

ORDINANCE NO. 20100610-026

**AN ORDINANCE APPROVING AND
AUTHORIZING THE FIRST AMENDMENT TO
THE STANDBY BOND PURCHASE AGREEMENT
AND A SECOND AMENDED LETTER
AGREEMENT FOR THE "CITY OF AUSTIN,
TEXAS, WATER AND WASTEWATER SYSTEM
VARIABLE RATE REVENUE REFUNDING
BONDS, SERIES 2004.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS

The City Council finds that:

1. Pursuant to Ordinances No. 000608-56A and 040812-43 (collectively, the "Bond Ordinance"), the "CITY OF AUSTIN, TEXAS, WATER AND WASTEWATER SYSTEM VARIABLE RATE REVENUE REFUNDING BONDS, SERIES 2004" ("Bonds") have been duly authorized, issued and sold by the City of Austin ("City").

2. To provide liquidity for the payment of the Bonds, the City entered into a Standby Bond Purchase Agreement ("Agreement"), dated August 1, 2004, with Landesbank Baden-Wuerttemberg, acting through its New York Branch ("Bank") and Deutsche Bank Trust Company Americas, as tender agent, and pursuant to Section 2.06 of the Agreement, the City and the Bank also entered into a related Letter Agreement, dated August 27, 2004.

3. The payment of the regularly scheduled principal of and interest on the Bonds, when due, is guaranteed by a municipal bond insurance policy issued by Assured Guaranty Municipal Corp., as successor to Financial Security Assurance, Inc. ("Insurer").

4. The rating assigned to the Insurer by Fitch Ratings has been withdrawn and the City has determined that (a) pursuant to Section 9.16 of the Agreement, the Agreement should be amended as provided in the First Amendment to the Standby Bond Purchase Agreement ("First Amendment"), attached as Exhibit A and incorporated by reference as a part of this Ordinance for all purposes; and (b) the Letter Agreement should be amended and restated as

provided in the Second Amended and Restated Letter Agreement, attached as Exhibit B and incorporated by reference as a part of this Ordinance.

5. Council finds that the First Amendment and Second Amended and Restated Letter Agreement should be approved and authorized to be executed.

PART 2. APPROVAL AND AUTHORIZATION FOR EXECUTION.

A. Council approves the First Amendment substantially in the form attached to this Ordinance as Exhibit A and authorizes an Authorized Official (as defined in the Bond Ordinance) to execute the First Amendment.

B. Council approves the Second Amended and Restated Letter Agreement, substantially in the form attached to this Ordinance as Exhibit B and authorizes an Authorized Official (as defined in the Bond Ordinance) to execute the Second Amended and Restated Letter Agreement.

PART 3. PUBLIC MEETING. The meeting at which this Ordinance was adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at the meeting, including this Ordinance, was given; all as required by Texas Government Code, Chapter 551.

PART 4. EFFECTIVE DATE. This Ordinance takes effect on June 20, 2010.

PASSED AND APPROVED

CITY OF AUSTIN, TEXAS

June 10, 2010

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§
§



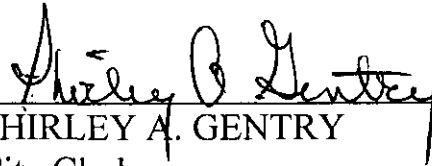
LEE LEFFINGWELL
Mayor

APPROVED:



KAREN M. KENNARD
Acting City Attorney

ATTEST:



SHIRLEY A. GENTRY
City Clerk

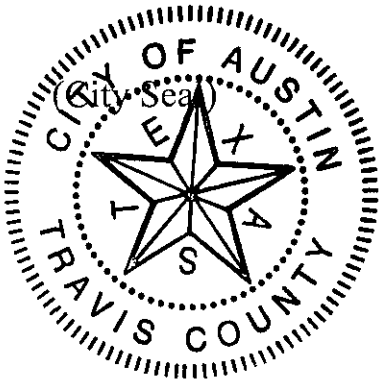


EXHIBIT A

FIRST AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT

FIRST AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT (the "First Amendment") dated as of June __, 2010 (the "Effective Date") is entered into by and among the **CITY OF AUSTIN, TEXAS** (the "Issuer"), **DEUTSCHE BANK TRUST COMPANY AMERICAS** (the "Tender Agent") and **LANDESBANK BADEN-WÜRTTEMBERG**, acting through its New York Branch (the "Bank").

