

SAMPLE

KMK/BMM 2/18/04

(Please Note: The following statements are an essential part of the permanent bond record. Read them carefully before signing this certificate. Advise Palmer & Dodge LLP of any inaccuracy.)

Town of Acton, Massachusetts

\$7,094,000 Municipal Purpose Loan of 2004 Bonds
dated March 1, 2004

CERTIFICATE

PART I. SIGNATURE AND NO LITIGATION CERTIFICATE

A. Certificate of Authorized Officers. We, the Selectmen and the Treasurer of the Town of Acton, Massachusetts, certify that we have signed each of the \$7,094,000 Municipal Purpose Loan of 2004 Bonds (the "Bonds") of the Town dated March 1, 2004, payable March 1 of the years and in the principal amounts, and bearing interest at the respective rates as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2005	\$359,000	2.50%	2015	\$365,000	3.50%
2006	365,000	2.50	2016	360,000	3.60
2007	365,000	3.50	2017	360,000	3.65
2008	365,000	2.375	2018	360,000	3.75
2009	365,000	2.50	2019	360,000	3.85
2010	365,000	2.75	2020	360,000	4.00
2011	365,000	2.75	2021	360,000	4.05
2012	365,000	3.00	2022	360,000	4.15
2013	365,000	3.25	2023	360,000	4.20
2014	365,000	3.50	2024	205,000	4.50

All of the Bonds are similar in form and similarly executed, and each Bond bears (either by impression or in facsimile) the Town seal, which is also affixed to this certificate.

We, the said officers, also certify as follows:

1. Authority. The Bonds are issued pursuant to the following statutes and votes of the Town:

- (a) \$6,400,000 - under G.L. c.44, §7(3) and votes of the Town passed October 15, 2002 (Article 1) and November 5, 2002 (Question 4);
- (b) \$610,000 - under G.L. c.44, §7(1) and a vote of the Town passed April 9, 1997 (Article 18); and
- (c) \$84,000 - under G.L. c.44, §7(1) and a vote of the Town passed November 15, 1999 (Article 3).

2. Other Debt. No other debt has been incurred under those votes except for the following bonds and bond anticipation notes:

- (a) \$3,000,000 notes dated March 5, 2003 and payable March 4, 2004;
- (b) a \$1,102,000 bond dated November 1, 1998 (and an interim loan note in anticipation thereof, of which \$12,560 was paid from a state grant); a \$9,385,440 bond dated November 1, 2000 (and an interim loan note in anticipation thereof); \$1,000,000 notes dated March 29, 1999, renewed March 6, 2000, and payable March 5, 2001, of which \$315,000 was temporarily paid on such date from available funds; \$685,000 notes dated March 5, 2001 and payable March 5, 2002, of which \$25,000 was paid on such date from revenue funds; a \$315,000 bond dated July 15, 2001 (and an interim loan note in anticipation thereof); \$660,000 notes dated March 5, 2002 and payable March 5, 2003, of which \$25,000 was paid on such date from revenue funds; and \$635,000 notes dated March 5, 2003 and payable March 4, 2004, of which \$25,000 will be paid on such date from revenue funds; and
- (c) a \$3,496,688 bond dated July 15, 2001 (and an interim loan note in anticipation thereof, of which \$52,288 was paid from a state grant); and \$84,000 notes dated March 5, 2002, renewed March 5, 2003, and payable March 4, 2004.

3. Approval of Sale. We approve the sale of the Bonds to Legg Mason Wood Walker, Inc. at par and accrued interest plus a premium of \$9,814.71.

B. Delivery and Receipt. I, the Treasurer, certify that the Bonds were delivered on this date and that the full purchase price including accrued interest for the period, if any, from the date of the Bonds to this date was received from the purchaser on this date.

C. Certificate of Town Clerk. I, the Town Clerk, certify as follows:

(a) Signatures and Incumbency. The signatures of the Treasurer, Finance Director and Selectmen as appearing below are the genuine signatures of the persons who held those offices when the Bonds were signed and when the Bonds were delivered.

