expenses	Total	Present Value to 05/30/2008 @ 4.0476908%
06/01/2008	4,596.74		4,596.74	4,596.23
07/01/2008	137,902.16	16,873.95	154,776.11	154,242.94
08/01/2008	137,902.16		137,902.16	136,968.96
09/01/2008	137,902.16		137,902.16	136,512.33
10/01/2008	427,902.16	48,576.63	476,478.79	470,104.17
11/01/2008	137,062.44		137,062.44	134,777.91
12/01/2008	137,062.44		137,062.44	134,328.58
01/01/2009	137,062.44	48,280.84	185,343.28	181,040.83
02/01/2009	137,062.44		137,062.44	133,434.42
03/01/2009	137,062.44		137,062.44	132,989.57
04/01/2009	137,062.44	47,231.25	184,293.69	178,221.18
05/01/2009	137,062.44		137,062.44	132,104.32
06/01/2009	137,062.44		137,062.44	131,663.91
07/01/2009	137,062.44	47,756.04	184,818.48	176,947.08
08/01/2009	137,062.44		137,062.44	130,787.48
09/01/2009	137,062.44		137,062.44	130,351.46
10/01/2009	422,062.44	48,280.84	470,343.28	445,822.62
11/01/2009	136,237.20		136,237.20	128,704.16
12/01/2009	136,237.20		136,237.20	128,275.08
01/01/2010	136,237.20	47,990.14	184,227.34	172,882.24
02/01/2010	136,237.20		136,237.20	127,421.21
03/01/2010	136,237.20		136,237.20	126,996.41
04/01/2010	136,237.20	46,946.88	183,184.08	170,189.67
05/01/2010	136,237.20		136,237.20	126,151.06
06/01/2010	136,237.20		136,237.20	125,730.49
07/01/2010	136,237.20	47,468.51	183,705.71	168,972.99
08/01/2010	136,237.20		136,237.20	124,893.56
09/01/2010	136,237.20		136,237.20	124,477.19
10/01/2010	421,237.20	47,990.14	469,227.34	427,294.29
11/01/2010	135,411.95		135,411.95	122,899.61
12/01/2010	135,411.95		135,411.95	122,489.88
01/01/2011	135,411.95	47,699.45	183,111.40	165,085.27
02/01/2011	135,411.95		135,411.95	121,674.52
03/01/2011	135,411.95		135,411.95	121,268.88
04/01/2011	135,411.95	46,662.50	182,074.45	162,514.12
05/01/2011	135,411.95		135,411.95	120,461.65
06/01/2011	135,411.95		135,411.95	120,060.05
07/01/2011	135,411.95	47,180.97	182,592.92	161,352.31
08/01/2011	135,411.95		135,411.95	119,260.86
09/01/2011	135,411.95		135,411.95	118,863.27
10/01/2011	420,411.95	47,699.45	468,111.40	409,533.67
11/01/2011	134,586.71		134,586.71	117,352.49
12/01/2011	134,586.71		134,586.71	116,961.25
01/01/2012	134,586.71	47,408.75	181,995.46	157,634.08
02/01/2012	134,586.71		134,586.71	116,182.70
03/01/2012	134,586.71		134,586.71	115,795.36
04/01/2012	134,586.71	46,893.44	181,480.15	155,620.87
05/01/2012	134,586.71		134,586.71	115,024.57
06/01/2012	134,586.71		134,586.71	114,641.09
07/01/2012	134,586.71	46,893.44	181,480.15	154,069.61
08/01/2012	134,586.71		134,586.71	113,877.98