W I T N E S S E T H :

WHEREAS, the Issuer, the Tender Agent and the Bank have previously entered into a Standby Bond Purchase Agreement dated as of August 1, 2004 (the "Agreement") relating to the City of Austin, Texas Water and Wastewater System Variable Rate Revenue Refunding Bonds, Series 2004;

WHEREAS, the payment of the regularly scheduled principal of and interest on the Bonds (including Bank Bonds, as defined in the Agreement) when due is guaranteed by a municipal bond insurance policy issued by Assured Guaranty Municipal Corp., (formerly known as Financial Security Assurance Inc.) ("AGM" or the "Insurer");

WHEREAS, the rating assigned to the Insurer by Fitch Ratings has been withdrawn;

WHEREAS, pursuant to Section 9.16 of the Agreement, the Agreement may be amended by a written amendment thereto, signed by the Bank, the Tender Agent and the Issuer and consented to in writing by the Insurer; and

WHEREAS, the Bank, the Tender Agent and the Issuer wish to amend the Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

AMENDMENTS

Section 1.01. Amendment to Section 6.20(b). Section 6.20(b) of the Agreement is hereby amended by deleting such subsection in its entirety and in place thereof inserting the following:

(b) Notwithstanding any provision of the Ordinance to the contrary, the Issuer shall not replace or cancel any Bond Insurance Policy without the prior written consent of the Bank. If the claims paying ability of the Insurer is lowered below "Aa3"

or "AA-" by either Moody's or S&P, respectively, the Issuer shall, within 30 days of the request of the Bank, (i) replace the Insurer with an Insurer reasonably acceptable to the Bank and which will not cause a reduction, withdrawal or suspension of the then current rating on the Bonds as confirmed in writing by the rating agencies then rating the Bonds, (ii) convert the interest rate borne by the Bonds to an interest rate other than a Covered Rate and terminate this Agreement or (iii) obtain an Alternate Liquidity Facility.

Section 1.02. Amendment to Section 9.04. Section 9.04 of the Agreement is hereby amended by deleting the notice information under the heading "Insurer" and in place thereof inserting the following:

Insurer: Assured Guaranty Municipal Corp.
31 West 52nd Street
New York, New York 10019
Attention: Managing Director-Surveillance Policy No.: 20 3392-N
Telephone: (212) 974-0100
Facsimile: (212) 581-3268

ARTICLE II

FULL FORCE AND EFFECT

The Agreement is hereby amended to the extent provided in this First Amendment and, except as specifically provided herein, the Agreement shall remain in full force and effect in accordance with its terms.

ARTICLE III

GOVERNING LAW

THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS FIRST AMENDMENT SHALL BE GOVERNED AS PROVIDED IN SECTION 9.06 OF THE AGREEMENT.

ARTICLE IV

HEADINGS

Section headings in this First Amendment are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this First Amendment.

ARTICLE V

COUNTERPARTS

This First Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same instrument.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Each party hereto represents and warrants to the other that this First Amendment has been duly authorized and validly executed by it and that the Agreement as hereby amended constitutes its valid obligation, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and subject to the application of general principles of equity including but not limited to the right of specific performance.

ARTICLE VII

SEVERABILITY

In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby.

ARTICLE VIII

DEFINITIONS

All capitalized terms used herein and not defined shall have the meaning assigned to such terms in the Agreement.

ARTICLE IX

FEES

In connection with this First Amendment, the Issuer agrees to pay on the Effective Date (a) an amendment fee of \$2,500 to the Bank and (b) the fees and expenses of Kutak Rock LLP, counsel to the Bank.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed and delivered as of the date and year first written above.