(b) Proceedings. No proceeding essential to the issue of the Bonds has been repealed or amended except as stated in paragraph (1) above, and no proceedings have been taken relating to the Bonds other than those certified to Palmer & Dodge LLP.

(c) Bylaws. The bylaws described below are the only bylaws or standing votes of the Town affecting the authorization, sale or issue of the Bonds or the use of assessments or other charges imposed to pay for any project financed by the Bonds, and there has been no change therein affecting those matters in any way except as may be indicated below:

Bylaws of the Town of Acton updated April, 1999.

(d) Home Rule. The Town has not amended its home rule charter adopted April 5, 1982 since March 29, 1994 and the Town has not amended or repealed any special law relating to the Town through the use of home rule procedures except by adoption of the charter.

D. No Litigation; No Financial Interest. All of the undersigned certify that there has been no litigation affecting the validity of the Bonds or the power of the Town to levy and collect taxes to pay them; that none is pending or to our knowledge threatened; that neither the corporate existence nor boundaries of the Town nor the title of any of us to our respective offices is being contested; and that none of us and, to the best of our knowledge, no other official of the Town has any direct or indirect financial interest in or relationship with the purchaser of the Bonds.

PART II. NO ARBITRAGE CERTIFICATE

We, the Treasurer and Selectmen of the Town, certify as follows:

1. Responsibility for Issue. We are charged by law and the proceedings authorizing the Bonds with responsibility for the issuance of the Bonds.
2. Description and Purpose of Bonds. The Town is issuing and delivering the Bonds simultaneously with the delivery of this certificate. The following amounts of the issue are for the following purposes including the payment of \$3,694,000 bond anticipation notes:

<u>Amount</u>	<u>Purpose</u>
\$6,400,000	designing, constructing, originally equipping and furnishing a new Public Safety Building
\$694,000	planning, designing and construction of sewers and wastewater treatment plant facilities for the Middle Fort Pond Brook Sewer District

3. Expenditure of Amount Borrowed. The following expectations relate to the Bonds:

(a) No Overissue. The principal amount borrowed by the issuance of the Bonds is not expected to exceed the amount needed after taking account of all other available funds.

(b) Commencement and Expenditure Tests. At least 10 percent of the new money borrowed by the issuance of the Bonds is expected to be needed and expended for project costs within 6 months from the date of the borrowing, after first expending any available amount previously borrowed or otherwise appropriated for the purpose. All of the new money borrowed by the issuance of the Bonds is expected to be needed and expended for project costs within 24 months from the date of the borrowing.

(c) Due Diligence. The project for which new money is provided by the issuance of the Bonds is expected to proceed with due diligence to completion.

4. Bond Anticipation Notes. The following relate to the notes issued in anticipation of the Bonds:

(a) Description of Notes. The schedule or description of bond anticipation notes in Part I of this Certificate is incorporated herein by reference.

(b) No Overissue. The principal amount borrowed for each purpose by each issue of the notes did not exceed the amount needed for the purpose after taking account of all other available funds.

(c) Commencement and Expenditure Tests. At least 10 percent of the new money borrowed for each purpose has been needed and expended for project costs within 6 months from the date of the original borrowing, after first expending any available amount previously borrowed or otherwise appropriated for the purpose. The new money borrowed for each purpose by each issue of the notes has been or is expected to be needed and expended for project costs within 24 months from the date of the original borrowing.

(d) Due Diligence. Each project for which new money has been provided by each issue of the notes has proceeded and is expected to proceed with due diligence to completion.

(e) Retirement of Notes. Any notes issued in anticipation of the Bonds will be retired within 30 days. Any notes for which refunding notes have been issued have already been retired.

5. No Reimbursement. None of the proceeds of the Bonds are being used to reimburse the Town for expenditures previously made from funds other than proceeds of a borrowing.

6. No Guaranteed Investment Contract. None of the new money borrowed by the issuance of the Bonds, or by the issuance of notes in anticipation of the Bonds, has been or will be invested in investments having a substantially guaranteed yield for 4 years or more.

