

**EXHIBIT E**

Third Amended Tender Agency Agreement

DRAFT

### **THIRD AMENDED AND RESTATED TENDER AGENCY AGREEMENT**

THIS THIRD AMENDED AND RESTATED TENDER AGENCY AGREEMENT (this “Agreement”), dated as of June 1, 2013, between the City of Austin, Texas (the “City”) and Wells Fargo Bank, N.A., as Tender Agent (the “Tender Agent”), amends and restates that certain Second Amended and Restated Tender Agency Agreement, dated as of May 1, 2012, between the City and the Tender Agent.

WHEREAS, pursuant to Ordinance No. 20050804-039 adopted and approved on August 4, 2005, as amended and supplemented by Ordinance No. 20110526-068 and Ordinance No. 20120412-016 (the “Ordinance”), the City has previously issued and has outstanding its Airport System Refunding Revenue Bonds, Series 2005, issued in four subseries designated “Subseries 2005-1,” “Subseries 2005-2,” “Subseries 2005-3” and “Subseries 2005-4” (collectively, the “Bonds”); and

WHEREAS, the Bonds and the Ordinance provide, among other things, that the registered owners (the “Owners”) of the Bonds are required to tender their Bonds to the Tender Agent for purchase at various times and under various conditions, in each case in accordance with the provisions of the Bonds and the Ordinance; and

WHEREAS, pursuant to the terms of a Remarketing Agreement, dated as of May 1, 2008, as amended by the First Amendment to Remarketing Agreement, dated as of June 9, 2009 (the “Remarketing Agreement”), each between the City and Morgan Stanley & Co. Incorporated (“Morgan Stanley”), Morgan Stanley has agreed to use its best efforts to remarket any Bonds tendered for purchase to the Tender Agent by the Owners thereof pursuant to the Ordinance; and

WHEREAS, pursuant to the terms of: (1) a Letter of Credit issued by Sumitomo Mitsui Banking Corporation, acting through its New York Branch (“SMBC”), with respect to the Subseries 2005-1 Bonds (the “Subseries 2005-1 Letter of Credit”), (2) a Letter of Credit issued by SBMC with respect to the Subseries 2005-2 Bonds (the “Subseries 2005-2 Letter of Credit”), (3) a Letter of Credit issued by SBMC, with respect to the Subseries 2005-3 Bonds (the “Subseries 2005-3 Letter of Credit”), and (4) a Letter of Credit issued by SBMC, with respect to the Subseries 2005-4 Bonds (the “Subseries 2005-4 Letter of Credit” and, together with the Subseries 2005-1 Letter of Credit, the Subseries 2005-2 Letter of Credit and the Subseries 2005-3 Letter of Credit, the “Letters of Credit”), SMBC has agreed, subject to certain terms and conditions, to purchase Bonds which have been tendered to the Tender Agent pursuant to the Ordinance and which have not been remarketed by the Remarketing Agent; and

WHEREAS, SMBC constitutes a Liquidity Facility Issuer and each Letter of Credit constitutes a Liquidity Facility pursuant to the Ordinance, as each such term is defined therein;

NOW, THEREFORE, in consideration of the premises and to provide for the coordination of said arrangements, the parties hereby agree as follows:

**SECTION 1. Defined Terms.** Capitalized terms used in this Agreement and not defined herein shall have the meanings assigned to them in the Ordinance, including Appendix A thereto.

SECTION 2. Appointment of Tender Agent. Subject to the terms and conditions contained herein and in the Ordinance, Wells Fargo Bank, N.A., is hereby designated and appointed Tender Agent in the performance of its duties and obligations hereunder and under the Ordinance. Wells Fargo Bank, N.A., hereby accepts such appointment and the City consents to such designation and appointment. Wells Fargo Bank, N.A., hereby certifies that it has the capacity to, and agrees to, perform the duties and responsibilities of the Tender Agent herein and under the Ordinance. By its execution and delivery of this Agreement, the Tender Agent hereby covenants and agrees to comply with the provisions of the Ordinance applicable to the Tender Agent. To the extent of any conflict between the provision of this Agreement and the Ordinance, the Ordinance shall control.

