

## **ORDINANCE NO. 20110407-061**

**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.

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

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

F. Council finds and determines that the payments owed by the City under the Substitute Liquidity Facility (each a "Liquidity Payment,") 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 Master Ordinance and the Prior Supplements (as defined in the Master Ordinance) and Ordinances Nos. 010419-77, 011129-65, 020718-15, 030206-35, 040617-45, 040812-43, 040930-83, 050519-37, 051020-051, 20051117-060, 20061116-051, 20071108-081, 20080306-052, 20080306-053, 20081211-77, 20091105-051, 20091217-004 and 20101118-074 (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 2001A", (2) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2001B", (3) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2001C", (4) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2002A", (5) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2003", (6) "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 these terms are defined in Ordinance No. 040812-43), (7) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2004A", (8) "City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2005", (9) "City of Austin, Texas, Water and 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.

### **PART 3. EXECUTION OF DOCUMENTS.**

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

### **PART 4. AMENDMENTS TO ORDINANCE.**

A. Exhibit B to the Supplemental Ordinance shall be and is amended to delete the definitions "Amortization End Date", "Amortization Payment Date" and "Amortization Start Date".

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

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

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

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

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

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

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

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

**PART 6. 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 such meeting, including this ordinance, was given; all as required by Texas, Government Code, Chapter 551.

**PART 7. WAIVER.**

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

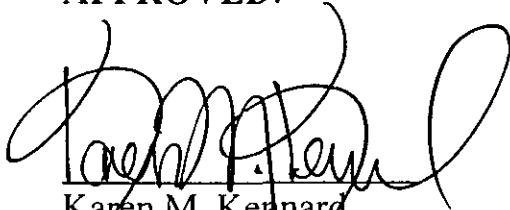
**PART 8. EFFECTIVE DATE.**

This ordinance takes effect on April 18, 2011.


**PASSED AND APPROVED**

April 7, 2011

**APPROVED:**

  
Karen M. Kernard  
City Attorney

§  
§  
§

  
\_\_\_\_\_  
Lee Leffingwell  
Mayor

**ATTEST:**

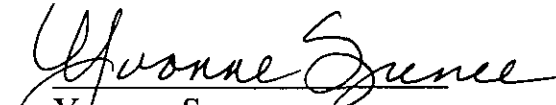
  
\_\_\_\_\_  
Yvonne Spence  
Deputy City Clerk

EXHIBIT A  
REIMBURSEMENT AGREEMENT

**LETTER OF CREDIT REIMBURSEMENT AGREEMENT**

Among

**CITY OF AUSTIN, TEXAS**

and

**SUMITOMO MITSUI BANKING CORPORATION,**  
as Agent and Bank

and

**THE BANK OF TOKYO – MITSUBISHI UFJ, LTD.,** as Bank

Relating to

**\$160,740,000**  
**City of Austin, Texas**  
**Water and Wastewater System**  
**Variable Rate Revenue Refunding Bonds**  
**Series 2008**

Dated as of May 1, 2011

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## LETTER OF CREDIT REIMBURSEMENT AGREEMENT

**THIS LETTER OF CREDIT REIMBURSEMENT AGREEMENT**, is dated as of May 1, 2011, among **CITY OF AUSTIN, TEXAS** (the "Issuer"), **SUMITOMO MITSUI BANKING CORPORATION**, as Agent and Bank, and **THE BANK OF TOKYO – MITSUBISHI UFJ, LTD.**, as Bank. All capitalized terms used herein and not otherwise defined shall have the meaning assigned in Section 1.01 or as otherwise provided in Section 1.02.