CITY OF AUSTIN, TEXAS

By _____
Name _____
Title _____

LANDESBANK BADEN-WÜRTTEMBERG,
Acting Through Its New York Branch

By _____
Name _____
Title _____

By _____
Name _____
Title _____

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as Tender Agent

By _____
Name _____
Title _____

By _____
Name _____
Title _____

[Signatures continued on following page]

[Signature page to First Amendment to Standby Bond Purchase Agreement]

Consented to:

Neither this consent nor any past, present or future consents, waivers, actions, amendments or other agreements, individually or in combination, may be construed to imply or impose upon AGM any intention, agreement, obligation or undertaking to grant future consents, waivers or amendments, or to limit the ability of AGM to exercise any and all of its rights under the Agreement or the First Amendment, all of which shall remain unmodified and in full force and effect except as to the First Amendment consented to above. In addition, AGM makes no representation and expresses no opinion as to whether the consent of any other person is required to effect the First Amendment.

ASSURED GUARANTY MUNICIPAL
CORP. (formerly known as Financial
Security Assurance Inc.), as Insurer

By _____
Name _____
Title _____

EXHIBIT B

SECOND AMENDED AND RESTATED LETTER AGREEMENT

SECOND AMENDED AND RESTATED LETTER AGREEMENT

June __, 2010

City of Austin, Texas
Suite 1510
700 Lavaca
Austin, TX 78701

\$132,475,000
City of Austin, Texas
Water and Wastewater System
Variable Rate Revenue Refunding Bonds, Series 2004

Ladies and Gentlemen:

Reference is hereby made to that certain Standby Bond Purchase Agreement, dated as of August 1, 2004 as amended by that First Amendment to Standby Bond Purchase Agreement dated as of June __, 2010 (collectively, the "Agreement") by and among the City of Austin, Texas (the "Issuer"), Deutsche Bank Trust Company Americas, as tender agent, and Landesbank Baden-Württemberg, acting through its New York Branch (the "Bank"). Terms used herein without definition shall have the meanings assigned in the Agreement.

Section 2.06 of the Agreement make reference to a Letter Agreement (the "Letter Agreement") containing an agreement as to certain fees payable by the Issuer to the Bank in consideration for the entrance into the Agreement by the Bank. The Issuer and the Bank have previously entered into that Letter Agreement dated as of August 27, 2004, as modified by that Notice of Adjustment of Facility Fee dated as of October 30, 2008 (the "Original Letter Agreement") which was amended and restated in its entirety pursuant to that Amended and Restated Letter Agreement dated November 7, 2008 (the "2008 Letter Agreement"). This Second Amended and Restated Letter Agreement hereby amends and restates the 2008 Letter Agreement in its entirety and is the Letter Agreement referenced in Section 2.06 of the Agreement. By countersigning this Second Amended and Restated Letter Agreement where indicated below, the Issuer agrees to pay the following:

(a) **Facility Fee.** The Issuer shall pay to the Bank a non-refundable facility fee (the "Facility Fee") equal to 0.45% per annum on the Available Commitment. Such Facility Fee shall be payable, without any requirement of notice or demand, in immediately available funds in arrears, quarterly on each October 1, January 1, April 1 and July 1 during the Purchase Period and on the Expiration Date. The Facility Fee shall

be calculated on the basis of the average daily amount of the Available Commitment and on the basis of a 360-day year and the actual number of days elapsed. If the Available Commitment is terminated in its entirety, the accrued but unpaid Facility Fee shall be payable on the effective date of such termination. The Facility Fee shall be increased to the per annum percentage of the Available Commitment described in the chart below if (i) any of the ratings assigned by the Rating Agencies to the long-term claims-paying ability of the Insurer (the "Insurer Ratings") fall to the corresponding levels specified below and/or (ii) any of the ratings assigned by the Rating Agencies to the Debt secured by a lien on Net Revenues (the "Water and Wastewater System Ratings") fall to the corresponding levels specified below. The Facility Fee shall be the fee specified in the matrix below at the intersection the lowest Insurer Rating (left side columns) and the lowest Water and Wastewater System Rating (across the top):