During the term hereof, the Tender Agent hereby covenants and agrees to maintain an office where Bonds no longer held in the Book-Entry System may be delivered and tendered for purchase to the Tender Agent. The initial designated office of the Tender Agent is: 608 2<sup>nd</sup> Ave S, Minneapolis, Minnesota 55479, Attention: REORG N9303-121.

Bonds tendered for purchase which are held in Book-Entry System shall be tendered pursuant to such Book-Entry System.

SECTION 3. Creation of Purchase Fund. There has been established in the Ordinance and currently is maintained with the Tender Agent, a separate fund known as the "Purchase Fund," which shall be held by the Tender Agent for the exclusive benefit of the Owners of Bonds who are entitled to be paid the Purchase Price of such Bonds from such Fund and, to the extent of any surplus, the Person who deposited the money into the applicable account of the Purchase Fund. The Tender Agent shall further establish and maintain separate accounts within the Purchase Fund known as the "Liquidity Facility Purchase Account" and the "Remarketing Proceeds Account."

Upon receipt from the Remarketing Agent of the proceeds of remarketing of Bonds of a Subseries on a Purchase Date or Mandatory Purchase Date, the Tender Agent shall deposit such proceeds in the Remarketing Proceeds Account for application to the Purchase Price of the remarketed Bond. Notwithstanding the foregoing, upon the receipt of the proceeds of remarketing of Bank Bonds, the Tender Agent shall immediately pay such proceeds to or for the account of the Liquidity Facility Issuer to the extent of any amount owing to the Liquidity Facility Issuer.

Upon receipt by the Tender Agent of immediately available funds to pay the Purchase Price of Bonds pursuant to Section A-411 of the Ordinance, the Tender Agent shall deposit such money in the Liquidity Facility Purchase Account for application to the Purchase Price of the Bonds to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in the Liquidity Facility Purchase Account and not needed with respect to the Purchase Price for any Bonds of such subseries shall be immediately returned to the order of the applicable Liquidity Facility Issuer.

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

SECTION 4. Delivery of Bonds. The Bonds of a subseries shall be delivered in accordance with Section A-409 of the Ordinance.

SECTION 5. Tenders; Remarketing of the Bonds.

(a) Mandatory Tenders. At the times specified in Section A-405 of the Ordinance, notice of any mandatory tender of Bonds of a subseries shall state that such Bonds are to be purchased pursuant to Sections A-402, A-403 or A-404 of the Ordinance, and shall be provided by the Paying Agent/Registrar or caused to be provided by the Paying Agent/Registrar by mailing a copy of the notice of mandatory tender by first-class mail to each Owner of the Bonds of the subseries at the respective addresses shown on the registry books. Each notice of mandatory tender for purchase shall identify the reason for the mandatory tender for purchase, and specify the CUSIP number, Mandatory Purchase Date, the Purchase Price, the place and manner of payment, that the Owner has no right to retain such Bonds and that no further interest will accrue from and after the Mandatory Purchase Date to such Owner. Each notice of mandatory tender for purchase caused by a change in the Mode applicable to the Bonds of a subseries shall in addition specify the conditions that have to be satisfied pursuant to Section A-207 of the Ordinance in order for the New Mode to become effective and the consequences that the failure to satisfy any of such conditions would have. In the event a mandatory tender of Bonds of a subseries shall occur at or prior to the same date on which an optional tender for purchase is scheduled to occur, the terms and conditions of the applicable mandatory tender for purchase shall control. The Paying Agent/Registrar shall give a copy of any notice of mandatory tender given by it to the other Notice Parties. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner of any Bond receives the notice, and the failure of such Owner to receive any such notice shall not affect the validity of the action described in such notice. Failure by the Paying Agent/Registrar to give a notice as provided in this Section shall not affect the obligation of the Tender Agent to purchase the Bonds of a subseries subject to mandatory tender for purchase on the Mandatory Purchase Date.

