

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2

3  
4  
5  
6  
7

8  
9  
0  
1  
2  
3  
4  
526  
27

89

0  
1  
2  
3

Obligations and the payment of the Bonds pursuant to the provisions of Chapter 1371, Texas Government Code, as amended; and

**WHEREAS**, the City Council finds and determines the regularly scheduled payments owed by the City (each, a “Scheduled Hedge Payment”) under the Credit Agreement (as such term is defined in Section 2) herein authorized can and shall be payable and secured on a parity, equally and ratably, with the outstanding “Parity Water/Wastewater Obligations” issued in accordance with and under the terms and provisions of Ordinance No. 000608-56A (the “Master Ordinance”) and Ordinance Nos. 000608-56B, 010419-77, 011129-65, 020718-15, 030206-35, 040617-45, 040812-43, 040930-83, 050519-37, 051020-051, 20051117-060, 20061108-051 and 20071108-080 (the “Prior Supplements”), which authorize the issuance of the Previously Issued Parity Water/Wastewater Obligations (which Previously Issued Parity Water/Wastewater Obligations consist of the outstanding (1) "City of Austin, Texas, Water And Wastewater System Revenue Refunding Bonds, Series 2000" (2) "City of Austin, Texas, Water And Wastewater System Revenue Refunding Bonds, Series 2001A", (3) "City of Austin, Texas, Water And Wastewater System Revenue Refunding Bonds, Series 2001B", (4) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2001C", (5) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2002A", (6) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2003", (7) "City of Austin, Texas, Water and Wastewater System Variable Rate Revenue Refunding Bonds, Series 2004", together with certain regularly scheduled payments under the Interest Rate Swap Agreement, the Liquidity Agreement and the Insurance Obligation (as such terms are defined in Ordinance No. 040812-43), (8) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2004A", (9) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2005”, (10) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2005A”, (11) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2006”, (12) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2006A” and (13) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2007,” each of which were authorized for issuance by the Master Ordinance and the Prior Supplements); and

**WHEREAS**, the City Council further finds and determines certain other contingent payments by the City related to termination of the Credit Agreement herein authorized can and shall be secured by lien on and pledge of the Net

Revenues of the Water/Wastewater System on a basis subordinate to other obligations payable from such Net Revenues all as specified herein; now therefore:

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN, TEXAS:**

**SECTION 1: DEFINITIONS.** In addition to the definitions set forth in the preamble of this Ordinance or otherwise contained in this Ordinance (hereinafter referred to as this "Fourteenth Supplement"), or otherwise contained herein, the terms used herein and not otherwise defined shall have the meanings given in the Master Ordinance and Prior Supplements.

**SECTION 2: AUTHORIZATION OF CREDIT AGREEMENT.** The City Council hereby approves and authorizes the City to enter into a Credit Agreement (as defined in the Master Ordinance) with Goldman Sachs Capital Markets, L.P. as a Parity Water/Wastewater Obligation, as defined in the Master Ordinance. In accordance with the provisions of Section 1371.056, Texas Government Code, as amended, the Chief Financial Officer of the City and the City Treasurer are hereby authorized to determine, either jointly or individually, whether and when, and with respect to what notional amounts and on what terms (subject to the parameters provided below) to cause the City to enter into the Credit Agreement. The Chief Financial Officer of the City and the City Treasurer are hereby authorized to execute and deliver, and the City Clerk may attest to, for and on behalf of and in the name of the City and as the act and deed of the City Council of the City, prior to, at, or after the delivery of the Bonds, but within 120 days after the date of enactment hereof, an ISDA Master Agreement, a Schedule to the Master Agreement, Credit Support Annex, and one or more Confirmations (collectively referred to herein as the "Credit Agreement"), with Goldman Sachs Capital Markets, L.P. (together with any successor thereto as counterparty under the Credit Agreement, the "Hedge Counterparty") substantially in the form and to the effect as set forth in Exhibit B hereto, with such changes and completions thereto, including the addition of and terms for insurance, if any, for obligations of the City to make Scheduled Hedge Payments and including such amendments to the Credit Agreement after the execution and delivery thereof that are required in connection with the issuance of the Bonds, as may be approved by the Chief Financial Officer or City Treasurer, as evidenced by their execution thereof; provided that, unless otherwise provided by ordinance of the City Council:

(1) the term of such Credit Agreement shall not extend beyond May 15, 2031, which is the expected final maturity of the Bonds,

(2) the notional amount thereof shall not exceed \$175,000,000, and the Credit Agreement shall provide for the reduction in notional amount equivalent to the reduction in outstanding principal amount of the Bonds after the same have been issued and once the outstanding principal amount of the Bonds has been reduced to an amount, equal to or lesser than the original notional amount and in all events in accordance with the amortization schedule to be approved by the Chief Financial Officer or City Treasurer and set forth as an attachment to the Credit Agreement,