### WITNESSETH:

WHEREAS, the Issuer has issued its Bonds pursuant to the terms of the Ordinance;

WHEREAS, to enhance the marketability of the Bonds, the Issuer has requested the Banks to issue the Letters of Credit to secure certain payments to be made with respect to the Bonds in the aggregate amount of \$\_\_\_\_\_, of which \$160,740,000 will be available to pay principal of the Bonds either at maturity or upon redemption or acceleration thereof or to pay the portion of the purchase price of Bonds representing the principal amount thereof, and of which \$\_\_\_\_\_ (( )) days of interest on the principal amount of Bonds calculated at the rate of 12% and computed on the basis of a year of 365 days) will be available to pay interest on the Bonds as interest becomes due or to pay the portion of the purchase price of the Bonds representing the accrued interest thereon;

WHEREAS, the Banks have agreed to issue the Letters of Credit pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, including the covenants, terms and conditions hereinafter contained, and to induce the Banks to issue the Letters of Credit, the Agent, the Banks and the Issuer agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.01. Definitions.** In addition to terms defined at other places in this agreement, the following defined terms are used throughout this agreement with the following meanings:

*"Accountant"* means an independent certified public accountant or a firm of independent certified public accountants, selected by the Issuer and satisfactory to the Banks.

*"Affiliate"* means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under common control with such Person. For purposes of this definition, "control" (including "controlled by" and "under common control with"), when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting rights, the power to appoint officers, members, trustees or directors, by contract or statute or otherwise. Without

limiting the foregoing, the definition of “*Affiliate*” of any Person shall include any subsidiary of such Person.

“*Agent*” means SMBC, in its capacity as administrative agent hereunder, and its successors and assigns.

“*Agreement*” means this Letter of Credit Reimbursement Agreement, including such amendments, modifications or supplements permitted pursuant to the terms hereof.

“*Alternate Credit Facility*” means any replacement credit facility meeting the requirements of an Alternate Credit Enhancement or an Alternate Liquidity Facility pursuant to the Supplemental Ordinance.

“*Applicable Bank*” means (a) with respect to the SMBC Letter of Credit, SMBC, and (b) with respect to the BTMU Letter of Credit, BTMU.

“*Applicable Law(s)*” means, collectively, the Constitutions of the United States and the State, all applicable common law and principles of equity and all international, foreign, federal, state and local laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all administrative orders, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the Issuer or (b) any assets, property, operations or facilities (including the Water/Wastewater System and the Electric System) of the Issuer or (c) the Transactions.

“*Applicable Letter of Credit*” means (a) with respect to SMBC, the SMBC Letter of Credit, and (b) with respect to BTMU, the BTMU Letter of Credit.

“*Authorized Denominations*” shall have the meaning assigned in the Supplemental Ordinance.

“*Bank*” means, individually, SMBC and BTMU, and “*Banks*” means both of them.

“*Bank Bond CUSIP Number*” means [\_\_\_\_\_].

“*Bank Bonds*” means Bonds purchased with funds provided pursuant to a Drawing on each Letter of Credit until remarketed or deemed to be remarketed in accordance with Section 2.03(h) hereof.

“*Bank Disclosure*” means the information provided by the Banks and included in Appendix [ ] of the Reoffering Document under the caption “[\_\_\_\_\_]”.

“*Bank Rate*” means, for each date of determination, the rate per annum specified below with respect to each period:

Period	Rate
Date of advance through 30th day thereafter	Base Rate
31st day after date of advance through 90th day after date of advance	Base Rate plus 1.00%
After 90th day of date of advance	Base Rate plus 2.00%

Notwithstanding the foregoing from and after the earlier of (i) the date amounts are owed hereunder but are not paid when due and (ii) during the occurrence and continuance of an Event of Default, such amounts shall bear interest at the Default Rate.

“*Base Rate*” means, for any date, a rate per annum equal to the greatest of (a) LIBOR Index Rate plus 300 basis points (3.00%), (b) Prime Rate plus 200 basis points (2.00%), (c) Federal Funds Rate plus 300 basis points (3.00%), (d) SIFMA plus 300 basis points (3.00%) or (e) 8%.

“*Bonds*” means bonds authenticated and delivered under and pursuant to the Supplemental Ordinance.

“*BTMU*” means The Bank of Tokyo-Mitsubishi UFJ, Ltd., its successors and assigns.