(b) Optional Tenders. Any Bond of a subseries (or portions thereof in Authorized Denominations) in the Daily Rate Mode that is not a Bank Bond is subject to purchase, on the demand of the Owner thereof, at a price equal to the Purchase Price on any Business Day (such purchase to be made on the Business Day upon which such demand is made), upon irrevocable notice submitted by Electronic Means to the Tender Agent and the Remarketing Agent (promptly confirmed in writing by such Owner), delivered to the Tender Agent and the Remarketing Agent by telecopier by 11:00 a.m., New York City time, at their respective Principal Offices, which states the number and principal amount of such Bond being tendered and the Purchase Date. Such tender notice, once transmitted to the Tender Agent, shall be irrevocable with respect to the tender for which such tender notice was delivered and such tender shall occur on the Business Day specified in such Tender Notice. The Tender Agent shall, as soon as practicable, notify the City of the principal amount of Bonds of the Series being tendered. The contents of any such irrevocable telephonic tender notice shall be conclusive and binding on all parties.

The Owners of Bonds of a subseries in a Weekly Rate Mode that are not Bank Bonds may elect to have such Bonds (or portions thereof in Authorized Denominations) purchased at a price equal to the Purchase Price upon delivery of an irrevocable written notice of tender to the

Tender Agent and Remarketing Agent, at their respective Principal Offices, not later than 5:00 p.m., New York City time, on a Business Day not less than seven (7) days before the Purchase Date specified by the Owner. Such notice shall (i) state the number and the principal amount of such Bond being tendered and (ii) state that such Bond shall be purchased on the Purchase Date so specified by the Owner. The Tender Agent shall notify the City by the close of business on the next succeeding Business Day of the receipt of any notice pursuant to this paragraph.

(c) Remarketing of the Bonds.

(i) The Remarketing Agent shall notify the Tender Agent by Electronic Means not later than 11:45 a.m. (12:15 p.m. in the case of Bonds of a subseries in the Daily Rate Mode), New York City time, of the registration instructions as may be necessary to re-register the Bonds.

(ii) Unless otherwise permitted by the Securities Depository and the book-entry-only system applicable to a Series of Bonds, the Tender Agent shall authenticate and have available for delivery to the Remarketing Agent prior to 12:30 p.m., New York City time, on the Purchase Date or Mandatory Tender Date new Bonds of the Series for the respective purchasers thereof.

(iii) The Remarketing Agent shall at or before 12:00 noon (12:20 p.m. in the case of Bonds of a subseries in the Daily Rate Mode), New York City time, on the Purchase Date or Mandatory Purchase Date, as the case may be, confirm to the City, the Paying Agent/Registrar and the Tender Agent the transfer of the Purchase Price of remarketed Bonds of the subseries to the Tender Agent in immediately available funds at or before 11:45 a.m. (12:15 p.m. in the case of Bonds of a subseries in the Daily Rate Mode), New York City time, such confirmation to include the pertinent identifying information with respect to such transfer.

(iv) To the extent a Liquidity Facility is in effect for a subseries of Bonds, the Tender Agent shall draw on the related Liquidity Facility, in accordance with the terms thereof, by 12:25 p.m., New York City time, on the Purchase Date or Mandatory Purchase Date, as the case may be, in an amount equal to the Purchase Price of all Bonds of the subseries tendered or deemed tendered less the aggregate amount of remarketing proceeds confirmed to the City, the Paying Agent/Registrar and the Tender Agent by the Remarketing Agent pursuant to clause (1) of Section A-407(c) of the Ordinance and shall cause the proceeds of such draw to be transferred to the Tender Agent by no later than 2:30 p.m., New York City time. Notwithstanding the foregoing, the Tender Agent shall draw on the related Liquidity Facility in an amount equal to the Purchase Price of all Bonds of the subseries tendered or deemed tendered for purchase on each Purchase Date or Mandatory Purchase Date, as the case may be, if it does not receive a confirmation from the Remarketing Agent pursuant to clause (1) of Section A-407(c) of the Ordinance.

(v) To the extent a Liquidity Facility is in effect for a subseries of Bonds, the Tender Agent shall confirm to the City by 2:40 p.m., New York City time, on the Purchase Date or Mandatory Purchase Date, receipt of the proceeds of any draw on such Liquidity Facility.

