

*St. Louis City Ordinance 64510*

FLOOR SUBSTITUTE

BOARD BILL NO. [98] 181

INTRODUCED BY ALDERMAN NANCY WEBER

AN ORDINANCE AUTHORIZING AND DIRECTING THE ISSUANCE IN THE NAME OF THE CITY OF ST. LOUIS OF WATER REVENUE REFUNDING BONDS, SERIES 1998, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$40,000,000 FOR THE PREPAYMENT AND REDEMPTION IN ADVANCE OF THEIR MATURITY OF ALL OR A PORTION OF THE CITY'S OUTSTANDING WATER REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 1994 ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$51,570,000; SETTING FORTH CERTAIN TERMS AND CONDITIONS FOR SAID BONDS; GRANTING AUTHORITY TO THE TREASURER OF THE CITY TO EMPLOY A TRUSTEE, PAYING AGENT AND ESCROW AGENT IN CONNECTION WITH SUCH BONDS; APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE SECOND SUPPLEMENTAL INDENTURE OF TRUST AND THE ESCROW AGREEMENT; AUTHORIZING THE NEGOTIATED SALE OF THE BONDS AND THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT; AUTHORIZING THE PREPARATION AND DISTRIBUTION OF THE PRELIMINARY OFFICIAL STATEMENT AND THE PREPARATION, EXECUTION AND DELIVERY OF THE OFFICIAL STATEMENT WITH RESPECT TO THE BONDS AND THE TAKING OF FURTHER ACTION WITH RESPECT THERETO; AUTHORIZING THE CREATION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE SECURING OF MUNICIPAL BOND INSURANCE, IF DEEMED NECESSARY, AND THE TAKING OF ALL ACTIONS, APPROVAL AND EXECUTION OF OTHER DOCUMENTS AS NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF INCLUDING AN AGREEMENT FOR BOND INSURANCE, IF ANY; AUTHORIZING THE TRANSFER OF WATERWORKS SYSTEM REVENUES TO THE ACCOUNTS AND SUB-ACCOUNTS ESTABLISHED UNDER THE INDENTURE, THE SECOND SUPPLEMENTAL INDENTURE AND THE ESCROW AGREEMENT; AUTHORIZING CITY OFFICIALS TO DO ALL THINGS DEEMED NECESSARY IN CONNECTION WITH ISSUANCE, SALE, EXECUTION

AND DELIVERY OF THE BONDS; AND CONTAINING SEVERABILITY AND EMERGENCY CLAUSES.

WHEREAS, The City of St. Louis, Missouri (the "City") now owns and operates a municipal waterworks system (the **Waterworks System**);

WHEREAS, pursuant to Article VI, Section 27 of the Constitution of the State of Missouri, as amended, and Chapter 108 of the Missouri Revised Statutes, as amended, the City financed the purchasing, construction, extension and the improvement of the Waterworks System and unified its outstanding indebtedness by the issuance of The City of St. Louis Water Revenue Bonds, Series 1985 (the **Series 1985 Bonds**) on December 12, 1985;

WHEREAS, on April 6, 1993 the qualified electors of the City approved the issuance by the City of its negotiable interest-bearing water revenue bonds in the aggregate principal amount of \$170,000,000 for the purpose of extending and improving the Waterworks System and acquiring land, rights-of-way and easements thereof;

WHEREAS, pursuant to an Indenture of Trust (the **Original Indenture**) and the First Supplemental Indenture of Trust, both dated April 1, 1994 between the City and Mark Twain Bank, St. Louis, Missouri, as trustee, the City issued its \$51,570,000 The City of St. Louis, Missouri Water Revenue Refunding and Improvement Bonds, Series 1994 (the **Series 1994 Bonds**) on April 28, 1994 which Series 1994 Bonds financed certain improvements to the Waterworks System and refunded and defeased all of the then outstanding Series 1985 Bonds;

WHEREAS, the City has determined that given current market conditions, it is in the public interest to issue bonds under the Indenture to provide funds for the prepayment and redemption in advance of their maturity of all or a portion of the Series 1994 Bonds, as described in the Second Supplemental Indenture referred to below and the City finds it necessary and desirable to provide such funds;

WHEREAS, the City is now prepared to issue and sell its Water Revenue Refunding Bonds, Series 1998, in an aggregate principal amount not to exceed \$40,000,000 (the **Series 1998 Bonds**), the proceeds of which will be used to finance the cost of the prepayment and redemption in advance of their maturities of all of or a portion of the Series 1994 Bonds including the funding of a debt service reserve account and other funds established pursuant to the

Original Indenture and the payment of expenses of the City associated therewith, including but not limited to a bond insurance premium, if necessary;

WHEREAS, as required by the Original Indenture, it is necessary and appropriate for the City to issue the Series 1998 Bonds and to secure the Series 1998 Bonds solely from the revenues derived by the City from the operation of the Waterworks System pursuant to the terms of the Original Indenture, as supplemented by a Second Supplemental Indenture (the **Second Supplemental Indenture**), such Second Supplemental Indenture to be substantially in the form attached to this Ordinance as Exhibit I, (the Original Indenture as supplemented by the Second Supplemental Indenture being hereinafter referred to as the **Indenture**);

WHEREAS, it is necessary and desirable that the City enter into certain documents, including the Second Supplemental Indenture and Escrow Agreement (substantially in the form attached to this Ordinance as Exhibit II) and that the City execute certain other documents and authorize preparation and execution of an official statement, a bond purchase agreement and a continuing disclosure agreement;

WHEREAS, the Series 1998 Bonds and any additional Water Revenue Bonds issued pursuant to the Indenture shall state that such bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation and the taxing power of the City is not pledged to the payment of the principal of, premium, if any, or interest on the Series 1998 Bonds.

**BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

**Section One. Authorization of the Series 1998 Bonds.**

The City does hereby authorize and direct the issuance of the Series 1998 Bonds to finance the cost of the prepayment and redemption in advance of their maturity of all or a portion of the Series 1994 Bonds and does hereby find and determine that this Ordinance is being enacted pursuant to Article VI, Section 27 of the Constitution of the State of Missouri, and the issuance of the Series 1998 Bonds is for the public purpose set forth in the recitals to this Ordinance.

**Section Two. Principal Amount and Terms and Provisions of the Series 1998 Bonds.**

This Board of Aldermen, acting as the governing authority of the City, does hereby authorize the issuance of the Series 1998 Bonds in an aggregate principal amount of not to exceed \$40,000,000, the proceeds of which will be

used to finance the cost of the prepayment and redemption in advance of their maturity of all or a portion of the Series 1994 Bonds and costs of refunding of all or a portion of the Series 1994 Bonds, including the funding of a portion of a debt service reserve account and other funds, accounts and sub-accounts established pursuant to the Indenture, and the payment of the costs of issuance associated therewith, including, but not limited to a bond insurance premium, if necessary. This Board of Aldermen hereby authorizes and directs the Mayor and the Comptroller of the City in the exercise of their sole discretion to determine and establish the aggregate principal amount and the terms and conditions of the Series 1998 Bonds.

### Section Three. Source of Repayment; Security; Pledge.

The Series 1998 Bonds shall be secured and payable, both as to principal and interest and, except to the extent secured and payable from Bond proceeds and certain funds established pursuant to the Indenture, solely from the pledge of revenues from the Waterworks System. The rights of the owners of the Series 1998 Bonds and any additional bonds issued under this Indenture to the revenues of the Waterworks System shall be subject to the application of revenues of the Waterworks System to the purposes and on the terms and conditions set forth by the Indenture. Upon the issuance and sale of the Series 1998 Bonds, all revenues derived from the operation of the Waterworks System shall be and are hereby pledged to the payment of the Series 1998 Bonds and any additional bonds issued under the Indenture, all as provided in the Indenture.

The Series 1998 Bonds shall be limited obligations of the City payable solely from revenues derived from the operation of the Waterworks System, and shall not be deemed to be an indebtedness of the State of Missouri or of any political subdivision thereof, and shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The Series 1998 Bonds shall be issued in one or more series, bear such date or dates, mature at such time or times (not exceeding thirty (30) years from their date of issuance), bear interest at such rate or rates (not exceeding the limitations set forth herein), be sold at a premium or at a discount with such discount not to exceed the maximum discount allowable under Missouri law, and be subject to redemption on such conditions and at such time or times as shall be approved by the Mayor and the Comptroller and provided for in the Second Supplemental Indenture as executed and delivered by the Mayor, Comptroller and Treasurer of the City. The Series 1998 Bonds shall be issuable in such series and denominations, be in fully registered form without coupons, carry such medium of payment at such place or places as the Second

Supplemental Indenture may provide. The Board of Aldermen of the City hereby specifically authorizes and directs the Mayor and Comptroller in the Second Supplemental Indenture to enter into such covenants with the future owner or owners of the Series 1998 Bonds and the bond insurer, if any, as to the operation and maintenance of funds, including a debt service reserve account, the application of funds subject to the Second Supplemental Indenture, limitations on the issuance of additional water revenue bonds and other pertinent matters as may be deemed by the Mayor and the Comptroller to assure the marketability of the Series 1998 Bonds. Such Second Supplemental Indenture shall also include such additional covenants, agreements and provisions as are judged advisable or necessary by the Mayor and the Comptroller for the security of the owners of the Series 1998 Bonds.

#### Section Four. Designation of Fiduciaries.

The Board of Alderman of the City hereby authorizes and directs the Treasurer of the City in the exercise of such Treasurer's sole discretion to select and designate one or more banks or trust companies within the City to serve as trustee, paying agent(s), escrow agent or other fiduciaries required pursuant to the terms of the Second Supplemental Indenture.

#### Section Five. Authority to Execute and Deliver the Second Supplemental Indenture and the Escrow Agreement.

The Second Supplemental Indenture, in the form attached hereto as Exhibit I, which is incorporated herein by reference and made a part hereof, is hereby approved, and the Mayor, Comptroller and Treasurer of the City are hereby authorized and directed to execute, acknowledge and deliver the Second Supplemental Indenture, in substantially such form, the same to be attested by the Register of the City, with such changes therein or in any attachment to the Second Supplemental Indenture, including, without limitation, changes reflecting the issuance of the Series 1998 Bonds in one or more series, changes to the covenants of the City and the manner of holding and application by the City and the Trustee named in the Indenture of funds subject to the Second Supplemental Indenture, as shall be approved by the execution of the Second Supplemental Indenture, such execution to constitute conclusive evidence of such approval by the City, and the Register is hereby authorized to affix to the Second Supplemental Indenture the corporate seal of the City. The Second Supplemental Indenture will be effective immediately upon the filing of the Second Supplemental Indenture with the Trustee.