PROOF OF ARBITRAGE YIELD  
City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Date	Debt Service	Expenses	Total	Present Value to 05/30/2008 @ 4.0476908%
09/01/2012	134,586.71		134,586.71	113,498.33
10/01/2012	444,586.71	47,408.75	491,995.46	413,521.52
11/01/2012	133,689.08		133,689.08	111,990.88
12/01/2012	133,689.08		133,689.08	111,617.53
01/01/2013	133,689.08	47,092.56	180,781.64	150,432.09
02/01/2013	133,689.08		133,689.08	110,874.54
03/01/2013	133,689.08		133,689.08	110,504.90
04/01/2013	133,689.08	46,068.81	179,757.89	148,089.17
05/01/2013	133,689.08		133,689.08	109,769.32
06/01/2013	133,689.08		133,689.08	109,403.37
07/01/2013	133,689.08	46,580.68	180,269.76	147,030.48
08/01/2013	133,689.08		133,689.08	108,675.12
09/01/2013	133,689.08		133,689.08	108,312.82
10/01/2013	443,689.08	47,092.56	490,781.64	396,298.07
11/01/2013	132,791.45		132,791.45	106,869.43
12/01/2013	132,791.45		132,791.45	106,513.14
01/01/2014	132,791.45	46,776.36	179,567.81	143,552.67
02/01/2014	132,791.45		132,791.45	105,804.13
03/01/2014	132,791.45		132,791.45	105,451.40
04/01/2014	132,791.45	45,759.48	178,550.93	141,316.89
05/01/2014	132,791.45		132,791.45	104,749.46
06/01/2014	132,791.45		132,791.45	104,400.24
07/01/2014	132,791.45	46,267.92	179,059.37	140,306.62
08/01/2014	132,791.45		132,791.45	103,705.30
09/01/2014	132,791.45		132,791.45	103,359.56
10/01/2014	472,791.45	46,776.36	519,567.81	403,062.60
11/01/2014	131,806.95		131,806.95	101,910.35
12/01/2014	131,806.95		131,806.95	101,570.60
01/01/2015	131,806.95	46,429.57	178,236.52	136,891.39
02/01/2015	131,806.95		131,806.95	100,894.49
03/01/2015	131,806.95		131,806.95	100,558.13
04/01/2015	131,806.95	45,420.23	177,227.18	134,759.35
05/01/2015	131,806.95		131,806.95	99,888.76
06/01/2015	131,806.95		131,806.95	99,555.75
07/01/2015	131,806.95	45,924.90	177,731.85	133,795.96
08/01/2015	131,806.95		131,806.95	98,893.05
09/01/2015	131,806.95		131,806.95	98,563.36
10/01/2015	471,806.95	46,429.57	518,236.52	386,237.92
11/01/2015	130,822.46		130,822.46	97,175.98
12/01/2015	130,822.46		130,822.46	96,852.01
01/01/2016	130,822.46	46,082.77	176,905.23	130,531.92
02/01/2016	130,822.46		130,822.46	96,207.31
03/01/2016	130,822.46		130,822.46	95,886.57
04/01/2016	130,822.46	45,581.88	176,404.34	128,864.85
05/01/2016	130,822.46		130,822.46	95,248.30
06/01/2016	130,822.46		130,822.46	94,930.76
07/01/2016	130,822.46	45,581.88	176,404.34	127,580.30
08/01/2016	130,822.46		130,822.46	94,298.85
09/01/2016	130,822.46		130,822.46	93,984.47
10/01/2016	495,822.46	46,082.77	541,905.23	388,013.52
11/01/2016	129,765.57		129,765.57	92,604.63

PROOF OF ARBITRAGE YIELD  
City of Modesto  
Water Refunding Revenue Certificates  
of Participation, 2008 Series A  
(Refunding of 2006 Water Revenue COPs)  
\*\*\*FINAL SIZING\*\*\*