SECTION 6. Tender of Bonds to Tender Agent. Each Owner who is required to tender its Bond to the Tender Agent must tender such Bond to the Tender Agent in accordance with Section A-410 of the Ordinance. For any Bonds required to be tendered for purchase which are not in fact delivered, the Tender Agent shall hold any funds received for purchase of those Bonds in trust in a separate account and shall pay such funds to the former Owners upon presentation of the Bonds subject to tender, and such Bonds shall be deemed tendered and cease to accrue interest as to the former Owners on the Purchase Date or Mandatory Purchase Date pursuant to the Ordinance.

SECTION 7. Source of Funds for Purchase of Bonds of a Subseries. At or before the close of business on the Purchase Date or Mandatory Purchase Date with respect to Bonds of a subseries, the Tender Agent shall purchase such Bonds from the Owners at the Purchase Price. Unless otherwise provided in a certificate of an Authorized Officer delivered to the Paying Agent/Registrar, the Insurer, the Tender Agent and the Remarketing Agent on a Purchase Date or Mandatory Purchase Date, funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated: (1) immediately available funds on deposit in the Remarketing Proceeds Account with respect to Bonds of such subseries; and (2) to the extent a Liquidity Facility is in effect, immediately available funds on deposit in the Liquidity Facility Purchase Account derived from the Liquidity Facility relating to Bonds of such subseries.

Notwithstanding the foregoing, unless otherwise provided in a certificate of an Authorized Officer delivered to the Tender Agent and the Remarketing Agent on a Purchase Date or Mandatory Purchase Date, the City shall have the option, but shall not be obligated, to transfer immediately available funds to the Tender Agent for the payment of the Purchase Price of any Bond that is tendered or deemed tendered for purchase in accordance with the terms of Appendix A of the Ordinance and the Purchase Price of which is not paid on the Purchase Date or Mandatory Purchase Date from the source identified above. Any Bonds purchased with such funds from the City shall be cancelled unless otherwise consented to by the Insurer. None of the City, the Tender Agent nor the Remarketing Agent shall have any liability or obligation to pay or advance its own funds or, except from the source identified above, make available such Purchase Price. Any Bonds held by or for the account of the City shall not be entitled to the benefit of a Liquidity Facility or the Bond Insurance Policy. Unless otherwise provided in a certificate of an Authorized Officer delivered to the Paying Agent/Registrar and the Tender Agent on a Purchase Date or Mandatory Purchase Date, the failure to pay any such Purchase Price for Bonds of a subseries that have been tendered or deemed tendered for purchase from the source identified above shall not constitute an Event of Default under the Ordinance and in the case of such failure such Bonds shall not be purchased and shall remain in the Mode in effect immediately preceding such Purchase Date or Mandatory Purchase Date, as the case may be, unless such Mode is automatically converted to a Weekly Rate Mode pursuant to Section A-205 of the Ordinance; provided, however, that if such Bonds were in the Auction Rate Mode immediately preceding such Date, such Bonds shall remain in the Auction Rate Mode for an Auction Period and bearing an Auction Period Rate as provided in Section A-207(c)(7) of the Ordinance.

SECTION 8. Purchase of Tendered Bonds by the Liquidity Facility Issuer; Deposits into the Liquidity Facility Purchase Account of the Purchase Fund; Notice to Paying Agent/Registrar and Tender Agent; Release of Bank Bonds. The Liquidity Facility Issuer, upon receipt of the

appropriate notice pursuant to the applicable Liquidity Facility, has agreed in each Liquidity Facility to purchase such unremarketed Bonds of a subseries by causing an amount equal to the aggregate Purchase Price of the unremarketed Bonds to be deposited in immediately available funds in the Liquidity Facility Purchase Account of the Purchase Fund no later than 2:30 p.m., New York City time, on the Purchase Date against delivery of such Bonds at the time and in the manner set forth in such Liquidity Facility.