The Escrow Agreement, in the form attached hereto as Exhibit II, which is incorporated herein by reference and made a part hereof, is hereby approved,

and the Mayor, Comptroller and Treasurer of the City are hereby authorized and directed to execute, acknowledge and deliver the Escrow Agreement, in substantially such form, the same to be attested by the Register of the City, with such changes therein or in Schedule I to the Escrow Agreement, as shall be approved by the execution of the Escrow Agreement, such execution to constitute conclusive evidence of such approval by the City, and the Register is hereby authorized to affix to the Escrow Agreement the corporate seal of the City.

#### Section Six. Execution of the Series 1998 Bonds.

The Series 1998 Bonds shall be executed on behalf of the City in the manner provided in the Indenture. If any of the officers who shall have signed or sealed any of the Series 1998 Bonds shall cease to be such officers of the City before the Series 1998 Bonds so signed and sealed shall have been actually authenticated by the Trustee specified in the Second Supplemental Indenture, or delivered by the City, such Series 1998 Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Series 1998 Bonds had not ceased to be such officer or officers of the City; and any such Series 1998 Bonds also may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Series 1998 Bonds shall be the proper officers of the City, although at the date of such Series 1998 Bonds any such person shall not have been such officer of the City.

#### Section Seven. Manner of Sale of the Series 1998 Bonds; Application of Proceeds.

The City declares that it is in the best interest of the City to sell the Series 1998 Bonds at a negotiated sale in order to obtain the necessary investment expertise in the desired time frame and to obtain greater flexibility in the structuring and marketing of the Series 1998 Bonds. The Series 1998 Bonds may be sold at the best price obtainable at a negotiated sale as the Mayor and Comptroller shall determined in their sole discretion, subject to the interest rate and par value limitations set forth in Chapter 108.170, Missouri Revised Statutes, as amended. The proceeds from the sale of the Series 1998 Bonds shall be applied by the City simultaneously with the delivery of the Series 1998 Bonds in accordance with the provisions of the Second Supplemental Indenture.

#### Section Eight. Execution and Delivery of a Bond Purchase Agreement

In connection with a negotiated sale of the Series 1998 Bonds, the Board of Aldermen hereby authorizes and directs the Mayor and the Comptroller to enter into a bond purchase agreement (the **◆Bond Purchase Agreement◆**) with the purchaser or purchasers of the Series 1998 Bonds, such Bond Purchase Agreement to set forth the terms of sale and to contain such other customary terms and provisions as the Mayor and the Comptroller shall approve, their execution to constitute conclusive evidence of such approval. The sale of the Series 1998 Bonds pursuant to the Bond Purchase Agreement is hereby authorized.

#### Section Nine. Official Statement and Continuing Disclosure Agreement.

The Mayor and the Comptroller and other appropriate officers, agents, and employees of the City (hereinafter, the **◆Authorized Officials◆**) with the advice and concurrence of the City Counselor, in connection with the public offering of the Series 1998 Bonds, are hereby authorized to prepare a Preliminary Official Statement for and on behalf of the City containing such disclosure and other matters deemed material, necessary or appropriate, as the Mayor and the Comptroller shall deem advisable. The Authorized Officials are hereby authorized to deliver certifications to the effect that the Preliminary Official Statement and the final Official Statement, together with such other documents, if any, described in such certificates, were deemed final as of their respective dates for the purposes of Rule 15c2-12 of the Securities and Exchange Commission (**◆Rule 15c2-12**). The Authorized Officials are each hereby authorized to make public and to permit the managing underwriter to the City to use and distribute the Preliminary Official Statement in connection with the sale of the Series 1998 Bonds. The Authorized Officials are each hereby authorized and directed to prepare, execute and deliver a final Official Statement for and on behalf of the City and the Comptroller is hereby authorized and directed to execute and deliver a continuing disclosure agreement (the **◆Continuing Disclosure Agreement◆**) pursuant to Rule 15c2-12 with such customary terms and provisions as the Comptroller shall deem advisable, the Comptroller's execution of the Continuing Disclosure Agreement to constitute conclusive evidence of such approval.

#### Section Ten. Acquisition of Bond Insurance.

Upon the recommendation of the managing underwriter and/or the financial advisor to the City with respect to the Series 1998 Bonds, based upon a cost-benefit analysis, the Comptroller is hereby authorized to approve the terms of any agreement for bond insurance and to purchase bond insurance with respect

to the Series 1998 Bonds from a recognized municipal bond insurance company with respect to all or a portion of the Series 1998 Bonds and to execute any agreement for bond insurance with respect to the Series 1998 Bonds and other documents therewith as necessary to obtain bond insurance with respect to the Series 1998 Bonds. The premium and costs payable with respect to any bond insurance acquired for the Series 1998 Bonds shall be payable out of the proceeds thereof as a cost of issuance. Any agreements with the bond insurer shall supplement and be in addition to the provisions of this Ordinance.

#### Section Eleven. Further Acts.

The Authorized Officials with the advice and concurrence of the City Counselor, are hereby empowered to execute and deliver the Series 1998 Bonds and all documents and other instruments which may be required under the terms of the Indenture, the Second Supplemental Indenture Agreement, the Escrow Agreement, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement, any agreement for bond insurance or other documents in connection therewith to obtain bond insurance, and this Ordinance, including, without limitation, a no-arbitrage certificate and applications, notices and other forms required to qualify the Series 1998 Bonds for sale under state securities or Blue Sky laws.

