

**FIRST AMENDMENT TO AMENDED AND RESTATED LETTER OF CREDIT  
REIMBURSEMENT AGREEMENT**

This First Amendment to the Amended and Restated Letter of Credit Reimbursement Agreement (the “Amendment”) executed and entered into as of February 10, 2011 (the “Effective Date”) by and among **THE CITY OF AUSTIN, TEXAS** (the “City”), **THE BANKS SIGNATORY** (the “Banks”) and **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION** (as successor to **MORGAN GUARANTY TRUST COMPANY OF NEW YORK**), as Agent for the Banks (in such capacity, the “Agent”).

**WITNESSETH:**

WHEREAS, the City and the Bank executed and delivered that certain Amended and Restated Letter of Credit Reimbursement Agreement dated as of March 1, 2010, (the “Reimbursement Agreement”) pursuant to which the Banks issued their irrevocable transferable direct pay letter of credit (the “Letter of Credit”) in connection with the \$350,000,000 City of Austin, Texas Combined Utility Systems Commercial Paper Notes, Series A (the “Notes”); and

WHEREAS, the City and the Banks now desire to amend the Reimbursement Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties do hereby agree as follows:

**Section 1. Amendment to definition of Applicable Commitment Fee Percentage.**

The definition of “*Applicable Commitment Fee Percentage*” in Section 1.01 of the Reimbursement Agreement is hereby deleted and replaced with the following:

“*Applicable Commitment Fee Percentage*” means the percentage amount determined as a function of the unenhanced rating assigned by a Rating Agency to either of the City’s Parity Electric Utility Obligations or Parity Water/Wastewater Obligations, whichever obligations have the lowest rating, in accordance with the schedules below. Prior to March 1, 2011, the Applicable Commitment Fee Percentage shall be as set forth in Schedule I below and on and after March 1, 2011, the Applicable Commitment Fee Percentage shall be as set forth in Schedule II below.

**Schedule I**

<u>Level</u>	<u>Rating</u> <u>Moody’s/S&amp;P/Fitch</u>	<u>Applicable</u> <u>Commitment Fee</u> <u>Percentage</u>
Level 1	A1 / A+/A+	1.15%
Level 2	A2 / A/A	1.35%
Level 3	A3 / A-/A-	1.55%
Level 4	Baa1 / BBB+/BBB+	1.75%
Level 5	Baa2 / BBB/BBB	1.95%
Level 6	Baa3 / BBB-/BBB-	2.15%

## **Schedule II**

<u>Level</u>	<u>Rating</u> <u>Moody's/S&amp;P/Fitch</u>	<u>Applicable</u> <u>Commitment Fee</u> <u>Percentage</u>
Level 1	A1 / A+/A+	.85%
Level 2	A2 / A/A	1.05%
Level 3	A3 / A-/A-	1.25%
Level 4	Baa1 / BBB+/BBB+	1.45%
Level 5	Baa2 / BBB/BBB	1.65%
Level 6	Baa3 / BBB-/BBB-	1.85%

In the event of split ratings among Moody's, S&P and Fitch the Applicable Commitment Fee Percentage shall be determined from the lowest of the three ratings. Any change in the Applicable Commitment Fee Percentage resulting from a change in a rating shall be and become effective as of and on the date of the announcement of the change in such rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges, and the Banks agree, that as of the Effective Date the Applicable Commitment Fee Percentage is that specified above for Schedule I, Level 1. Upon the occurrence and during the continuance of an Event of Default or in the event that any rating is suspended, withdrawn or is otherwise unavailable, in each case for credit related reasons, the Applicable Commitment Fee Percentage shall be increased from the rate then in effect by an additional one and one-half percent (1.50%). The Commitment Fee shall be payable quarterly in arrears, together with interest on the Commitment Fees from the date payment is due until payment in full at the Default Rate.

**Section 2. Amendment to definition of Applicable Letter of Credit Fee Percentage.** The definition of "*Applicable Letter of Credit Fee Percentage*" in Section 1.01 of the Reimbursement Agreement is hereby deleted and replaced with the following:

"*Applicable Letter of Credit Fee Percentage*" means the percentage amount determined as a function of the unenhanced rating assigned by a Rating Agency to either of the City's Parity Electric Utility Obligations or Parity Water/Wastewater Obligations, whichever obligations have the lowest rating, in accordance with the schedules below. Prior to March 1, 2011, the Applicable Letter of Credit Fee Percentage shall be as set forth in Schedule I below and on and after March 1, 2011, the Letter of Credit Fee Percentage shall be as set forth in Schedule II below.