(3) the fixed rates of interest at which the obligations of the City under the Credit Agreement shall be calculated shall not exceed [\_\_\_\_\_] % per annum,

(4) the Credit Agreement shall permit the City to terminate the same or reduce the notional amount thereof at any time, which right may be made conditional upon the payment by the City of the amount due in respect of such partial or complete termination,

(5) the Credit Agreement being entered into in connection with the issuance of the Bonds and the issuance of the Bonds shall result in at least \$\_\_\_\_\_ in gross savings on the Refunded Obligations and a net present value benefit to the City of at least \$\_\_\_\_\_; and

(6) the Credit Agreement and the proceedings of the City Council of the City authorizing the same shall be approved by the Attorney General of Texas and such proceedings shall be registered by the Comptroller of Public Accounts of the State of Texas prior to delivering the Credit Agreement.

The obligations of the Hedge Counterparty to the City are hereby pledged as additional security for the obligations of the City that are secured by the Net Revenues, and the payments from the Hedge Counterparty to the City are hereby declared to constitute Gross Revenues.

**SECTION 3: ISSUANCE OF CREDIT AGREEMENT.** The City has provided certain criteria and established certain covenants and agreements in relation to the issuance of Credit Agreements payable from Net Revenues of the Water/Wastewater System pursuant to the Master Ordinance and Prior Supplements. This Fourteenth Supplement provides for the authorization,

issuance, sale, delivery, form, characteristics, provisions of payment, and security of the Credit Agreement, the form of which is attached as Exhibit B hereto, which Credit Agreement constitutes a "Credit Agreement" in accordance with the Master Ordinance and Prior Supplements.

The Scheduled Hedge Payments shall constitute Parity Water/Wastewater Obligations in accordance with the Master Ordinance, Prior Supplements, and this Fourteenth Supplement. The Scheduled Hedge Payments and any other payment owed by the City under the Credit Agreement including, but not limited to, payments owed as a result of its termination (herein referred to as a "Termination Payment") shall be payable from and secured by the Net Revenues; provided, however, that the Termination Payments are subordinated as provided in Section 5 of this Fourteenth Supplement. The Master Ordinance is incorporated herein by reference and made a part hereof for all purposes, except to the extent modified and supplemented by the Prior Supplements and this Fourteenth Supplement. The City Council hereby finds and determines that it will have sufficient Gross Revenues to meet the obligations of the Water/Wastewater System, including sufficient Net Revenues to satisfy the Annual Debt Service Requirements of the Previously Issued Parity Water/Wastewater Obligations and to meet all financial obligations (i.e., the "Scheduled Hedge Payments" and "Termination Payments") of the City under the Credit Agreement relating to the Water/Wastewater System.

**SECTION 4: TERMINATION OF CREDIT AGREEMENT.** The City currently intends to issue the Bonds in a variable rate interest mode and to maintain in effect the Credit Agreement. If, however the City does not, prior to, on, or within 120 days after the effective date of the Credit Agreement, issue the Bonds in one or more series in an aggregate original principal amount equal to or greater than the notional amount of the Credit Agreement and rated as required to be an "obligation" as defined in Texas Government Code, 1371.001(5), as amended, then the City shall promptly exercise its option reserved in the Credit Agreement to terminate or reduce the resulting notional amount of the Credit Agreement to achieve the result that the notional amount, if any, of the Credit Agreement does not exceed the original principal amount of the Bonds that are issued. In addition to such required full or partial termination of the Credit Agreement, to the extent the Chief Financial Officer may deem advisable he or she may, and the City Council hereby delegates to such person the authority to, at any time terminate in whole or in part the Credit Agreement as permitted thereby; provided appropriate documentation is furnished the City Manager and City Attorney evidencing the amount or payment owed by the City, if any, as a result of such termination and that such amount can be paid from available funds of the City

(including, without limitation, proceeds of bonds issued for such purpose) without a budget amendment, or should such termination payment require City Council action by a budget amendment or otherwise, obtaining City Council approval prior to its termination.

## SECTION 5: PLEDGE.

(a) Scheduled Hedge Payments. Subject to the prior claims and liens on the Net Revenues of the Water/Wastewater System to the payment and security of the Prior First Lien Obligations currently Outstanding, including the funding and maintenance of the special funds established and maintained for the payment and security of such Prior First Lien Obligations, the Net Revenues of the Water/Wastewater System are hereby pledged to the payment of the Scheduled Hedge Payments. The Scheduled Hedge Payments, together with the Prior Subordinate Lien Obligations and the Previously Issued Separate Lien Obligations currently outstanding and the Parity Water/Wastewater Obligations, shall be equally and ratably secured by a parity lien on and pledge of the Net Revenues of the Water/Wastewater System in accordance with the terms of the Master Ordinance, the Prior Supplements, and this Fourteenth Supplement. Additionally, the Scheduled Hedge Payments and payments due for the payment of the Parity Water/Wastewater Obligations shall be equally and ratably secured by a lien on the funds, if any, deposited to the credit of the Debt Service Fund in accordance with the terms of the Master Ordinance, the Prior Supplements and this Fourteenth Supplement.

