

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A SUBSTITUTE LETTER OF CREDIT REIMBURSEMENT AGREEMENT AND RELATED FEE LETTER IN RELATION TO THE “CITY OF AUSTIN, TEXAS, WATER AND WASTEWATER SYSTEM VARIABLE RATE REVENUE REFUNDING BONDS, SERIES 2008”; AMENDING CERTAIN PROVISIONS OF THE ORDINANCE; AND AUTHORIZING THE ISSUANCE OF THE BONDS AND RELATED DOCUMENTS

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

PART 1. FINDINGS

The City Council finds that:

A. Pursuant to Ordinance No. 0006008-56A (Master Ordinance) and Ordinance No. 20080306-053 (Supplemental Ordinance) (collectively, the “Ordinance”), “CITY OF AUSTIN, TEXAS WATER AND WASTEWATER SYSTEM VARIABLE RATE REVENUE REFUNDING BONDS, SERIES 2008” (Bonds) have been duly authorized, issued and sold, by the City of Austin, (City) in accordance with the provisions of Texas Government Code, Chapters 1207 and 1371, and, in conjunction, approved and authorized the execution of a Letter of Credit and Reimbursement Agreement, dated as of May 1, 2008 (Initial Liquidity Facility), by and between the City and Dexia Credit Local, acting through its New York Branch.

B. The Initial Liquidity Facility expires on May 15, 2011 and the City is required by the Ordinance to provide a substitute liquidity facility to support the Bonds on or before its expiration.

C. A Letter of Credit Reimbursement Agreement, dated as of May 1, 2011 (Reimbursement Agreement), by and among the City and Sumitomo Mitsui Banking Corporation, as agent (Agent) and as bank, and The Bank of Tokyo – Mitsubishi UFJ, Ltd., as bank (collectively with Sumitomo Mitsui Banking Corporation, the “Banks”), to be effective on May 9, 2011, and a Fee Letter, dated May 9, 2011 between the City, the Agent and the Banks (Fee Letter) have been submitted to the City Council of the City (City Council) for approval and execution.

34 D. Council finds and determines that the Reimbursement Agreement and Fee
35 Letter should be approved and Council should authorize the execution of the
36 Reimbursement Agreement and Fee Letter.

37 E. Council finds and determines that certain provisions of the Ordinance should
38 be amended to conform to the provisions of the Reimbursement Agreement and
39 Fee Letter and the corresponding Letters of Credit from each Bank (collectively
40 with the Reimbursement Agreement and the Fee Letter referred to as the
41 "Substitute Liquidity Facility") and, in connection with these documents, a First
42 Amendment to the Tender Agent Agreement (First Amendment to the Tender
43 Agent Agreement) and a First Amendment to the Remarketing Agreement (First
44 Amendment to the Remarketing Agreement) should be approved and Council
45 should authorize its execution.

46 F. Council finds and determines that the payments owed by the City under the
47 Substitute Liquidity Facility (each a "Liquidity Payment,") can and shall be
48 payable and secured on a parity, equally and ratably, with the outstanding "Parity
49 Water/Wastewater Obligations" issued in accordance with and under the terms and
50 provisions of Master Ordinance and the Prior Supplements (as defined in the
51 Master Ordinance) and Ordinances Nos. 010419-77, 011129-65, 020718-15,
52 030206-35, 040617-45, 040812-43, 040930-83, 050519-37, 051020-051,
53 20051117-060, 20061116-051, 20071108-081, 20080306-052, 20080306-053,
54 20081211-77, 20091105-051, 20091217-004 and 20101118-074 (the "Prior
55 Supplements"), which authorize the issuance of the Previously Issued Parity
56 Water/Wastewater Obligations (which Previously Issued Parity Water/Wastewater
57 Obligations consist of the outstanding (1) "City of Austin, Texas, Water and
58 Wastewater System Revenue Refunding Bonds, Series 2001A", (2) "City of
59 Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series
60 2001B", (3) "City of Austin, Texas, Water and Wastewater System Revenue
61 Refunding Bonds, Series 2001C", (4) "City of Austin, Texas, Water and
62 Wastewater System Revenue Refunding Bonds, Series 2002A", (5) "City of
63 Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series
64 2003", (6) "City of Austin, Texas, Water and Wastewater System Variable Rate
65 Revenue Refunding Bonds, Series 2004", together with certain regularly scheduled
66 payments under the Interest Rate Swap Agreement, the Liquidity Agreement and
67 the Insurance Obligation (as these terms are defined in Ordinance No. 040812-43),
68 (7) "City of Austin, Texas, Water and Wastewater System Revenue Refunding
69 Bonds, Series 2004A", (8) "City of Austin, Texas, Water and Wastewater System
70 Revenue Refunding Bonds, Series 2005", (9) "City of Austin, Texas, Water and
71 Wastewater System Revenue Refunding Bonds, Series 2005A", (10) "City of

Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2006”, (11) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2006A”, (12) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2007”, (13) “City of Austin, Texas, Water and Wastewater System Variable Rate Revenue Refunding Bonds, Series 2008”, together with certain regularly scheduled payments under the Series 2008 Interest Rate Management Agreement and the Series 2008 Liquidity Agreement (as these terms are defined in Ordinance No. 20080306-053), (14) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2009”, (15) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2009A”, (16) “City of Austin, Texas, Water and Wastewater System Revenue Bonds, Series 2010”, (17) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2010A” and (18) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Taxable Series 2010B (Direct Subsidy-Build America Bonds)” each of which were authorized for issuance by the Master Ordinance and the Prior Supplements)

G. The City Council further 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 of the City under the Credit Agreements (including, but not limited to, the Substitute Liquidity Facility as defined in paragraph E above) relating to the Water/Wastewater System. Capitalized terms used in this paragraph shall have the meanings assigned in the Master Ordinance and Prior Supplements.