#### Section Twelve. Repeal of Conflicting Ordinances.

All provisions of other Ordinances of the City which are in conflict with this Ordinance or the Second Supplemental Indenture approved hereby (as executed and delivered) shall be of no further force or effect on the City upon issuance and sale of the Series 1998 Bonds.

#### Section Thirteen. Severability.

The sections of this Ordinance shall be severable. In the event that any section of this Ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining sections of this Ordinance are valid unless the court finds the valid section of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the void section that it cannot be presumed that the Board of Alderman would have enacted the valid section without the void ones; or unless the court finds the valid sections, standing alone, are incomplete and incapable of being executed in accordance with legislative intent.

Section Fourteen. Incorporation of Exhibits.

The exhibits attached to this Ordinance are hereby incorporated herein by this reference as if such exhibits were duly set forth herein.

Section Fifteen. Emergency Clause.

The passage of this Ordinance and the prepayment and redemption in advance of their maturity of the Series 1994 Bonds to be financed with the proceeds of the Series 1998 Bonds being deemed necessary to the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist under the terms and provisions of Article IV, Sections 19 and 20 of the Charter of the City of St. Louis and this Ordinance shall take effect immediately upon its passage and approval by the Mayor.

EXHIBIT I

SECOND SUPPLEMENTAL INDENTURE

EXHIBIT II

ESCROW AGREEMENT

ESCROW AGREEMENT

between

THE CITY OF ST. LOUIS, MISSOURI

and

STATE STREET BANK & TRUST COMPANY

OF MISSOURI, N.A.

as escrow agent

DATED AS OF DECEMBER 1, 1998

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## ESCROW AGREEMENT

This Escrow Agreement, dated as of December 1, 1998, by and between The City of St. Louis, Missouri, a municipal corporation and a political subdivision of the State of Missouri (the **City**), and State Street Bank & Trust Company of Missouri, N.A., a [trust company] duly organized and existing under and by virtue of the laws of the State of Missouri (the **Escrow Agent**).

### WITNESSETH:

WHEREAS, the City has heretofore issued its Water Revenue Bonds Series 1985 in the original principal amount of \$11,155,000 (the **Series 1985 Bonds**) pursuant to Ordinance 59597 (the **1985 Bond Ordinance**) for the purpose of providing funds for the advance refunding of the then outstanding water revenue bonds of the City; and

WHEREAS, pursuant to an Indenture of Trust (the **Indenture**) and the First Supplemental Indenture of Trust, both dated as of April 1, 1994 between the City and Mark Twain Bank, as Trustee, the City issued its \$51,570,000 The City of St. Louis, Missouri Water Revenue Refunding and Improvement Bonds, Series 1994 (the **Series 1994 Bonds**) on April 28, 1994 which

Series 1994 Bonds financed certain improvements to the City's Waterworks System and refunded and defeased all of the then outstanding Series 1985 Bonds; and

WHEREAS, the Board of Aldermen of the City have determined that it is necessary and advisable and in the best interest of the City to pay, refund and redeem and thereby to retire all or a portion of the City's Series 1994 Bonds which remain outstanding and unpaid by depositing with the Escrow Agent funds in an amount sufficient to purchase direct obligations of the United States of America that may not be redeemed at the option of the issuer or any person other than the holder thereof, as identified in Schedule I hereto (the "Defeasance Obligations"), which Defeasance Obligations will mature in principal amounts and bear interest in such amounts and become due and payable at such times so that monies will be available from such maturing principal and interest payments as shall, together with such beginning cash balance, be sufficient to pay, as the same become due by reason of maturity or redemption prior thereto as herein provided, all principal of, interest and redemption premium, if any, on all or a portion of the City's Series 1994 Bonds which mature on and after July 1, 2005 (the "Refunded Bonds"); and

WHEREAS, in order to provide funds to purchase the Defeasance Obligations, the City has determined that it is necessary to issue its Water Revenue Refunding Bonds, Series 1998 in the original principal amount of \$40,000,000 (the "Series 1998 Bonds"), under the authority of Ordinance \_\_\_\_\_ adopted by the Board of Aldermen of the City on November \_\_, 1998 and approved by the Mayor of the City on November \_\_, 1998 and the Indenture and a Second Supplemental Indenture of Trust dated as of December 1, 1998 between the City and UMB Bank St. Louis, N.A. (together with the Indenture, the "Series 1998 Indenture"), and to apply a portion of the proceeds thereof to such purpose;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

Section 1. Creation of Escrow Account. There is hereby created and established with the Escrow Agent a special and irrevocable escrow account designated "Escrow Account for City of St. Louis, Missouri Water Revenue Bonds, Series 1994" (the "Escrow Account") to be held in the custody of the Escrow Agent in a segregated account separate and apart from all other funds held by the Escrow Agent, in trust for the benefit of the holders of the Refunded Bonds. The cash funds and Defeasance Obligations at any time on deposit in the

Escrow Account shall be considered a part of the Waterworks Revenue Fund created to pay the Refunded Bonds.

