

FIRST AMENDMENT
TO THE TENDER AGENT AGREEMENT

This First Amendment to the Tender Agent Agreement (the “First Amendment”) executed and entered into as of May 9, 2011 (the “Effective Date”) by and among **CITY OF AUSTIN, TEXAS** (the “City”) and **U. S. BANK NATIONAL ASSOCIATION**, as Tender Agent (the “Tender Agent”):

WITNESSETH:

WHEREAS, the City and Sumitomo Mitsui Banking Corporation, as agent (the “Agent”) and as bank, and The Bank of Tokyo – Mitsubishi UFJ, Ltd., as bank (collectively with Sumitomo Mitsui Banking Corporation, as bank, the “Banks”) will, as of the date hereof, execute and deliver a Letter of Credit Reimbursement Agreement, dated as of May 1, 2011 (as amended, restated, supplemented or otherwise modified from time to time the “Reimbursement Agreement”), pursuant to which each Bank issued an irrevocable transferable direct pay letter of credit (collectively, the “Letter of Credits”) in support of the City of Austin, Texas, Water and Wastewater System Variable Rate Revenue Refunding Bonds, Series 2008 (the “Bonds”); and

WHEREAS, in connection with the execution and delivery of the Reimbursement Agreement, the City and the Tender Agent now desire to amend the Tender Agent Agreement, dated as of May 2, 2008 (the “Original Tender Agent Agreement”), between the City and the Tender Agent, executed in connection with the original issuance of the Bonds;

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 to amend the following provisions:

SECTION 1: Any reference in the Original Tender Agent Agreement to the (a) “Reimbursement Agreement” shall have the meaning set forth in Ordinance No. 20080306-053, dated as of March 6, 2008, as amended (the “Ordinance”) and (b) “Bank” or “Banks” shall mean the Banks as defined in the preamble of this First Amendment or any Liquidity Provider providing an Alternate Liquidity Facility (both as defined in the Ordinance).

SECTION 2: Section 4 of the Tender Agent Agreement shall be and is hereby amended in its entirety as follows:

“SECTION 4: Deposit of Bonds. The Tender Agent agrees to hold all Bonds delivered to it (or transferred to the DTC Participant account of the Tender Agent if such Bonds are held in the Book-Entry System) pursuant to Section 7(f) and 7(g) of the Ordinance, in trust for the benefit of the respective Holders which delivered or transferred such Bonds, until required to be delivered by the Tender Agent pursuant to Section 10 or Section 11 hereof. With respect to any Liquidity Provider Bonds held in the Book-Entry System and delivered to the Tender Agent under Section 8 hereof, the Tender Agent shall act as a DTC Participant on behalf of the Agent on behalf of the Banks, as beneficial owner of such Liquidity Provider Bonds, and shall take all such actions, in accordance with the Reimbursement Agreement, on behalf of the Agent and the Banks as may be required with respect thereto during such time as such Liquidity Provider Bonds are held in the Book-Entry System.”

SECTION 3: Section 8 of the Tender Agent Agreement shall be and is hereby amended to read as follows:

“SECTION 8: Purchase of Tendered Bonds by the Banks; Deposits into the Liquidity Facility Purchase Account of the Purchase Fund; Notice to Paying Agent/Registrar and Tender Agent; Release of Liquidity Provider Bonds. Each Bank, upon receipt of a draw certificate in the applicable form attached to the Letter of Credit shall cause an amount equal to its pro rata portion of the Purchase Price of the unremarketed Bonds to be deposited in immediately available funds in the Liquidity Facility Purchase Account of the Purchase Fund no later than 2:00 p.m. New York City time on the Purchase Date against delivery of such Bonds at the time and in the manner set forth in the Reimbursement Agreement.

The Tender Agent agrees to hold Liquidity Provider Bonds as agent of the Agent, on behalf of the Banks, and to release any Liquidity Provider Bonds solely in accordance with Section 7(c) of the Ordinance and the Reimbursement Agreement.”

SECTION 4: The second paragraph of Section 10 of the Tender Agent Agreement shall be and is hereby amended to read as follows:

“Notwithstanding anything to the contrary in the foregoing paragraph, for so long as the Bonds are held in

the system of book-entry of DTC in accordance with Section 7 of the Ordinance, (i) any Bond remarketed by the Remarketing Agent shall be delivered to the new beneficial owner thereof by a transfer in the book-entry system of DTC of such remarketed Bond to the applicable DTC Participant account for such beneficial owner; and (ii) Liquidity Provider Bonds shall be delivered to the Agent, for the benefit of the Banks, by a transfer in the book-entry system of DTC of such Liquidity Provider Bonds to the DTC Participant account of the Tender Agent for the benefit of the Agent, for the benefit of the Banks, as beneficial owner of such Liquidity Provider Bonds.”

SECTION 5: Section 13 of the Tender Agent Agreement shall be and is hereby amended with respect to the Bank to read as follows:

Agent: Sumitomo Mitsui Banking Corporation
277 Park Avenue, 6th Floor
New York, New York 10172
Attention: Trade Services Credit Dept.
Telephone: (212) 224-4000
Telecopy: (212) 224-4566

Bank: Sumitomo Mitsui Banking Corporation
277 Park Avenue, 6th Floor
New York, New York 10172
Attention: Trade Services Credit Dept.
Telephone: (212) 224-4000
Telecopy: (212) 224-4566

Bank: The Bank of Tokyo-Mitsubishi UFJ, Ltd.
1251 Avenue of the Americas
New York, New York 10020-1104
Attention: James Burr
Telephone: (212) 782-4312
Telecopy: (212) 782-6440

SECTION 6: The City and the Tender Agent hereby ratify and reaffirm all of the terms, conditions and provisions of the Tender Agent Agreement, as

specifically amended by this First Amendment, and each hereby acknowledges that the Tender Agent Agreement remains in full force and effect as so amended.

SECTION 7: This First Amendment may be executed in several counterparts, each of which shall be regarded as an original and all of which will constitute one and the same instrument.

(remainder of page intentionally left blank)

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.

U. S. BANK NATIONAL
ASSOCIATION

By: _____
Title: _____

Address: 5555 San Felipe
Suite 1150
Houston, Texas 77056

CITY OF AUSTIN, TEXAS

(CITY SEAL)

By _____
Title: Chief Financial Officer

Address: 301 W. 2nd Street, 3rd Floor
Austin, Texas 78701