(b) Termination Payment. Subject to the prior claims and liens on the Net Revenues of the Water/Wastewater System to the payment and security of (i) the Prior First Lien Obligations, Prior Subordinate Lien Obligations and Previously Issued Separate Lien Obligations currently Outstanding, including the funding and maintenance of the special funds established and maintained for the payment and security of such obligations, and (ii) the “Commercial Paper Obligations” (as defined and identified in the Master Ordinance), the Net Revenues of the Water/Wastewater System are hereby pledged to the payment of the Termination Payment, if any, owed by the City pursuant to the Credit Agreement. Subject to the prior claims and liens on the Net Revenues of the Water/Wastewater System securing the payment of the Prior First Lien Obligations and Commercial Paper Obligations, the Termination Payment, if any, owed by the City under the Credit Agreement shall be secured by a lien on and pledge of the Net Revenues of the Water/Wastewater System in accordance with the terms of this Fourteenth Supplement.

(c) Security for Payments. The Scheduled Hedge Payments and the Termination Payment are and will be secured by and payable only from the Net Revenues of the Water/Wastewater System as herein provided, and are not secured by or payable from a mortgage or deed of trust on any properties, whether real, personal, or mixed, of the Water/Wastewater System or by a lien on or security interest in funds or obligations held by the Reserve Fund maintained for other Parity Water/Wastewater Obligations. The Hedge Counterparty shall never have the right to demand payment from funds raised or to be raised by taxation, or from any source other than specified in this Fourteenth Supplement.

(d) Perfection of Security Interest. It is hereby ordained that the Credit Agreement, and the Scheduled Hedge Payments due thereon and the Termination Payment, if due, shall constitute a lien on the Net Revenues of the City's Water/Wastewater System in accordance with the terms of this Fourteenth Supplement and be valid and binding and fully perfected from and after the later of the date of adoption of this Fourteenth Supplement or the date the proceedings relating to approval, execution and delivery of the Credit Agreement are registered by the Comptroller of Public Accounts of the State of Texas, without physical delivery or transfer or transfer of control of the Net Revenues, the filing of this Fourteenth Supplement or any other act; all as provided in Section 1371.105 of the Texas Government Code. Section 1371.105, Texas Government Code, applies to the issuance of the Credit Agreement and the pledge of the Net Revenues of the City's Water/Wastewater System granted by the City under this Section 5, and such pledge is therefore valid, effective and perfected at the time specified herein. If Texas law is amended at any time while the Credit Agreement is Outstanding such that the pledge of the Net Revenues of the City's Water/Wastewater System granted by the City under this Section 5 is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Hedge Counterparty the perfection of the security interests in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interests in said pledge to occur.

**SECTION 6: DEBT SERVICE FUND.** By reason of the issuance of the Credit Agreement, the City need not establish any special accounts within the Debt Service Fund and following the delivery of such Credit Agreement, the City hereby agrees and covenants to cause to be deposited to the credit of the Debt Service Fund an amount equal to one hundred percent (100%) of the amount required to fully pay the Scheduled Hedge Payments owed under the Credit Agreement, falling due on or before each payment date, and such deposits shall be

made on such monthly payment dates in amounts needed (or reasonably expected to be needed) to pay the City's Scheduled Hedge Payments due under the Credit Agreement.

If on any date a Scheduled Hedge Payment is due there is insufficient money in the Debt Service Fund to make such payment, the City shall deposit to the Debt Service Fund and thereafter transfer to the applicable payee or paying agent, but solely from and to the extent of available Net Revenues, sufficient money to make or complete such payment.

The required monthly deposits to the Debt Service Fund for the payment of Scheduled Hedge Payments shall continue to be made in the manner provided herein until such time as (i) the total amount on deposit in the Debt Service Fund is equal to the amount required to fully pay and discharge all Parity Water/Wastewater Obligations then Outstanding or (ii) the Credit Agreement has been retired or terminated in accordance with its terms without further obligation on the part of the City.

The City shall deposit to the Debt Service Fund all money received from the Hedge Counterparty.

The City may establish and utilize such accounts within the Debt Service Fund as it may, from time to time, deem appropriate.