## **Schedule I**

<u>Level</u>	<u>Rating</u> <u>Moody's/S&amp;P/Fitch</u>	<u>Applicable</u> <u>Letter of Credit Fee Percentage</u>
Level 1	A1 / A+/A+	1.25%
Level 2	A2 / A/A	1.45%
Level 3	A3 / A-/A-	1.65%
Level 4	Baa1 / BBB+/BBB+	1.85%
Level 5	Baa2 / BBB/BBB	2.05%
Level 6	Baa3 / BBB-/BBB-	2.25%

## **Schedule II**

<u>Level</u>	<u>Rating</u> <u>Moody's/S&amp;P/Fitch</u>	<u>Applicable</u> <u>Letter of Credit Fee</u> <u>Percentage</u>
Level 1	A1 / A+/A+	.90%
Level 2	A2 / A/A	1.10%
Level 3	A3 / A-/A-	1.30%
Level 4	Baa1 / BBB+/BBB+	1.50%
Level 5	Baa2 / BBB/BBB	1.70%
Level 6	Baa3 / BBB-/BBB-	1.90%

In the event of split ratings among Moody's, S&P and Fitch the Applicable Letter of Credit Fee shall be determined from the lowest of the three ratings. Any change in the Applicable Letter of Credit Fee Percentage resulting from a change in a rating shall be and become effective as of and on the date of the announcement of the change in such rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges, and the Banks agree, that as of the Effective Date the Applicable Letter of Credit Fee Percentage is that specified above for Schedule I, Level 1. Upon the occurrence and during the continuance of an Event of Default or in the event that any Rating is suspended, withdrawn or is otherwise unavailable, in each case for credit related reasons, the Applicable Letter of Credit Fee Percentage shall be increased from the rate then in effect by an additional one and one-half percent (1.50%). The Letter of Credit Fees shall be payable quarterly in arrears, together with interest on the Letter of Credit Fees from the date payment is due until payment in full at the Default Rate.

**Section 3. Amendment to definition of Commitment Expiration Date.** The definition of "*Commitment Expiration Date*" in Section 1.01 of the Reimbursement Agreement is hereby deleted and replaced with the following:

"*Commitment Expiration Date*" means October 1, 2014, or such later date established as the Commitment Expiration Date pursuant to Section 9.02(b) or such earlier date on which the Banks may terminate their Commitments as provided herein or the date on which the City may

terminate the Banks' Commitments as provided herein. In the event the Commitment Expiration Date is scheduled to occur on a day which is not a Business Day, the Commitment Expiration Date shall occur on the next preceding Business Day.

**Section 4. Conditions Precedent.** As condition to the effectiveness of this Amendment (i) City Council shall have approved the amendment and the City shall have received any additional necessary approvals or authorizations, (ii) the City shall have paid all legal fees of legal counsel to the Banks related to the preparation of this Amendment, and (iii) the Banks shall have received such additional documents, instruments and information as the Banks or their legal counsel may reasonably request.

**Section 5. Representations True; No Default.** The City represents and warrants that the representations and warranties contained herein and in the Reimbursement Agreement are true and correct in all material respects on and as of the date hereof as though made on and as of such date. The City hereby certifies that no event has occurred and is continuing which constitutes an Event of Default or which upon the giving of notice or the lapse of time or both would constitute an Event of Default.

**Section 6. Ratification.** Except as expressly amended hereby, the Reimbursement Agreement shall remain in full force and effect. The Reimbursement Agreement, as hereby amended, and all rights and powers created thereby or thereunder are in all respects ratified and confirmed and remain in full force and effect.

**Section 7. Definitions and References.** Any term used herein which is defined in the Reimbursement Agreement shall have the meaning therein ascribed to it. The term "Reimbursement Agreement" as used in the Reimbursement Agreement or any other instrument, document or writing furnished to the Bank by the City and referring to the Reimbursement Agreement shall mean the Reimbursement Agreement as hereby amended.

**Section 8. Governing Law.** **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS; PROVIDED, THAT THE OBLIGATIONS OF THE BANKS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

**Section 9. Miscellaneous.** This Amendment (a) may be executed in several counterparts, and by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original agreement, and all such separate counterparts shall constitute but one and the same agreement, and (b) together with the Reimbursement Agreement, embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter. The headings herein shall be accorded no significance in interpreting this Amendment.

**THE REIMBURSEMENT AGREEMENT, AS AMENDED BY THIS AMENDMENT, REPRESENTS THE FINAL AGREEMENT OF THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

[Signatures on following page ]

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

By: \_\_\_\_\_  
Marc A. Ott, City Manager

ATTEST:

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

APPROVED:

\_\_\_\_\_  
Karen M. Kennard, Acting City Attorney

[Signatures continued on following page ]

**AS AGENT AND BANK:**

**JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Name: David M. Bayer  
Title: Executive Director

**AS BANK:**

**BANK OF AMERICA, N.A.**

By: \_\_\_\_\_  
Name: Michael A. Feist  
Title: Senior Vice President

**AS BANK:**

**STATE STREET BANK AND TRUST  
COMPANY**

By: \_\_\_\_\_  
Name: Thomas A. Henderson  
Title: Vice President

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