Section 2. Deposits to Escrow Account. Concurrently with the execution of this Agreement and in accordance with Ordinance \_\_\_\_\_ and the Series 1998 Indenture, the City herewith deposits or causes to be deposited with the Escrow Agent and the Escrow Agent hereby acknowledges receipt of immediately available funds in the amount of \$ \_\_\_\_\_ which consists of \$ \_\_\_\_\_ of proceeds of the Series 1998 Bonds, \$ \_\_\_\_\_ consisting of certain monies transferred by the Series 1994 Waterworks Debt Service Account and \$ \_\_\_\_\_, consisting of certain monies transferred from the Series 1994 Water Revenue Debt Service Reserve Account.

The aforesaid funds so held shall be held in the Escrow Account and administered subject to and in accordance with the terms of this Agreement.

The City hereby instructs the Escrow Agent to purchase with the aforesaid funds on deposit with the Escrow Agent, the Defeasance Obligations described in Schedule I. McGhee & Associates, Bond Counsel, has issued its opinion that the Refunded Bonds have been defeased in accordance with the terms of Ordinance 59597.

Section 3. Creation of Lien. The escrow created hereby shall be irrevocable. The holders of the Refunded Bonds are hereby granted an express lien on and security interest in the cash and Defeasance Obligations in the Escrow Account and all earnings thereon until used and applied in accordance with this Agreement. Except as otherwise expressly provided in Section 5, such cash funds and the matured principal of and interest income from the Defeasance Obligations in the Escrow Account shall be applied solely for the payment of the principal of, redemption premium and interest on the Refunded Bonds.

Based upon the opinion of Bond Counsel referred to in Section 2 above, the City hereby acknowledges and agrees that the deposit of funds hereinbefore described and application of the same in accordance with the terms of this Agreement will constitute all action required for the Refunded Bonds to cease to be entitled to any lien, benefit or security under Ordinance 63135 and, upon such deposit and such application as aforesaid, all covenants, agreements and obligations of the City under Ordinance 63135 to the owners of the Refunded Bonds shall cease, terminate and become void and be discharged and fully satisfied. Simultaneously with the delivery of the aforementioned documents, the City shall provide to the Trustee a verification report addressed to the Trustee, the City and bond Counsel from a firm of nationally recognized

independent certified public accountants that the amounts which will consist of cash and/or Defeasance Obligations available or to be available for payment of the Refunded Bonds will remain sufficient to pay when due all principal and interest on the Refunded Bonds.

Section 4. Application of Proceeds of Defeasance Obligations. Except as otherwise expressly provided herein, the Escrow Agent shall have no power or duty to invest any monies held hereunder or to sell, transfer or otherwise dispose of the Defeasance Obligations.

On July 1, 2004 (the **Redemption Date**), the Escrow Agent shall pay, pursuant to Ordinance 63135, principal of, redemption premium, as applicable, and interest on all of the Refunded Bonds which remain outstanding on and after July 1, 2004 which shall equal \$ \_\_\_\_\_. In order to make the payments required to be made by the provisions of this paragraph, the Escrow Agent is hereby authorized to redeem or otherwise dispose of the Defeasance Obligations in which monies of the Escrow Account are invested in accordance with the maturity schedule set forth in Schedule I hereof.

The liability of the Escrow Agent to make the payments required by this Section 4 shall be limited to the funds and Defeasance Obligations on deposit in the Escrow Account. Notwithstanding any other provision of this Agreement, the City hereby covenants that no part of the proceeds of the Series 1998 Bonds or of the monies or funds in the Escrow Account shall be used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Series 1998 Bonds would have caused any of such Series 1998 Bonds or the Refunded Bonds to be an **arbitrage bond** under Section 148 of the Internal Revenue Code of 1986, as amended, (herein the **Code**), and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Series 1998 Bonds.

At the written direction of the City and upon compliance with the conditions hereinafter stated, the Escrow Agent shall sell, transfer or otherwise dispose of or request the redemption of the Defeasance Obligations acquired hereunder and to substitute for the Defeasance Obligations other direct and general obligations of the United States of America (the **Substituted Obligations**), which are not subject to redemption prior to maturity except at the option of the holder thereof, provided however that such substitution shall only occur upon the receipt by the Escrow Agent of (i) a new verification by a verification agent of the sufficiency of the escrowed securities (assuming such substitution has

been made) to provide for the payment of the Refunded Bonds in accordance with the terms herein and (ii) an opinion of bond counsel to the effect that such substitution shall not affect the tax-exempt status of interest on the Refunded Bonds or the Series 1998 Bonds. The City hereby covenants and agrees that it will not request the Escrow Agent to exercise any of the powers described in the preceding sentence in any manner which, if reasonably expected on the date of issuance thereof, would cause any such Refunded Bond or Series 1998 Bonds to be an  $\diamond$ arbitrage bond $\diamond$  within the meaning of Section 148 of the Code, and the regulations thereunder in effect on the date of such request and applicable to obligations issued on the issue date of such Series 1998 Bonds. The Escrow Agent shall purchase such Substituted Obligations with the proceeds derived from the sale, transfer, disposition or redemption of the Defeasance Obligations together with any other funds available for such purpose.

Section 5. Escrow Agent Covenants. The Escrow Agent covenants and agrees with the City as follows:

The Escrow Agent will hold the Defeasance Obligations and all interest income or profit derived therefrom and all uninvested deposits in an irrevocable segregated and separate trust fund account for the sole and exclusive benefit of the City (and the holders of the Refunded Bonds) to the purposes for which escrowed.