**SECTION 7: RESERVE FUND.** The provisions of Section 8 of the Master Ordinance relating to the Reserve Fund are hereby incorporated by reference and made a part hereof as if the same were restated in full in this Section.

In accordance with paragraph (f) of Section 8 of the Master Ordinance, neither the Scheduled Hedge Payments nor the Termination Payments shall be secured by or entitled to payment from the Reserve Fund.

**SECTION 8: PAYMENT OF CREDIT AGREEMENT.** The City shall cause to be paid (i) the Scheduled Hedge Payments when due from the Debt Service Fund to the Hedge Counterparty when and as the same shall become due and payable and (ii) the Termination Payment, if any, owed by the City from available pledged Net Revenues of the Water/Wastewater System, or from other available sources, in a timely manner when and if the same should become due and payable in accordance with provisions of the Credit Agreement.

**SECTION 9: AMENDMENT.** This Fourteenth Supplement shall constitute a contract with the Hedge Counterparty to the Credit Agreement from



and after execution and delivery of the Credit Agreement. The City shall not amend, repeal, or otherwise modify any provision of this Fourteenth Supplement, the Master Ordinance or the Prior Supplements in a manner that adversely affects the interests of the Hedge Counterparty without the consent of such person.

**SECTION 10: REMEDY IN EVENT OF DEFAULT.** In addition to all rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in payments to be made to the Debt Service Fund as required by this Fourteenth Supplement or the Master Ordinance or to be made pursuant to the Credit Agreement, (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Fourteenth Supplement or the Master Ordinance or under the terms of the Credit Agreement or (c) the City declares bankruptcy, the Hedge Counterparty shall be entitled to a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring the City and its officers to observe and perform any covenant, condition or obligation prescribed in this Fourteenth Supplement or the Master Ordinance or under the terms of the Credit Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

**SECTION 11: PAYMENT AND PERFORMANCE ON BUSINESS DAYS.** Whenever under the terms of this Fourteenth Supplement or the Bonds, the performance date of any provision hereof or thereof, including the payment of a Scheduled Hedge Payment or Termination Payment, shall occur on a day other than a Business Day then the performance thereof, including the payment of a Scheduled Hedge Payment or Termination Payment, need not be made on such day but may be performed or paid, as the case may be, on the next succeeding Business Day with the same force and effect as if made on the date of performance or payment. For purposes of this Fourteenth Supplement, the term "Business Day" shall have the meaning provided therefor in the Credit Agreement.

**SECTION 12: LIMITATION OF BENEFITS WITH RESPECT TO THIS FOURTEENTH SUPPLEMENT.** With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Fourteenth Supplement or the Credit Agreement is intended or should be construed to confer upon or give to any person

other than the City and the Hedge Counterparty, any legal or equitable right, remedy, or claim under or by reason of or in respect to this Fourteenth Supplement or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Fourteenth Supplement and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City and the Hedge Counterparty as herein and therein provided.

**SECTION 13: NOTICES TO HEDGE COUNTERPARTY-WAIVER.** Wherever this Fourteenth Supplement provides for notice to the Hedge Counterparty of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if given pursuant to the notice provisions of the Credit Agreement.

Where this Fourteenth Supplement provides for notice in any manner, such notice may be waived in writing by the Hedge Counterparty entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice.

**SECTION 14: GOVERNING LAW.** This Fourteenth Supplement shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**SECTION 15: EFFECT OF HEADINGS.** The Section headings herein are for convenience only and shall not affect the construction hereof.

**SECTION 16: CONSTRUCTION OF TERMS.** If appropriate in the context of this Fourteenth Supplement, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

**SECTION 17: SEVERABILITY.** If any provision of this Fourteenth Supplement or the application thereof to any circumstance shall be held to be invalid, the remainder of this Fourteenth Supplement and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Fourteenth Supplement would have been enacted without such invalid provision.

**SECTION 18: PUBLIC MEETING.** It is officially found, determined, and declared that the meeting at which this Fourteenth Supplement is adopted was open to the public and public notice of the time, place, and subject matter of the

public business to be considered at such meeting, including this Fourteenth Supplement, was given; all as required by V.T.C.A., Government Code, Chapter 551, as amended.

**SECTION 19: EFFECTIVE DATE.** This Fourteenth Supplement is hereby passed on one reading as authorized by Texas Government Code, Section 1201.028, as amended, and shall be effective immediately upon its passage and adoption.

**PASSED AND APPROVED**

\_\_\_\_\_, 2008

§  
§  
§

\_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:**

\_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:**

\_\_\_\_\_  
Shirley A. Gentry  
City Clerk

**(CITY SEAL)**

386  
387

EXHIBIT A  
Refunded Obligations

DRAFT

388  
389

EXHIBIT B  
Credit Agreement

DRAFT