Date	Debt Service	Expenses	Total	Present Value to 05/30/2008 @ 4.0476908%
12/01/2016	129,765.57		129,765.57	92,295.90
01/01/2017	129,765.57	45,710.48	175,476.05	124,391.45
02/01/2017	129,765.57		129,765.57	91,681.53
03/01/2017	129,765.57		129,765.57	91,375.88
04/01/2017	129,765.57	44,716.78	174,482.35	122,454.10
05/01/2017	129,765.57		129,765.57	90,767.64
06/01/2017	129,765.57		129,765.57	90,465.03
07/01/2017	129,765.57	45,213.63	174,979.20	121,578.68
08/01/2017	129,765.57		129,765.57	89,862.85
09/01/2017	129,765.57		129,765.57	89,563.26
10/01/2017	494,765.57	45,710.48	540,476.05	371,789.05
11/01/2017	128,708.68		128,708.68	88,242.48
12/01/2017	128,708.68		128,708.68	87,948.29
01/01/2018	128,708.68	45,338.19	174,046.87	118,531.97
02/01/2018	128,708.68		128,708.68	87,362.86
03/01/2018	128,708.68		128,708.68	87,071.61
04/01/2018	128,708.68	44,352.58	173,061.26	116,685.88
05/01/2018	128,708.68		128,708.68	86,492.01
06/01/2018	128,708.68		128,708.68	86,203.66
07/01/2018	128,708.68	44,845.38	173,554.06	115,851.69
08/01/2018	128,708.68		128,708.68	85,629.85
09/01/2018	128,708.68		128,708.68	85,344.37
10/01/2018	523,708.68	45,338.19	569,046.87	376,066.63
11/01/2018	127,564.92		127,564.92	84,022.91
12/01/2018	127,564.92		127,564.92	83,742.80
01/01/2019	127,564.92	44,935.30	172,500.22	112,864.03
02/01/2019	127,564.92		127,564.92	83,185.36
03/01/2019	127,564.92		127,564.92	82,908.03
04/01/2019	127,564.92	43,958.44	171,523.36	111,106.21
05/01/2019	127,564.92		127,564.92	82,356.15
06/01/2019	127,564.92		127,564.92	82,081.59
07/01/2019	127,564.92	44,446.87	172,011.79	110,311.92
08/01/2019	127,564.92		127,564.92	81,535.21
09/01/2019	127,564.92		127,564.92	81,263.39
10/01/2019	522,564.92	44,935.30	567,500.22	360,312.57
11/01/2019	126,421.17		126,421.17	79,998.70
12/01/2019	126,421.17		126,421.17	79,731.99
01/01/2020	126,421.17	44,532.40	170,953.57	107,458.48
02/01/2020	126,421.17		126,421.17	79,201.25
03/01/2020	126,421.17		126,421.17	78,937.21
04/01/2020	126,421.17	44,048.35	170,469.52	106,086.09
05/01/2020	126,421.17		126,421.17	78,411.76
06/01/2020	126,421.17		126,421.17	78,150.35
07/01/2020	126,421.17	44,048.35	170,469.52	105,028.60
08/01/2020	126,421.17		126,421.17	77,630.14
09/01/2020	126,421.17		126,421.17	77,371.34
10/01/2020	521,421.17	44,532.40	565,953.57	345,215.91
11/01/2020	125,277.41		125,277.41	76,160.97
12/01/2020	125,277.41		125,277.41	75,907.07
01/01/2021	125,277.41	44,129.51	169,406.92	102,303.46
02/01/2021	125,277.41		125,277.41	75,401.79