Insurer Ratings (lowest rating to be used)		Water and Wastewater System Ratings (lowest rating to be used)					
S&P	Moody's	A+, A+ and A1 or better	A, A or A2	A-, A- or A3	BBB+, BBB+ or Baa1	BBB, BBB, or Baa2	BBB-, BBB- or Baa3
AAA	Aaa	.45%	.50%	.55%	.60%	.65%	.70%
AA+	Aa1	.55%	.60%	.65%	.70%	.75%	.80%
AA	Aa2	.65%	.70%	.75%	.80%	.85%	.90%
AA-	Aa3	.75%	.80%	.85%	.90%	.95%	1.00%
A+	A1	.85%	.90%	.95%	1.00%	1.05%	1.10%
A	A2	.95%	1.00%	1.05%	1.10%	1.15%	1.20%
A-	A3	1.05%	1.10%	1.15%	1.20%	1.25%	1.30%
BBB+	Baa1	1.15%	1.20%	1.25%	1.30%	1.35%	1.40%
BBB	Baa2	1.25%	1.30%	1.35%	1.40%	1.45%	1.50%
BBB-	Baa3	1.35%	1.40%	1.45%	1.50%	1.55%	1.60%

In the event that either (1) the Insurer Ratings are withdrawn, suspended or fall below the lowest level specified above by either Moody's or S&P or (2) the Water and Wastewater System Ratings are withdrawn, suspended or fall below the lowest level specified above by either Moody's, Fitch or S&P, the Facility Fee shall be increased to 1.75% of the Available Commitment. The lowest Insurer Rating or Water and Wastewater System Rating, as applicable, assigned by any of the applicable Rating Agencies shall be used to determine the appropriate level of the Facility Fee. Upon the occurrence of an Event of Default, the Facility Fee shall be increased by an additional .50% of the Available Commitment, calculated as provided above.

(b) **Transfer/Amendment Fee.** Upon each transfer or amendment of the Agreement in accordance with its terms (other than an amendment caused by an action of the Bank) or appointment of a successor Tender Agent under the Ordinance, the Issuer agrees to pay the Bank the sum of \$2,500 plus the Bank's actual costs and expenses (including reasonable legal fees) associated with such transfer, appointment or amendment (and interest on any overdue costs and expenses from the date due to the date reimbursed by the Issuer at the interest rate specified in Section 2.08(b) of the Agreement). Any such payment under this paragraph (b) shall be due 45 days after receipt by the Issuer of an invoice from the Bank for the appropriate charges.

(c) **Purchase Fee.** Upon each advance of funds to purchase Eligible Bonds pursuant to Section 2.02 of the Agreement, the Issuer agrees to pay to the Bank, a purchase fee of \$250 per Purchase Date, payable without any requirement of notice or demand by the Bank on the day on which such advance is paid by the Bank; provided, however, the sum total of all purchase fees paid by the Issuer under this paragraph (c) shall not exceed \$10,000 in any one calendar year.

This Second Amended and Restated Letter Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same document, and each of which shall for all purposes be deemed to be an original. This Second Amended and Restated Letter Agreement may be amended, terminated or otherwise modified only by a written instrument executed by both the Bank and the Issuer. This Second Amended and Restated Letter Agreement and the Agreement shall be construed as one agreement between the Issuer and the Bank and shall be governed by the laws set forth in Section 9.06 of the Agreement.

[The Remainder of the Page Left Blank Intentionally]

If the foregoing accurately reflects our agreement, please indicate the same by signing in the space provided below.

Very truly yours,

LANDESBANK BADEN-WÜRTTEMBERG,
Acting Through Its New York Branch

By: _____

Name: _____

Title: _____

By _____

Name: _____

Title: _____

Acknowledged and agreed
as of the _____ day of June, 2010.

CITY OF AUSTIN, TEXAS

By _____

Name _____

Title _____