PART 2. APPROVAL AND AUTHORIZATION FOR EXECUTION.

A. Council approves and authorizes the Reimbursement Agreement substantially in the form attached as Exhibit A.

B. Council approves and authorizes the Fee Letter substantially in the form attached as Exhibit B.

C. Council approves and authorizes the First Amendment to the Tender Agent Agreement substantially in the form attached as Exhibit C.

D. Council approves and authorizes the First Amendment to the Remarketing Agreement substantially in the form attached as Exhibit D.

107 **PART 3. EXECUTION OF DOCUMENTS.**

108 The Mayor, City Manager, Chief Financial Officer, Treasurer, City Clerk,
109 Deputy City Clerk, and City Attorney are authorized and directed to negotiate,
110 execute and deliver the Reimbursement Agreement, Fee Letter, First Amendment
111 to the Tender Agent Agreement and First Amendment to the Remarketing
112 Agreement and any and all certificates and other instruments described in or by the
113 conditions described in these documents, all upon the terms approved in this
114 Ordinance, and the City Clerk or the Deputy City Clerk, or either of them, is
115 authorized to attest such signature or signatures, if so required, and affix the seal of
116 the City to, if necessary, the Reimbursement Agreement, Fee Letter, First
117 Amendment to the Tender Agent Agreement and/or First Amendment to the
118 Remarketing Agreement and any and all certificates and other instruments
119 described in or required by these documents, and the Mayor, Mayor Pro Tem, City
120 Manager, Chief Financial Officer, City Treasurer, City Clerk, and Deputy City
121 Clerk, or any of them, are authorized to negotiate and approve such completions to
122 and changes in the terms of each instrument (prior to the execution and delivery) as
123 such officers, or any of them, shall deem necessary or appropriate and advisable
124 based on the advice of counsel, and such officers, or any of them, so acting are
125 appointed for such purpose with power to exercise the authority of the Council in
126 such regard, and approval and advisability of the terms of each such instrument by
127 such officers, or any of them, shall be conclusively evidenced by their execution
128 and delivery. Any actions by officials of the City with respect to the extension of
129 the Letter of Credit expiration date that may have occurred prior to the date of this
130 ordinance are ratified.

131 **PART 4. AMENDMENTS TO ORDINANCE.**

132 A. Exhibit B to the Supplemental Ordinance shall be and is amended to delete
133 the definitions “Amortization End Date”, “Amortization Payment Date” and
134 “Amortization Start Date”.

135 B. Section 6(m) of the Supplemental Ordinance shall be and is amended to read
136 as follows:

137 “(m) The Bonds are subject to special mandatory redemption
138 in accordance with the requirements of the Liquidity Facility.”

139 C. The third paragraph of Section 18 of the Supplemental Ordinance shall be
140 and is amended to read as follows:

141 “Notwithstanding paragraph (f) of Section 8 of the Master
142 Ordinance, the Credit Enhancement shall also be secured by and
143 entitled to payment from the Reserve Fund.”

144 D. The first paragraph of Section 41 of the Supplemental Ordinance shall be
145 and is amended to read as follows:

146 “**SECTION 41: RATING AGENCIES.** If Moody's, Fitch or
147 S&P maintain a rating on the Bonds such rating agencies shall receive
148 notice by or on behalf of the City, of (i) any change to the Paying
149 Agent/Registrar, Tender Agent or Remarketing Agent; (ii) any
150 material amendment pursuant to Section 21 of this Fifteenth
151 Supplement or any amendment or supplement to the Credit
152 Enhancement or Liquidity Facility, including, but not limited to, any
153 expiration, termination, or extension of the Credit Enhancement or
154 Liquidity Facility; and of defeasance of the Bonds in full.”

155 **PART 5. SECONDARY MARKET INFORMATION CIRCULAR.**

156 The preparation and distribution of a secondary marketing information
157 circular is approved and authorized to be utilized in connection with the
158 remarketing of the Bonds by Goldman Sachs & Co., as remarketing agent.

159 **PART 6. PUBLIC MEETING.**

160 The meeting at which this ordinance was adopted was open to the public and
161 public notice of the time, place, and subject matter of the public business to be
162 considered at such meeting, including this ordinance, was given; all as required by
163 Texas, Government Code, Chapter 551.

164 **PART 7. WAIVER.**

165 The Council waives the requirements of Section 2-5-13 of the City Code for
166 this Ordinance.

167 **PART 8. EFFECTIVE DATE.**

168 This ordinance takes effect on April 18, 2011.

169 *[Remainder of page intentionally left blank]*

PASSED AND APPROVED

April 7, 2011

APPROVED:

Karen M. Kennard
City Attorney

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Lee Leffingwell
Mayor

ATTEST:

Shirley A. Gentry
City Clerk

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EXHIBIT A

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REIMBURSEMENT AGREEMENT

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DRAFT

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EXHIBIT B

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FEE LETTER

DRAFT

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EXHIBIT C

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FIRST AMENDMENT TO THE TENDER AGENT AGREEMENT

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DRAFT

EXHIBIT D

FIRST AMENDMENT TO THE REMARKETING AGREEMENT

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