The Tender Agent agrees to hold Bank Bonds as agent of the Liquidity Facility Issuer and to release any Bank Bonds solely in accordance with Section A-409 of the Ordinance.

SECTION 9. Disbursements from the Purchase Fund. Money in each of the Remarketing Proceeds Account and the Liquidity Facility Purchase Account of the Purchase Fund shall be applied by the Tender Agent by 3:00 p.m., New York City time, on each Purchase Date or Mandatory Purchase Date to purchase Bonds tendered to the Tender Agent at the Purchase Price in accordance with Appendix A of the Ordinance. Such Purchase Price shall be paid by wire transfer in immediately available funds on such Purchase Date or Mandatory Purchase Date; provided, however, for so long as the Bonds are held in the Book-Entry System, such payment will be in accordance with the requirements of the Book-Entry System.

SECTION 10. Transfer and Delivery of Tendered Bonds for Purchase. A principal amount of Bonds equal to the principal amount of Bonds purchased on behalf of the Remarketing Agent pursuant to Sections 5 and 11 hereof or by the Liquidity Facility Issuer pursuant to Section 8 hereof shall be authenticated by the Tender Agent and delivered to, or as instructed by, the Remarketing Agent or the respective Liquidity Facility Issuer, as applicable, and the Tender Agent shall cause the Paying Agent/Registrar to register such Bonds in the name or names provided by the Remarketing Agent or the Liquidity Facility Issuer, as applicable. The Remarketing Agent is required to redeliver such Bonds received from the Tender Agent to the respective purchasers not later than 3:30 p.m., New York City time.

Notwithstanding anything to the contrary in the foregoing paragraph, for so long as the Bonds are held in the system of book-entry of DTC in accordance with Section 3.09 of the Ordinance, (i) any Bond remarketed by the Remarketing Agent shall be delivered to the new beneficial owner thereof by a transfer in the book-entry system of DTC of such remarketed Bond to the applicable DTC Participant account for such beneficial owner; and (ii) Bank Bonds shall be delivered to the Liquidity Facility Issuer by a transfer in the book-entry system of DTC of such Bank Bonds to the DTC Participant account of the Tender Agent for the benefit of the Liquidity Facility Issuer, as beneficial owner of such Bank Bonds.

SECTION 11. Remarketing of Bank Bonds. The Remarketing Agent has agreed in the Remarketing Agreement that it shall exercise its best efforts to solicit purchases of any Bank Bonds at a price of not less than 100% of the principal amount thereof, and upon receipt of the proceeds of any remarketing of such Bank Bonds the Tender Agent shall immediately pay such proceeds to or for the account of the Liquidity Facility Issuer to the extent of any amount owing to the Liquidity Facility Issuer. Upon receipt by the Tender Agent of funds representing the proceeds of the remarketing of such Bank Bonds, new Bonds in place of such Bank Bonds so remarketed shall be registered in the names of the buyers thereof by the Paying Agent/Registrar and delivered by the Remarketing Agent to the buyers thereof and the proceeds of such

remarketing shall, prior to or simultaneously with such delivery, be transferred by the Tender Agent to the Liquidity Facility Issuer by wire transfer.

SECTION 12. Draws on Liquidity Facility. Draws on any Liquidity Facility shall be made in accordance with the provisions of Section A-411 of the Ordinance.

SECTION 13. Maintenance of Books and Records. The Tender Agent agrees to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the City, the related Credit Facility Issuer and the related Liquidity Facility Issuer at all reasonable times.

SECTION 14. Notice. Except as specifically provided in this Agreement and unless otherwise hereafter directed in writing by the applicable Person, all notices, demands and formal actions under this Agreement shall be in writing and mailed, telecommunicated or otherwise delivered to:

The Tender Agent:

Wells Fargo Bank, N.A.  
608 2nd Ave S  
Minneapolis, MN 55479  
Attention: REORG N9303-121  
Telephone: (612) 316-2148  
Telecopy: (612) 667-4927

with a copy to:

Wells Fargo Bank, N.A.  
750 N. St. Paul Place, Suite 1750  
MAC : T9263-170  
Dallas, TX 75201  
Attention: \_\_\_\_\_  
Telephone: (214) 756-7417  
Telecopy: (214) 756-7401  
E-mail: \_\_\_\_\_@wellsfargo.com

The City:

City of Austin, Texas  
700 Lavaca, Suite 940  
Austin, TX 78701  
Attention: City Treasurer  
Telephone: (512) 974-7882  
Telecopy: (512) 370-3838  
E-mail: art.alfaro@austintexas.gov

The Liquidity Facility Issuer:

Sumitomo Mitsui Banking Corporation  
Public and Infrastructure Finance  
277 Park Avenue  
New York, NY 10172  
Attention: \_\_\_\_\_  
Telephone: (212) 224-4000  
Telecopy: (212) 224-4566  
E-mail: \_\_\_\_\_

With a copy to:

Sumitomo Mitsui Banking Corporation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, — \_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_  
Telecopy: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

and:

Sumitomo Mitsui Banking Corporation  
Trade Credit Services Department  
277 Park Avenue  
New York, NY 10172  
Attention: \_\_\_\_\_  
Telephone: (212) 224-4000  
Telecopy: (212) 224-4566

SECTION 15. General.

(a) Payment of Tender Agent: Indemnification. The City shall pay the annual Tender Agent fee and all reasonable and actual out of pocket expenses of the Tender Agent for acting under and pursuant to this Agreement as set forth in Annex A hereto. To the extent permitted by law, the City shall indemnify and save harmless the Tender Agent and its officers and employees from and against any and all losses, costs, charges, expenses, judgments and liabilities to third parties arising out of its acting in good faith to carry out the transactions contemplated by this Agreement; provided, however, that such indemnification shall not apply to any losses, costs, charges, expenses, judgments or liabilities caused by the negligence or willful misconduct of the Tender Agent or its officers or employees. The terms of this Section 15(a) shall survive the termination of this Agreement and the payment of the all fees, expenses and amounts due hereunder shall be subject to annual appropriation of available funds by the City for the payment thereof.

(b) Tender Agent's Performance: Duty of Care. The Tender Agent consents and agrees to (i) hold all sums held by it for the payment of Bonds or Bank Bonds, as applicable, in trust for the benefit of the Owners or the Liquidity Facility Issuer, as applicable, until such sums shall be paid to the Owners or the Liquidity Facility Issuer or otherwise disposed of as herein

provided, and (ii) perform and comply with all the terms and provisions on its part contained in this Agreement.

The duties and obligations of the Tender Agent shall be determined solely by the express provisions of this Agreement and the Ordinance, and no implied covenants or obligations shall be read into this Agreement against the Tender Agent; and in the absence of negligence or willful misconduct on the part of the Tender Agent, the Tender Agent may conclusively rely, as to the truth of the statements expressed therein, upon any document furnished to the Tender Agent and conforming to the requirements of this Agreement and the Tender Agent 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; but in the case of any such document which by any provision hereof is specifically required to be furnished to the Tender Agent, the Tender Agent shall be under a duty to examine the same to determine whether or not it conforms to the requirements of this Agreement.

No provision of this Agreement shall be construed to relieve the Tender Agent from liability for its own negligence or willful misconduct or that of its officers or employees.

(c) Payments. Any provision of this Agreement or any statute to the contrary notwithstanding, the Tender Agent hereby waives any rights to, or liens for, its fees, charges and expenses for services hereunder from funds or obligations credited to the Purchase Fund. The Tender Agent agrees that it will be reimbursed and compensated for its fees, charges and expenses for acting under and pursuant to this Agreement only from payments to be made by the City pursuant to Section 15(a) hereof.

(d) Term of this Agreement. This Agreement shall become effective upon the effective date of the Letters of Credit and shall remain in full force and effect until (i) such time as the principal of and premium, if any, and interest on all Bonds under the Ordinance shall have been paid or shall no longer have the right to be tendered for purchase; provided, however, that the City and the Tender Agent shall have fulfilled all their respective obligations hereunder, whereupon this Agreement shall terminate; or (ii) resignation by the Tender Agent or removal of the Tender Agent in accordance with Section 15(e) hereof, it being understood, in each case, that the Tender Agent does not waive or relinquish any rights it may have under Section 15(a) hereof.