7. Appendix. For additional facts and estimates relating to the projects to be financed by the Bonds see the attached Appendix, which is incorporated into this certificate.

8. Premium or Discount. The Bonds are not subject to optional redemption within 5 years. The premium to be received from the sale of the Bonds does not exceed one-fourth of 1 percent of the face amount and will be applied to payment of costs of issuance within 1 year from the date of issue.

9. Accrued Interest. The accrued interest to be received from the sale of the Bonds does not exceed 1 month's interest and will be applied to the payment of interest on the Bonds within 6 months from the date of issue. Any accrued interest on any sale of notes in anticipation of the Bonds has not exceeded 1 month's interest and has been or will be applied to interest on the notes within 1 year from the date of issue of the notes.

10. Costs of Issuance. Proceeds of the Bonds to be applied to costs of issuance will be so applied within 180 days from the date of issue. Any proceeds of notes in anticipation of the Bonds to be applied to costs of issuance have been so applied.

11. Investment Earnings. Earnings (including net profit) from investment or deposit of proceeds of the Bonds or of notes in anticipation thereof have been or are expected to be commingled upon receipt with the general funds of the Town and expended for current purposes within 6 months after their commingling. As used in this certificate, the term "proceeds" includes premium, accrued interest and investment earnings as well as the principal amount borrowed.

12. Compliance with Rebate Requirement.

(a) Small-Issuer Exception. [Inapplicable.]

(b) Six Month Exception. [Inapplicable.]

(c) Two Year Exception. At least 75% of the Available Construction Proceeds (as defined below) are to be used to pay costs of construction, reconstruction, or rehabilitation of property owned by the Town. "Available Construction Proceeds" means the proceeds of sale of the Bonds and all earnings thereon (including earnings on earnings). If the expenditure of the Available Construction Proceeds will equal or exceed the minimum percentages at the end of each period (measured from the original borrowing date) as set forth below, the Town will not be required to pay any rebate or penalty described in Paragraph 12(d) or (e) with respect to the Available Construction Proceeds:

<u>Period</u>	<u>Minimum Percentage</u>
6 months	10%
12 months	45
18 months	75
24 months	100 ¹

(d) Rebate. If the Town fails to spend all the proceeds of the Non-School Bonds on the schedule described in Paragraph 12(c), the Town will pay any rebate due in accordance with IRC §148(f), pursuant to advice and instructions from Palmer & Dodge LLP or other nationally recognized bond counsel. For this purpose, for each investment of proceeds the Town will record the date of payment for the investment, its purchase price and accrued interest paid, face amount, interest rate, interest payment dates and amounts received, the date of disposition, disposition price, and accrued interest received upon disposition. If proceeds are commingled with other funds for investment, the Town will allocate investments to the proceeds by a reasonable method consistently applied.

(e) Penalty in Lieu of Rebate. [Inapplicable.]

(f) Yield. [Inapplicable.]

~~(g) Bond Anticipation Notes. No penalty under IRC §148(f)(4)(C)(vii) has been or will be payable in connection with the notes issued in anticipation of the Bonds.~~

13. No Sale of Projects. The Town does not expect to sell any project financed by the Bonds.

14. No Sinking Fund or Pledged Collateral. The Town has not established and does not expect to establish any sinking fund, debt service fund, redemption fund, reserve fund, replacement fund or similar fund to be used to pay principal of or interest on the Bonds. The Town has not pledged and does not expect to pledge any funds or property as security for the Bonds.

15. Reasonable Expectations; Intentional Acts. To the best of our knowledge, information and belief, the above expectations are reasonable. The Town will not intentionally take any action that would cause, or intentionally omit to take any action if that omission would cause, the Bonds to be "arbitrage bonds" within the meaning of IRC §148.

¹ Except for a reasonable retainage not exceeding 5% of the Available Construction Proceeds, which is expected to be spent within 36 months of the original borrowing date.