The Escrow Agent will take no action in the investment or securing of the proceeds of the Defeasance Obligations which would cause the Series 1998 Bonds to be classified as  $\diamond$ arbitrage bonds $\diamond$  under Section 103(c) of the Internal Revenue Code of 1986, as amended, and all lawful regulations promulgated thereunder, provided, it shall be under no duty to affirmatively inquire whether the Defeasance Obligations as deposited are properly invested under said section; and, provided, further, it may rely on all specific directions in this Agreement in the investment or reinvestment of balances held hereunder.

The Escrow Agent will submit to the Comptroller of the City a statement within forty-five (45) days after \_\_\_\_\_ and \_\_\_\_\_ of each calendar year, commencing \_\_\_\_\_, itemizing all moneys received by it and all payments made by it under the provisions of this Agreement during the preceding six (6) month period, and also listing the Defeasance Obligations on deposit therewith on the date of said report, including all moneys held by it received as interest on or profit from the collection of the Defeasance Obligations.

Section 6. City Covenants. The City covenants and agrees with the Escrow Agent as follows:

The Escrow Agent in its capacity hereunder shall have no responsibility or liability whatsoever for (a) any of the recitals of the City herein, (b) the performance of or compliance with any covenant, condition, term or provisions of the Indenture and (c) any undertaking or statement of the City hereunder or under the Indenture.

All payments to be made by, and all acts and things required to be done by, the Escrow Agent under the terms and provisions of this Agreement, shall be made and done by the Escrow Agent without any further direction or authority of the City.

Section 7. Redemption of Refunded Bonds; Notices. The City hereby irrevocably elects and directs the Escrow Agent to cause to be redeemed on the Redemption Date, with the funds in the Escrow Account, the Refunded Bonds.

The Escrow Agent hereby agrees to expeditiously mail by first class mail, as soon as practicable, after the closing of the Series 1998 Bonds, a notice to registered owners of the Refunded Bonds in substantially the following form:

NOTICE TO OWNERS

OF

THE CITY OF ST. LOUIS MISSOURI

WATER REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES  
1994

DATED AS OF APRIL 1, 1994

MATURING ON JULY 1, \_\_\_\_, \_\_\_\_ AND \_\_\_\_

Notice is hereby given by the undersigned on behalf of The City of St. Louis, Missouri (the "City") to the Owners of the City's Water Revenue Refunding and Improvement Bonds, Series 1994 dated as of April 1, 1994 (the "Series 1994 Bonds"), that there has been deposited irrevocably in trust with

State Street Bank & Trust Company of Missouri, N.A., as Escrow Agent, direct obligations of the United States of America, the principal of and interest on which, together with other monies on deposit with the Escrow Agent, shall be sufficient to pay on July 1, 2004 the Series 1994 Bonds maturing on and after July 1, 2005 and interest thereon in accordance with the irrevocable election and instruction of the City.

State Street Bank & Trust Company of Missouri, N.A.

St. Louis, Missouri, as Escrow Agent

The City hereby gives the Escrow Agent irrevocable instructions as follows:

To provide in writing, notice in the name of the City, of the City's intention to redeem the Series 1994 Bonds which mature on and after July 1, 2005 prior to their stated maturities, such notice to be in substantially the following form and to be mailed to each of the registered owners such Series 1994 Bonds maturing on and after July 1, 2005, as hereinafter provided, not less than 25 days prior to July 1, 2004:

NOTICE OF REDEMPTION

TO THE OWNERS OF

THE CITY OF ST. LOUIS, MISSOURI

WATER REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES  
1994

DATED AS OF APRIL 1, 1994

MATURING ON JULY 1, \_\_\_\_, \_\_\_\_, AND \_\_\_\_

Notice is hereby given by the undersigned on behalf of The City of St. Louis, Missouri (the City) that all outstanding Water Revenue Refunding and Improvement Bonds, Series 1994 (described above) (the Series 1994 Bonds) have been irrevocably designated for payment upon redemption and shall be redeemed on July 1, 2004 at a redemption price equal to the percentage set forth below of the principal amount thereof plus interest accrued on such principal amount to, but not including, the date fixed for redemption.

The stated maturity dates, aggregate principal amounts, interest rates and CUSIP numbers and redemption price (as a percentage) of the Series 1994 Bonds hereby called for redemption are as follows:

Stated Maturity	Principal Amount	Interest Rate	C U S I P Number	Redemption Price
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The total aggregate principal amount of Refunded Bonds maturing after July 1, 2005 which are hereby called for redemption and shall be payable on July 1, 2004 is \$\_\_\_\_\_.

The Refunded Bonds shall be payable upon presentation and surrender at the principal office of State Street Bank & Trust Company of Missouri, N.A., Attention: Municipal Trust and Agency Administration. Inquiries or requests for additional information should be directed to the principal office of State Street Bank & Trust Company of Missouri, N.A., or by telephone to (314) 206-3020.

Interest on the Series 1994 Bonds called for redemption shall cease to accrue from and after July 1, 2004.

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

\_\_\_\_\_  
ESCROW AGENT

Under the provisions of the Interest and Dividend Tax Compliance Act of 1983, as amended, Paying Agents making payments of principal on municipal securities will be obligated to withhold 31% of the payment of principal to holders who have failed to provide the paying agent with a valid Taxpayer Identification Number. Holders of the above described securities will avoid such withholding by providing a certified Taxpayer Identification Number when presenting securities for payment.