(e) Resignation by or Removal of the Tender Agent. The Tender Agent may at any time resign and be discharged from the duties and obligations hereby created by giving at least sixty (60) days' written notice by first class mail, postage prepaid, to the City, the Credit Facility Issuer and the Liquidity Facility Issuer; provided, that resignation or removal (as set out below) shall not be effective until a successor Tender Agent, which shall be a bank or trust company duly qualified to act in the capacity as a successor Tender Agent, shall have been appointed by the City and acting under the Ordinance. The Tender Agent may be removed at any time, at the direction of the City, by an instrument filed with the Tender Agent and the Remarketing Agent.

(f) Amendments. (i) This Agreement may not be amended so as to adversely affect the right of the Owners or the Liquidity Facility Issuer to effect the purchase of Bonds pursuant to the Ordinance without the prior written approval of the Liquidity Facility Issuer and (ii) the City agrees to give to the Tender Agent prompt written notice of any modification or change of

or supplement or amendment to the Ordinance which would affect the rights or obligations of the Tender Agent hereunder. No such modification or change shall be effective against the Tender Agent unless the Tender Agent shall have consented thereto in writing.

(g) Successors and Assigns. The rights, duties and obligations of the City, the Paying Agent/Registrar, the Remarketing Agent and the Tender Agent hereunder shall inure, without further act, to their respective successors and permitted assigns; provided, however, that the Tender Agent may not assign or delegate its rights and obligations under this Agreement without the prior written consent of the City and, provided further, any successor Tender Agent shall execute a tender agent agreement substantially in the form and substance as this Agreement.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

(i) Limited Liability. Any obligation of the City created by or arising out of this Agreement and owing to the Tender Agent shall be a limited unsecured obligation of the City, payable solely from the Net Revenues of the Airport System, in accordance with the customary payment approval procedures, policies and processes of the City.

(j) Governing Law. This Agreement shall be governed by the laws of the State of Texas.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written by their respective officers thereunto duly authorized.

WELLS FARGO BANK, N.A. as Tender Agent

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

CITY OF AUSTIN, TEXAS

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

ANNEX A

FEES OF THE TENDER AGENT



SCHEDULE OF FEES

City of Austin, Texas  
Airport System Revenue Refunding Bonds, Series 2005,  
Subseries 2005-1; 2005-2; 2005-3; 2005-4

TO ACT AS TENDER AGENT

**Acceptance Fee:** **\$0.00**

Initial Fees as they relate to Wells Fargo Bank acting in the capacity of Paying Agent/Registrar – includes creation and examination of the Paying Agent/Registrar Agreement; acceptance of the appointment; setting up of Paying Agent/Registrar records and accounting records; and coordination of closing.

Acceptance Fee payable at time of Tender Agency Agreement execution.

**Annual Tender Agent Fee:** **\$1,000.00**

**Out of Pocket Expenses and Activity Fees:**

We only charge for out of pocket expenses in response to specific tasks assigned by the client. Therefore, we cannot anticipate what specific out-of-pocket items will be needed or what corresponding expenses will be incurred. Possible expenses would be, but are not limited to, express mail and messenger charges, travel expenses to attend closing or other meetings. There are no charges for indirect out-of-pocket expenses. Conversion fees from existing structure to Variable Rate Series will be \$250 for each series and there will be a \$100 charge for each optional tender notice.

*This fee schedule is based upon the assumptions listed above which pertain to the responsibilities and risks involved in Wells Fargo undertaking the role of Paying Agent/Registrar. These assumptions are based on information provided to us as of the date of this fee schedule. Our fee schedule is subject to review and acceptance of the final documents. Should any of the assumptions, duties or responsibilities change, we reserve the right to affirm, modify or rescind our fee schedule.*

*Submitted by:* Gregory M. Hasty – April 23, 2008  
Vice President/Business Development  
Wells Fargo Bank  
(214) 740-1548