“*BTMU Letter of Credit*” means the Irrevocable Transferable Direct-Pay Letter of Credit No. [\_\_\_\_], dated May [\_\_\_\_], 2011, issued by BTMU for the account of the Issuer in favor of the Tender Agent and the Paying Agent/Registrar, including such amendments, modifications or supplements permitted pursuant to the terms hereof and thereof.

“*Business Day*” means any day other than (a) a Saturday or Sunday, (b) a day on which banks located in the cities in which the designated office of any of the Tender Agent and Paying Agent/Registrar, the Remarketing Agent, the Agent or the Banks are located are required or authorized by law or executive order to close, (c) a day on which the New York Stock Exchange is closed, or (d) a day on which the payment system of the Federal Reserve System is not operational. For purposes of this definition, the Banks’ designated offices shall be the respective offices of the Banks at which Drawings are to be presented under the respective Letters of Credit.

“*Charges*” has the meaning assigned to such term in Section 2.10(c).

“*Closing Date*” means May [\_\_\_\_], 2011 or such later date on which this Agreement is fully executed and delivered.

“*Code*” means the Internal Revenue Code of 1986, as amended, or any successor provision or provisions thereto or any successor federal tax code, and any regulations (including temporary and proposed regulations relating to the matters governed by this Agreement) thereunder or under any such provision or successor federal tax code.



*“Contract”* means any indenture, contract, mortgage, deed of trust, guaranty, note or agreement (other than this Agreement), other contractual restriction, lease, instrument, certificate of incorporation, charter or by-law.

*“Covered Rate”* means the Weekly Rate.

*“Date of Issuance”* means May \_\_\_, 2011, on which date the Banks will issue the Letters of Credit.

*“Debt”* means with respect to any Person, all items that would be classified as a liability in accordance with GAAP, including, without limitation, (a) indebtedness or liability for borrowed money including amounts drawn under a letter of credit or other credit facility, or for the deferred purchase price of property or services (including trade obligations); (b) all capital leases obligations of such Person; (c) current liabilities in respect of unfunded benefits under employee benefit, retirement or pension plans; (d) obligations issued for the account of any other Person; (e) all obligations arising under acceptance facilities; (f) all Guarantees and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor against loss; (g) obligations secured by any mortgage, Lien, pledge, security interest or other charge or encumbrance on property, whether or not the obligations have been assumed; (h) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable, if such amounts were advanced under the credit facility; (i) obligations of such Person under Hedge Agreements; and (j) all amounts required to be paid by such Person as a guaranteed payment to partners or members or as a preferred or special dividend, including any mandatory redemption of shares or interests; and, in each case, whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

*“Debtor Relief Laws”* means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws and regulations of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

*“Default”* means the occurrence of any event or the existence of any condition which constitutes an Event of Default or the occurrence of any event or the existence of any condition which with the giving of notice, the passage of time, or both, would constitute an Event of Default.

*“Default Rate”* means a per annum rate of interest equal to the Base Rate plus 400 basis points (4.00%); provided, that the Default Rate shall not exceed the Maximum Lawful Rate.

*“Designated Maturity”* means one month.

*“Determination of Taxability”* means any determination, decision, decree or advisement by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction, or an opinion obtained by the Paying Agent/Registrar, the Agent or the Banks, of counsel qualified in such matters, that an Event of Taxability shall have

occurred. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

(a) the date when the Issuer files any statement, supplemental statement, or other tax schedule, return or document, which discloses that an Event of Taxability shall have occurred;

(b) the effective date of any federal legislation enacted or federal rule or regulation promulgated after the date of the Ordinance that causes an Event of Taxability; or

(c) if upon sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an unqualified opinion of bond counsel to the effect that such action will not cause interest on the Bonds to become includable in the gross income of the recipient.

*“Differential Interest Amount”* means, with respect to any Principal Purchase Drawing, the excess of (a) interest which has accrued and is payable under this Agreement at the Bank Rate on such Principal Purchase Drawing, as determined in accordance with Sections 2.01 and 2.10, up to but excluding the Business Day on which such Principal Purchase Drawing is repaid in full to the Applicable Bank, less (b) the interest accrued on the Bank Bonds purchased pursuant to such Principal Purchase Drawing which is received by the Applicable Bank as part of the Sale Price for such Bank Bonds under Section 2.03(h).