PROOF OF ARBITRAGE YIELD

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Debt Service	Expenses	Total	Present Value to 05/30/2008 @ 4.0476908%
03/01/2021	125,277.41		125,277.41	75,150.41
04/01/2021	125,277.41	43,170.17	168,447.58	100,710.12
05/01/2021	125,277.41		125,277.41	74,650.17
06/01/2021	125,277.41		125,277.41	74,401.30
07/01/2021	125,277.41	43,649.84	168,927.25	99,990.14
08/01/2021	125,277.41		125,277.41	73,906.04
09/01/2021	125,277.41		125,277.41	73,659.65
10/01/2021	550,277.41	44,129.51	594,406.92	348,329.68
11/01/2021	124,046.79		124,046.79	72,450.58
12/01/2021	124,046.79		124,046.79	72,209.04
01/01/2022	124,046.79	43,696.02	167,742.81	97,319.46
02/01/2022	124,046.79		124,046.79	71,728.38
03/01/2022	124,046.79		124,046.79	71,489.25
04/01/2022	124,046.79	42,746.10	166,792.89	95,803.74
05/01/2022	124,046.79		124,046.79	71,013.38
06/01/2022	124,046.79		124,046.79	70,776.63
07/01/2022	124,046.79	43,221.06	167,267.85	95,118.85
08/01/2022	124,046.79		124,046.79	70,305.51
09/01/2022	124,046.79		124,046.79	70,071.12
10/01/2022	574,046.79	43,696.02	617,742.81	347,785.08
11/01/2022	122,743.78		122,743.78	68,873.55
12/01/2022	122,743.78		122,743.78	68,643.94
01/01/2023	122,743.78	43,237.03	165,980.81	92,514.60
02/01/2023	122,743.78		122,743.78	68,187.01
03/01/2023	122,743.78		122,743.78	67,959.68
04/01/2023	122,743.78	42,297.09	165,040.87	91,073.72
05/01/2023	122,743.78		122,743.78	67,507.31
06/01/2023	122,743.78		122,743.78	67,282.25
07/01/2023	122,743.78	42,767.06	165,510.84	90,422.64
08/01/2023	122,743.78		122,743.78	66,834.38
09/01/2023	122,743.78		122,743.78	66,611.57
10/01/2023	2,422,743.78	43,237.03	2,465,980.81	1,333,796.48
11/01/2023	116,083.94		116,083.94	62,578.01
12/01/2023	116,083.94		116,083.94	62,369.38
01/01/2024	116,083.94	40,891.07	156,975.01	84,058.10
02/01/2024	116,083.94		116,083.94	61,954.22
03/01/2024	116,083.94		116,083.94	61,747.67
04/01/2024	116,083.94	40,446.60	156,530.54	82,984.55
05/01/2024	116,083.94		116,083.94	61,336.65
06/01/2024	116,083.94		116,083.94	61,132.16
07/01/2024	116,083.94	40,446.60	156,530.54	82,157.35
08/01/2024	116,083.94		116,083.94	60,725.23
09/01/2024	116,083.94		116,083.94	60,522.79
10/01/2024	2,526,083.94	40,891.07	2,566,975.01	1,333,884.23
11/01/2024	109,105.58		109,105.58	56,505.82
12/01/2024	109,105.58		109,105.58	56,317.44
01/01/2025	109,105.58	38,432.91	147,538.49	75,901.61
02/01/2025	109,105.58		109,105.58	55,942.56
03/01/2025	109,105.58		109,105.58	55,756.06
04/01/2025	109,105.58	37,597.41	146,702.99	74,719.47
05/01/2025	109,105.58		109,105.58	55,384.91

PROOF OF ARBITRAGE YIELD

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Debt Service	Expenses	Total	Present Value to 05/30/2008 @ 4.0476908%
06/01/2025	109,105.58		109,105.58	55,200.27
07/01/2025	109,105.58	38,015.16	147,120.74	74,185.30
08/01/2025	109,105.58		109,105.58	54,832.83
09/01/2025	109,105.58		109,105.58	54,650.02
10/01/2025	2,624,105.58	38,432.91	2,662,538.49	1,329,195.96
11/01/2025	101,823.19		101,823.19	50,662.84
12/01/2025	101,823.19		101,823.19	50,493.94
01/01/2026	101,823.19	35,867.66	137,690.85	68,053.01
02/01/2026	101,823.19		101,823.19	50,157.82
03/01/2026	101,823.19		101,823.19	49,990.61
04/01/2026	101,823.19	35,087.93	136,911.12	66,993.11
05/01/2026	101,823.19		101,823.19	49,657.84
06/01/2026	101,823.19		101,823.19	49,492.29
07/01/2026	101,823.19	35,477.79	137,300.98	66,514.18
08/01/2026	101,823.19		101,823.19	49,162.84
09/01/2026	101,823.19		101,823.19	48,998.94
10/01/2026	2,696,823.19	35,867.66	2,732,690.85	1,310,630.42
11/01/2026	94,309.15		94,309.15	45,080.97
12/01/2026	94,309.15		94,309.15	44,930.68
01/01/2027	94,309.15	33,220.81	127,529.96	60,555.16
02/01/2027	94,309.15		94,309.15	44,631.60
03/01/2027	94,309.15		94,309.15	44,482.80
04/01/2027	94,309.15	32,498.61	126,807.76	59,612.03
05/01/2027	94,309.15		94,309.15	44,186.70
06/01/2027	94,309.15		94,309.15	44,039.39
07/01/2027	94,309.15	32,859.71	127,168.86	59,185.86
08/01/2027	94,309.15		94,309.15	43,746.24
09/01/2027	94,309.15		94,309.15	43,600.40
10/01/2027	2,799,309.15	33,220.81	2,832,529.96	1,305,151.35
11/01/2027	86,476.60		86,476.60	39,713.18
12/01/2027	86,476.60		86,476.60	39,580.79
01/01/2028	86,476.60	30,461.75	116,938.35	53,344.85
02/01/2028	86,476.60		86,476.60	39,317.31
03/01/2028	86,476.60		86,476.60	39,186.24
04/01/2028	86,476.60	30,130.65	116,607.25	52,663.56
05/01/2028	86,476.60		86,476.60	38,925.39
06/01/2028	86,476.60		86,476.60	38,795.62
07/01/2028	86,476.60	30,130.65	116,607.25	52,138.60
08/01/2028	86,476.60		86,476.60	38,537.38
09/01/2028	86,476.60		86,476.60	38,408.90
10/01/2028	2,896,476.60	30,461.75	2,926,938.35	1,295,676.44
11/01/2028	78,340.01		78,340.01	34,563.39
12/01/2028	78,340.01		78,340.01	34,448.16
01/01/2029	78,340.01	27,595.61	105,935.62	46,427.38
02/01/2029	78,340.01		78,340.01	34,218.86
03/01/2029	78,340.01		78,340.01	34,104.78
04/01/2029	78,340.01	26,995.70	105,335.71	45,704.29
05/01/2029	78,340.01		78,340.01	33,877.76
06/01/2029	78,340.01		78,340.01	33,764.81
07/01/2029	78,340.01	27,295.65	105,635.66	45,377.55
08/01/2029	78,340.01		78,340.01	33,540.06