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The Escrow Agent shall mail such Notice of Redemption to the registered owners of each of the Refunded Bonds, by first class mail, postage prepaid, at least 25 days prior to July 1, 2004.

Section 8. Remaining Funds. All cash funds and Defeasance Obligations together with any income and interest thereon remaining in the Escrow Account after all of the Refunded Bonds have been duly paid in full at maturity according to their terms or upon redemption as herein provided, shall be applied as provided in Ordinance 63135.

Section 9. Liability of Escrow Agent. (a) The Escrow Agent shall not be liable for any loss resulting from any investment, sale, transfer or other disposition made pursuant to this Agreement in compliance with the provisions hereof. The Escrow Agent shall have no lien whatsoever on any of the monies or Defeasance Obligations on deposit in the Escrow Account for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of the Defeasance Obligations and other monies available for such purpose to pay the Refunded Bonds. So long as the Escrow Agent applies the Defeasance Obligations and monies as provided herein, and complies fully with the terms of this Agreement, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Refunded Bonds caused by such calculations. Notwithstanding the foregoing, the Escrow Agent shall not be relieved of liability arising from and proximate to its gross negligence, or willful misconduct or failure to exercise good faith in its efforts to comply fully with the terms of this Agreement.

(c) In the event of the Escrow Agent's failure to account for any of the Defeasance Obligations or monies received by it, said Defeasance Obligations or monies shall be and remain the property of the City in trust for the holders of the Refunded Bonds, as herein provided, and if for any cause within the scope of the Escrow Agent's obligations or control such Defeasance Obligations or monies are not applied as herein provided, the assets of the Escrow Agent shall be liable for the amount thereof until the required application shall be made.

Section 10. Fees and Costs of the Escrow Agent. The aggregate amount of the costs, fees and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Agreement and in carrying out any of the duties, terms or provisions of this Agreement is \$\_\_\_\_\_ payable upon the establishment of the escrow.

Notwithstanding the preceding paragraph, the Escrow Agent shall be entitled to reimbursement from the City of out-of-pocket, legal or extraordinary expenses or any loss incurred in carrying out the duties, terms or provisions of this

Agreement. Claims for such reimbursement may be made to the City and in no event shall such reimbursement be made from funds held by the Escrow Agent pursuant to this Agreement.

Section 11. Resignation or Removal of Escrow Agent; Successor Escrow Agent. The Escrow Agent at the time acting hereunder may at any time resign and be discharged from its duties and responsibilities hereby created by giving written notice to the City not less than 60 days prior to the date when the resignation is to take effect. Such resignation shall take effect immediately upon the acceptance by the City of such resignation, the appointment of a successor Escrow Agent (which may be a temporary Escrow Agent), the acceptance by such successor Escrow Agent of the terms, covenants and conditions of this Agreement, the transfer of the Escrow Account, including the moneys and Defeasance Obligations held therein, to such successor Escrow Agent and the completion of any other actions required for the principal of and interest on the Defeasance Obligations to be made payable to such successor Escrow Agent and the completion of any other actions required for the principal of and interest on the Defeasance Obligations to be made payable to such successor Escrow Agent rather than the resigning Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent signed by the owners of a majority in principal amount of the Refunded Bonds then outstanding. The Escrow Agent may also be removed by the City if the Escrow Agent, due to its negligence or willful failure to act, fails to make timely payment on any bond payment date of the amounts required to be paid by it on such bond payment date by Section 5 of this Agreement to the persons specified in said Section 4. Any removal pursuant to this paragraph shall become effective upon the appointment of a successor Escrow Agent (which may be a temporary successor Escrow Agent), the acceptance by such successor Escrow Agent of the terms, covenants and conditions of this Agreement, the transfer of the Escrow Account, including the moneys and Defeasance Obligations held therein, to such successor Escrow Agent and the completion of any other actions required for the principal of and interest on the Defeasance Obligations to be made payable to such successor Escrow Agent rather than the Escrow Agent being removed.

In the event the Escrow Agent shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, the City shall appoint a temporary Escrow Agent to fill such vacancy

until a successor Escrow Agent shall be appointed in the manner above provided, and any such temporary Escrow Agent so appointed shall immediately and without further act be superseded by the successor Escrow Agent so appointed. The City covenants and agrees that it shall appoint a successor Escrow Agent. The City shall mail notice of any such appointment made by the City to the owners of the Refunded Bonds at their last address, if any, appearing upon the registry books.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by the City pursuant to the foregoing provisions of this Section within 60 days after written notice of resignation of the Escrow Agent has been given to the City, the owner of any of the Refunded Bonds or the retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation with trust powers authorized to do business in the State of Missouri and organized under the banking laws of the United States or the State of Missouri and shall have at the time of appointment capital and surplus of not less than [\$70,000,000].