*“Drawing”* means any Interest Drawing, Interest Purchase Drawing, Principal Drawing or Principal Purchase Drawing.

*“Early Expiration Date”* means any occurrence of the “Termination Date” as described in any of subparts (b), (c) or (d) of the definition of Termination Date in Paragraph 1 of the Letters of Credit.

*“Electric System”* means the Issuer’s Electric Utility System, which is referred to as the “City’s Electric Light and Power System” in the Master Ordinance.

*“Electric System Material Adverse Effect”* means a material and adverse effect on the business, condition (financial or otherwise) or operations of the Electric System which in the sole reasonable discretion of the Banks materially and adversely affects the ability of the Issuer to make timely payments of debt service on the Electric System Supported Bonds.

*“Electric System Supported Bonds”* means Issuer’s obligations supported by the joint and several lien on and pledge of the Net Revenues of the Issuer’s Water/Wastewater System and Electric System as described in the second recital to the Master Ordinance.

*“EMMA”* shall have the meaning assigned to such term in Section 5.02(h).

*“Environmental Claim”* shall mean any and all administrative, regulatory or judicial investigations, proceedings, actions, suits, demand letters, claims, Liens, notices of noncompliance or violation, relating in any way to any Environmental Law (“claims”) or any

permit issued under any such Environmental Law, including without limitation (a) any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial, or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

*“Environmental Law(s)”* means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to air, water or land pollution, wetlands or the protection of the environment or to emissions, discharges or releases of Hazardous Materials into the environment, including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials or the clean-up or other remediation thereof.

*“Environmental Liability”* means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Issuer directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, presence, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

*“Event of Default,”* in relation to this Agreement, shall have the meaning assigned to such term in Article VII, and in relation to any Related Document, shall have the meaning set forth therein.

*“Event of Insolvency”* means, with respect to any Person, the occurrence of one or more of the following events:

(a) the issuance, under the laws of any state or under the laws of the United States of America, of an order of rehabilitation, liquidation or dissolution of such Person;

(b) the commencement by or against such Person of a case or other proceeding seeking liquidation, reorganization or other relief with respect to such Person or its debts under any bankruptcy, insolvency or other similar state or federal law now or hereafter in effect, including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for such Person or any substantial part of its property or there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;

- (c) the making of an assignment for the benefit of creditors by such Person;
  - (d) the failure of such Person to generally pay its debts as they become due;
  - (e) the declaration of a moratorium with respect to the payment of the debts of such Person;
  - (f) such Person shall admit in writing its inability to pay its debts when due;
- or
- (g) the initiation of any actions to authorize any of the foregoing by or on behalf of such Person.

*“Event of Taxability”* means, with respect to the Bonds, (i) the application of the proceeds of such Bonds in such manner that such Bonds become “arbitrage bonds” within the meaning of Code Sections 103(b)(2) and 148, and with the result that interest on such Bonds is or becomes includable in a Holder’s gross income (as defined in Code Section 61); or (ii) if as the result of any act, failure to act or use of the proceeds of such Bonds or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in the Ordinance, in this Agreement or any Related Document by the Issuer or the enactment of any federal legislation or the promulgation of any federal rule or regulation after the date of the Ordinance, the interest on such Bonds is or becomes includable in a Holder’s gross income (as defined in Code Section 61).

*“Excess Interest Amount”* shall have the meaning assigned to such term in Section 2.10(d).

*“Excluded Bond”* shall have the meaning assigned to such term in Paragraph 12 of the Letters of Credit.

*“Exposure”* means, for any date with respect to a Person and any Hedge Agreement, the amount of any Settlement Amount that would be payable by such Person if such Hedge Agreement were terminated as of such date. Exposure shall be determined in accordance with the standard methods of calculating such Exposure under similar arrangements as prescribed from time to time by the Banks, taking into account the methodology for calculating amounts due upon early termination as set forth in the related Hedge Agreement and the notional principal amount, term and other relevant provisions thereof.