PROOF OF ARBITRAGE YIELD

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Debt Service	Expenses	Total	Present Value to 05/30/2008 @ 4.0476908%
09/01/2029	78,340.01		78,340.01	33,428.24
10/01/2029	3,023,340.01	27,595.61	3,050,935.62	1,297,515.79
11/01/2029	69,812.51		69,812.51	29,591.20
12/01/2029	69,812.51		69,812.51	29,492.55
01/01/2030	69,812.51	24,591.76	94,404.27	39,748.47
02/01/2030	69,812.51		69,812.51	29,296.23
03/01/2030	69,812.51		69,812.51	29,198.56
04/01/2030	69,812.51	24,057.16	93,869.67	39,129.40
05/01/2030	69,812.51		69,812.51	29,004.20
06/01/2030	69,812.51		69,812.51	28,907.51
07/01/2030	69,812.51	24,324.46	94,136.97	38,849.67
08/01/2030	69,812.51		69,812.51	28,715.08
09/01/2030	69,812.51		69,812.51	28,619.35
10/01/2030	3,124,812.51	24,591.76	3,149,404.27	1,286,781.01
11/01/2030	60,966.51		60,966.51	24,826.60
12/01/2030	60,966.51		60,966.51	24,743.83
01/01/2031	60,966.51	21,475.72	82,442.23	33,348.41
02/01/2031	60,966.51		60,966.51	24,579.13
03/01/2031	60,966.51		60,966.51	24,497.18
04/01/2031	60,966.51	21,008.85	81,975.36	32,829.02
05/01/2031	60,966.51		60,966.51	24,334.12
06/01/2031	60,966.51		60,966.51	24,252.99
07/01/2031	60,966.51	21,242.28	82,208.79	32,594.32
08/01/2031	60,966.51		60,966.51	24,091.55
09/01/2031	60,966.51		60,966.51	24,011.23
10/01/2031	3,245,966.51	21,475.72	3,267,442.23	1,282,569.10
11/01/2031	51,744.07		51,744.07	20,243.39
12/01/2031	51,744.07		51,744.07	20,175.90
01/01/2032	51,744.07	18,227.07	69,971.14	27,191.99
02/01/2032	51,744.07		51,744.07	20,041.60
03/01/2032	51,744.07		51,744.07	19,974.78
04/01/2032	51,744.07	18,028.95	69,773.02	26,844.71
05/01/2032	51,744.07		51,744.07	19,841.82
06/01/2032	51,744.07		51,744.07	19,775.67
07/01/2032	51,744.07	18,028.95	69,773.02	26,577.12
08/01/2032	51,744.07		51,744.07	19,644.03
09/01/2032	51,744.07		51,744.07	19,578.54
10/01/2032	3,346,744.07	18,227.07	3,364,971.14	1,268,968.44
11/01/2032	42,203.13		42,203.13	15,862.22
12/01/2032	42,203.13		42,203.13	15,809.33
01/01/2033	42,203.13	14,866.23	57,069.36	21,306.97
02/01/2033	42,203.13		42,203.13	15,704.10
03/01/2033	42,203.13		42,203.13	15,651.74
04/01/2033	42,203.13	14,543.05	56,746.18	20,975.12
05/01/2033	42,203.13		42,203.13	15,547.56
06/01/2033	42,203.13		42,203.13	15,495.72
07/01/2033	42,203.13	14,704.64	56,907.77	20,825.17
08/01/2033	42,203.13		42,203.13	15,392.58
09/01/2033	42,203.13		42,203.13	15,341.26
10/01/2033	3,472,203.13	14,866.23	3,487,069.36	1,263,358.73
11/01/2033	32,271.28		32,271.28	11,652.85