PART III. USE OF PROCEEDS CERTIFICATE AND COVENANT AS TO
TAX-EXEMPT STATUS OF BONDS

We, the Treasurer and Selectmen of the Town, certify and covenant on behalf of the Town as follows in connection with the issuance of the Bonds and the exclusion of interest on the Bonds from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"):

1. Use in Trade or Business. Not more than 5% of the gross proceeds of the Bond issue are to be used (directly or indirectly) in any trade or business carried on by any person other than a state or local governmental unit². The Town does not have or plan to have any contract or other arrangement not applicable to the general public under which a party, other than the Commonwealth or a local governmental unit or a residential homeowner or tenant, is to have the use of a particular facility financed by the Bonds or is to make payments based on costs of such a facility rather than system costs.

2. Private Loans. None of the gross proceeds of the issue are to be used by the Town directly or indirectly to make or finance loans to others.³

3. Covenant. We hereby covenant on behalf of the Town that the Town will pay any amount due under IRC §148(f) to the United States in connection with the issuance of the Bonds, and that the Town will take all other lawful action necessary to comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest on the Bonds be or continue to be excluded from gross income for federal income tax purposes.

4. Qualified Tax-Exempt Obligations. The Bonds are hereby designated as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code except to the extent that the Bonds issued to refund prior notes are deemed designated under Section 265(b)(3)(D)(ii). The notes issued in anticipation of the Bonds were designated in 2003 as "qualified tax-exempt obligations" for the purposes of Section 265(b)(3) of the Code, and the total amount of tax-exempt obligations so designated by the Town and all subordinate entities during that year was \$3,719,000. We certify that the reasonably anticipated amount of tax-exempt obligations that will be issued by or on behalf of the Town and all of its subordinate entities, if any, during the current calendar year (excluding that portion of the Bonds being issued to refund bond anticipation notes and any other obligations issued to refund within 90 days thereafter the same principal amount of any prior obligations) does not exceed \$10,000,000, as shown on the attached Schedule A. The aggregate amount of tax-exempt obligations issued by or on behalf of the Town and all subordinate entities during 2003 (excluding obligations issued

² Use in a trade or business includes all activities carried on by the federal government (including its agencies and instrumentalities), by so-called Section 501(c)(3) organizations and by all other nongovernmental entities other than natural persons, but does not include use as a member of or on the same basis as the general public.

³ This does not preclude (i) financing projects whose costs are to be paid by betterment assessments over a period of years or (ii) temporary investment of Bond proceeds pending their expenditure.

to refund within 90 days thereafter the same principal amount of any prior obligations) was \$3,700,000. No entity has been formed by the Town or for the benefit of the Town in order to avoid the \$10,000,000 limitations in IRC §265(b)(3)(C) and (D).

Dated: March 3, 2004
(Date of delivery of and
payment for the Bonds)

Selectmen

Treasurer

Finance Director

Town Clerk

(Town Seal)

APPENDIX

The Town has expended all of the prior note proceeds on the sewer project.

The Town has expended at least \$ _____ and has contractual commitments to expend at least \$ _____ more on the public safety building project and has expended or expects to expend the bond anticipation note proceeds and the Bond proceeds for the project in accordance with the following schedule:

Expend at least:

\$ _____

By:

September 5, 2003
March 5, 2004
September 3, 2004
March 3, 2005
September 3, 2005
March 3, 2006

SCHEDULE A

Tax-exempt Obligations
Issued or Expected to be Issued During 2004

<u>Actual or Expected Date of Issuance</u>	<u>Maturity Date</u>	<u>Type of Obligation (1)</u>	<u>Original Issue (O) or Refunding (R)</u>	<u>Principal Amount</u>
3/3/04	2005-2024	Bonds	O	\$3,400,000
3/3/04	2005-2024	Bonds	R	3,694,000

(1) "Bonds," "BANs" (bond anticipation notes), "TRANs" (tax or revenue anticipation notes), "GANs" (federal or state grant anticipation notes), "Lease" or "Other".