*“Federal Funds Rate”* means, for any day a fluctuating interest rate per annum equal to the weighted average (rounded to the next higher 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Banks of New York, or, if such rate is not so published for any day which is a Business Day, the average (rounded to the next higher 1/100 of 1%) of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by the Agent. Each determination of the Federal Funds Rate by the Agent shall be conclusive and binding on the Issuer.

*"Fee Letter"* means that certain Fee Letter dated May \_\_\_, 2011, among the Issuer, the Agent and the Banks, relating to this Agreement, including such amendments, modifications or supplements permitted pursuant to the terms thereof.

*"Fiscal Year"* means the fiscal year of the Issuer ending on September 30 of each calendar year.

*"Fitch"* means Fitch, Inc., or any successor thereto.

*"GAAP"* means accounting principles generally accepted in the United States, as set forth in the opinions and pronouncements of the Accounting Principles Board, the American Institute of Certified Public Accountants and the Financial Accounting Standards Board or in such other statements by such other entity as may be in general use by significant segments of the accounting profession as in effect on the date hereof.

*"Governmental Approvals"* means an authorization, consent, approval, permit, license, certificate of occupancy or an exemption of, a registration or filing with, or a report to, any Governmental Authority.

*"Governmental Authority"* means any national, supra-national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, department, commission, bureau, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

*"Gross Revenues"* has the meaning assigned to such term in the Ordinance.

*"Guarantee"* of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Debt or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Debt or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

*"Hazardous Materials"* means all explosive or radioactive substances or wastes and all hazardous or toxic substances, contaminants, chemicals, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

*“Hedge Agreement”* means any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap, credit default swap or any other similar transaction (including any option with respect to any of these transactions) and any other agreement or option involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

*“Holder”* has the meaning assigned to such term in the Ordinance.

*“Interest Accrual Period”* means each period commencing on the immediately preceding Interest Payment Date (or the Closing Date if there was no preceding Interest Payment Date) and ending on the day prior to the next Interest Payment Date.

*“Interest Drawing”* means a drawing under a Letter of Credit pursuant to an Interest Drawing, as defined in such Letter of Credit, to pay scheduled and unpaid interest accrued on the Bonds when due.

*“Interest Purchase Drawing”* means the portion of a drawing under a Letter of Credit pursuant to a Purchase Drawing to pay the portion of the purchase price of Bonds representing accrued and unpaid interest on Bonds to be purchased.

*“Interest Payment Date”* has the meaning assigned to such term in Section 2.10.

*“Issuer”* means the City of Austin, Texas, a home-rule city operating under its home-rule charter adopted pursuant to Section 5 of Article XI of the Texas Constitution, and its successors and assigns permitted hereunder.

*“Letters of Credit”* means, collectively, the SMBC Letter of Credit and the BTMU Letter of Credit.

*“LIBOR Index Rate”* means:

(a) as of any date of determination, the interest rate per annum equal to (i) the offered quotations for the Designated Maturity in United States Dollars which appears on LIBOR01 Page of the Thomson Reuters BBA LIBOR Rates Screen (or such other page as may replace LIBOR01 Page, or the service as may be nominated by the British Bankers’ Association as the information vendor for the purpose of displaying British Bankers’ Association Interest Settlement Rates for deposits in United States Dollars) at or about 11:00 a.m. (London time) on the applicable determination date; or (ii) if no such interest rate determined under clause (i) is available, the arithmetic mean (rounded upward to the nearest one-sixteenth of one percent (0.0625%)) of the interest rates quoted by the “London Reference Banks” to leading banks in the London interbank market at or about 11:00 a.m. (London time) on the applicable determination date for a period of the

Designated Maturity (commencing on the first day of the relevant interest period) in United States Dollars;

(b) provided, however that, if the Agent determines that for any reason and with respect to any date of determination (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Designated Maturity of such LIBOR Index Rate, or (ii) adequate and reasonable means do not exist for determining the LIBOR Index Rate for any Designated Maturity, the Agent will promptly so notify the Issuer and the LIBOR Index Rate for such Designated Maturity and such date of determination shall be that of the preceding interest period for the Designated Maturity until such time as the Agent shall either notify the Issuer (x) of an alternative reasonably comparable index to be used to calculate the LIBOR Index Rate or (y) that the LIBOR Index Rate will again be calculated as set forth under (a) of this definition.