PROOF OF ARBITRAGE YIELD

City of Modesto  
 Water Refunding Revenue Certificates  
 of Participation, 2008 Series A  
 (Refunding of 2006 Water Revenue COPs)  
 \*\*\*FINAL SIZING\*\*\*

Date	Debt Service	Expenses	Total	Present Value to 05/30/2008 @ 4.0476908%
12/01/2033	32,271.28		32,271.28	11,614.00
01/01/2034	32,271.28	11,367.70	43,638.98	15,652.72
02/01/2034	32,271.28		32,271.28	11,536.69
03/01/2034	32,271.28		32,271.28	11,498.23
04/01/2034	32,271.28	11,120.57	43,391.85	15,408.93
05/01/2034	32,271.28		32,271.28	11,421.69
06/01/2034	32,271.28		32,271.28	11,383.61
07/01/2034	32,271.28	11,244.13	43,515.41	15,298.77
08/01/2034	32,271.28		32,271.28	11,307.84
09/01/2034	32,271.28		32,271.28	11,270.14
10/01/2034	3,602,271.28	11,367.70	3,613,638.98	1,257,788.11
11/01/2034	21,934.04		21,934.04	7,609.06
12/01/2034	21,934.04		21,934.04	7,583.69
01/01/2035	21,934.04	7,726.36	29,660.40	10,220.89
02/01/2035	21,934.04		21,934.04	7,533.21
03/01/2035	21,934.04		21,934.04	7,508.10
04/01/2035	21,934.04	7,558.40	29,492.44	10,061.71
05/01/2035	21,934.04		21,934.04	7,458.12
06/01/2035	21,934.04		21,934.04	7,433.26
07/01/2035	21,934.04	7,642.38	29,576.42	9,989.78
08/01/2035	21,934.04		21,934.04	7,383.78
09/01/2035	21,934.04		21,934.04	7,359.16
10/01/2035	3,726,934.04	7,726.36	3,734,660.40	1,248,850.53
11/01/2035	11,205.91		11,205.91	3,734.70
12/01/2035	11,205.91		11,205.91	3,722.25
01/01/2036	11,205.91	3,947.33	15,153.24	5,016.65
02/01/2036	11,205.91		11,205.91	3,697.48
03/01/2036	11,205.91		11,205.91	3,685.15
04/01/2036	11,205.91	3,904.42	15,110.33	4,952.58
05/01/2036	11,205.91		11,205.91	3,660.62
06/01/2036	11,205.91		11,205.91	3,648.41
07/01/2036	11,205.91	3,904.42	15,110.33	4,903.21
08/01/2036	11,205.91		11,205.91	3,624.13
09/01/2036	11,205.91		11,205.91	3,612.05
10/01/2036	3,881,205.91	3,947.33	3,885,153.24	1,248,142.36
	82,179,755.14	4,027,468.91	86,207,224.05	46,735,908.82

Proceeds Summary

Delivery date	05/30/2008
Par Value	47,625,000.00
Arbitrage expenses	-889,091.18
Target for yield calculation	46,735,908.82