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the City an instrument in writing accepting such appointment hereunder, and thereupon such successor Escrow Agent without any further act, deed or conveyance shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the City execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor. Should any transfer, assignment or instrument in writing from the City be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Any corporation into which the Escrow Agent, or any successor to it of the duties and responsibilities created by this Agreement, may be merged or

converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party shall be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 12. Termination. This Agreement shall terminate when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

Section 13. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or on the part of the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement. In the event of the application of this severability provision, the Escrow Agent shall give immediate notice to Moody's Investors Service, 99 Church Street, New York, New York 10007, Attention: Public Finance Rating Desk/Refunded Bonds, Standard & Poor's Rating Group at 25 Broadway, New York, New York 10004, Attention: Municipal Finance Department and Fitch Investors Service, Inc., 1 State Street Plaza, 33rd Floor, New York, New York 10004, Attention: Public Finance Department.

Section 14. Successors and Assigns. All the covenants, promises and agreements in this Agreement contained by or on behalf of the City or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 15. Reliance. The Escrow Agent hereunder is conclusively entitled to rely on this Agreement and the opinions of bond counsel and any special tax counsel as to the validity and legal sufficiency thereof and of the refunding, and shall incur no liability for application of funds in accordance with the liability for application of funds in accordance with the provisions of this Agreement. The City agrees to indemnify and save harmless to the extent permitted by law the Escrow Agent from and against any claims arising out of or on account of the refunding except for its willful misconduct or gross negligence and except for claims based on its failure to faithfully perform the terms and provisions of this Agreement.

Section 16. Governing Laws. This Agreement shall be governed by the applicable laws of the State of Missouri.

Section 17. Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 18. Amendments to this Agreement. This Agreement is made for the benefit of the owners from time to time of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such owners and the Escrow Agent; provided, however, that the Escrow Agent may, without the consent of, or notice to, such owners, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such owners and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Agreement;

(b) to grant to, or confer upon, the Escrow Agent for the benefit of the holders of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and

(c) to subject to this Agreement additional funds, securities or properties. The Escrow Agent shall be entitled to rely exclusively upon an opinion of counsel, nationally recognized on the subject of municipal bonds, acceptable to the Escrow Agent with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the holders of the Refunded Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

Section 19. Subsequent Actions. This Agreement may be amended or supplemented, the Defeasance Obligations or any portion thereof sold or redeemed, or invested or reinvested in the manner provided herein (any such amendment, supplement, direction to sell or redeem or invest to be referred to as a ♦Subsequent Action♦), upon submission to the Escrow Agent of each of the following:

(1) A certified copy of proceedings of the City authorizing the Subsequent Action and copy of the document effecting the Subsequent Action signed by duly designated officers of the City.

(2) An opinion of nationally recognized bond counsel or tax counsel nationally recognized as having an expertise in the area of tax-exempt municipal bonds that the Subsequent Action will not cause the interest on the Series 1998 Bonds or the Refunded Bonds to become includable in the gross income of the owners for federal income tax purposes and not exempt from Federal income taxes of such owners under the laws of the United States of America providing for taxation of income nor violate the covenants of the City not to cause the Series 1998 Bonds or the Refunded Bonds to become arbitrage bonds under §103(c) of the Internal Revenue Code of 1986, as amended, and that the Subsequent Action does not materially adversely affect the legal rights of the holders of the Series 1998 Bonds and the Refunded Bonds.

(3) An opinion of a firm of nationally recognized independent certified public accountants that the amounts (which will consist of cash or deposits on demand held in trust or receipts from direct full faith and credit obligations of the United States of America, all of which shall be held hereunder) available or to be available for payment of the City's Refunded Bonds will remain sufficient to pay when due all principal and interest on the Refunded Bonds after taking of the Subsequent Action.

Section 20. Notices. All notices and communications to the City and/or the Comptroller shall be addressed in writing to:

The City of St. Louis  
City Hall  
1200 Market Street  
St. Louis, Missouri 63103  
Attention: Comptroller (Room 212) and  
City Counselor (Room 314)

All notices and communications to the Escrow Agent shall be addressed in writing to:

State Street Bank & Trust Company of Missouri, N.A.,  
211 N. Broadway - 39th Floor  
St. Louis, MO 63102  
Attention: Municipal Trust and Agency Administration

(Signature page to follow)

IN WITNESS WHEREOF, the City has caused this Agreement to be signed in its name and on behalf of the Mayor, Comptroller and Treasurer and its corporate seal to be hereunto affixed and attested by its Register, and State Street Bank & Trust Company of Missouri, N.A., in the capacity as hereinabove described, has caused this Agreement to be signed in its corporate name by one of its Vice Presidents or Assistant Vice Presidents and attested by one of its Assistant Secretaries under its corporate seal hereunto affixed, all as of the date first above written.

THE CITY OF ST. LOUIS

By:

Clarence Harmon, Mayor

By:

Darlene Green, Comptroller

By:

Larry C. Williams, Treasurer

Approved as to form:

By:

Eric Kendall Banks, City Counselor

(SEAL)

ATTEST:

By:

Rita Krapf, Register

(SEAL),

STATE STREET BANK & TRUST COMPANY OF MISSOURI, N.A.,

as Escrow Agent

ATTEST:

By:

Assistant Secretary

By:

Name:

Title: Vice President

**SCHEDULE I**

**I. Description of Defeasance Obligations**

Type Principal Amount Maturity Date Yield Total Costs

<b>Legislative History</b>				
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>
<b>11/06/98</b>	<b>11/06/98</b>	<b>PU</b>		
<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>PERFECTN</b>	<b>PASSAGE</b>
<b>11/20/98</b>			<b>12/04/98</b>	<b>12/04/98</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>	
<b>64510</b>				