“*Lien*” on or with respect to any asset means any mortgage, deed of trust, lien, pledge, charge, security interest, hypothecation, assignment, deposit arrangement or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital or finance lease or other title retention agreement relating to such asset and, in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“*Margin Stock*” shall have the meaning assigned to that term in Regulation U promulgated by the Board of Directors of the Federal Reserve System, as now and hereafter from time to time in effect.

“*Master Ordinance*” means Ordinance No. 0006008-56A adopted by the Issuer on June 8, 2000.

“*Material Adverse Change*” means the occurrence of any event or change which in the sole reasonable discretion of the Banks results in a material and adverse change in the business, condition (financial or otherwise) or operations of the Issuer since the last day of the period reported in the audited annual financial statements of the Issuer dated as of [September 30, 2010] or which in the sole reasonable discretion of the Banks materially and adversely affects (a) the enforceability of this Agreement or any of the other Related Documents, (b) the ability of the Issuer to perform its obligations hereunder or thereunder or (c) the rights of or benefits or remedies available to the Banks under this Agreement.

“*Material Adverse Effect*” means (a)(i), a materially adverse effect upon such Person’s business, assets, liabilities, condition (financial or otherwise) or results of operations, and (ii), a materially adverse effect upon the business, assets, liabilities, financial conditions or results of operations of the Issuer, (b) with respect to this Agreement or any of the other Related Documents or any of the Issuer’s obligations arising under this Agreement or any of the Related Documents, an adverse effect upon the binding nature, validity or enforceability of such agreement or obligation, (c) an adverse effect on the exclusion of interest with respect to the Bonds from gross income for purposes of federal income taxation or (d) a materially adverse

effect (i) on the ability of the Issuer to complete the Transactions or (ii) on the rights or remedies of the Banks hereunder or under the other Related Documents.

*“Material Litigation”* shall have the meaning assigned in Section 4.07.

*“Maturity Date”* means May 15, 2031.

*“Maximum Interest Rate”* means (a) with respect to the Bonds which are not Bank Bonds, the lesser of (i) 12% per annum and (ii) the Maximum Lawful Rate and (b) with respect to Bank Bonds and all other obligations of the Issuer hereunder, the Maximum Lawful Rate.

*“Maximum Lawful Rate”* means the respective maximum, non-usurious, lawful rate of interest that may be contracted for, charged or received in connection with the payment obligations of the Issuer under this Agreement or the Issuer under the Bank Bonds, as the case may be, under Applicable Law presently in effect or, to the extent permitted by law, under Applicable Law that may hereafter be in effect and that allows a higher maximum and non-usurious rate of interest than Applicable Law now allows.

*“Moody’s”* means Moody’s Investors Service, or any successor thereto.

*“Net Revenues”* has the meaning assigned to such term in the Ordinance.

*“Notice of Non-Reinstatement”* has the meaning given to such term in Paragraph 4(a) of the Letters of Credit.

*“Obligor Rating”* shall mean any rating by a Rating Agency on the Bonds or any Parity Bonds that are not guaranteed by any other Person or subject to any third-party credit enhancement, and shall also include any underlying rating on the Bonds or any Parity Bonds which are guaranteed by another Person or subject to third-party credit enhancement.

*“Off-Balance Sheet Liabilities”* means any liability or obligation, absolute, contingent or otherwise, incurred under an “off-balance sheet arrangement” as defined in the Final Rule: Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations, Securities And Exchange Commission 17 CFR Parts 228, 229 and 249, as such rule may be amended or supplemented from time to time.

*“Ordinance”* means, collectively, the Master Ordinance, the Pricing Certificate, the Supplemental Ordinance and Ordinance No. 20110407-[\_\_\_\_], as the same may be further amended or supplemented from time to time pursuant to the terms hereof and thereof.

*“Ordinance No. 20110407-[\_\_\_\_]”* means Ordinance No. 20110407-[\_\_\_\_] adopted by the Issuer on April 7, 2011.

*“Other Taxes”* means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, the Letters of Credit or this Agreement.



*“Outstanding”* shall have the meaning assigned in the Ordinance.

*“Owner”* means the registered owner of a Bond or, if the Bonds are held in book-entry form, the beneficial owner of such Bond.

*“Parity Bonds”* means the Parity Water/Wastewater Obligations, the Prior Subordinate Lien Obligations (as defined in the Ordinance) and the Previously Issued Separate Lien Obligations (as defined in the Ordinance) currently Outstanding.

*“Parity Water/Wastewater Obligations”* has the meaning assigned to such term in the Ordinance.

*“Participant(s)”* means any bank(s) or other financial institution(s) which may purchase a participation interest from a Bank in a Letter of Credit, this Agreement and certain of the Related Documents pursuant to a participation agreement between the Applicable Bank and the Participant(s).

*“Parity Water/Wastewater Obligations”* shall have the meaning assigned to such term in the Ordinance.

*“Paying Agent/Registrar”* means U.S. Bank National Association or its permitted successor as paying agent/registrar under the Ordinance.

*“Paying Agent/Registrar Agreement”* means the Paying Agent/Registrar Agreement by and between the Issuer and the Paying Agent/Registrar dated as of May 2, 2008 and any similar agreement between the Issuer and any successor Paying Agent/Registrar, including, in each case, such amendments, modifications or supplements permitted pursuant to its terms and the terms hereof.

*“Percentage”* means, for each Bank, the percentage for such Bank specified on its signature page to this Agreement.

*“Person”* means an individual, a corporation, a partnership, an association, a joint venture, a trust, a business trust, a limited liability company or any other entity or organization, including a governmental or political subdivision or an agency or instrumentality thereof.

*“Pricing Certificate”* shall have the meaning assigned to such term in the Supplemental Ordinance.

*“Prime Rate”* means the fluctuating rate per annum equal to the “Prime Rate” listed daily in the “Money Rate” section of The Wall Street Journal, or if The Wall Street Journal is not published on a particular Business Day, then, the “prime rate” published in any other national financial journal or newspaper selected by the Agent, and if more than one rate is listed in the applicable publication, the average rate shall be used. Any change in the Prime Rate shall take effect on the date specified in the announcement of such change.

*“Principal Drawing”* means a drawing under a Letter of Credit pursuant to a Principal Drawing, as defined in such Letter of Credit, to pay principal of the Bonds.

*“Principal Purchase Drawing”* means a drawing under a Letter of Credit pursuant to a Purchase Drawing to pay the portion of the purchase price of Bonds representing the principal amount of Bonds to be purchased.

*“Prior Bonds”* means the Prior First Lien Obligations (as defined in the Master Ordinance) currently Outstanding.

*“Purchase Date”* shall mean the date that Bonds are purchased pursuant to a Purchase Drawing on the Letters of Credit and become Bank Bonds.

*“Purchase Drawing”* has the meaning assigned to such term in the Letters of Credit.

*“Purchase Notice”* shall have the meaning assigned to such term in Section 2.03(g).

*“Purchase Price”* shall have the meaning set forth in the Letters of Credit.

*“Purchaser”* shall have the meaning assigned to such term in Section 2.03(g).

*“Rating Agency”* means S&P, Moody’s, Fitch or any successor or additional rating agency that rates the Bonds at the written request of the Issuer with the written consent of the Banks.

*“Related Documents”* means, collectively, this Agreement, the Letters of Credit, the Supplemental Ordinance, the Master Ordinance, the Remarketing Agreement, the Paying Agent/Registrar Agreement, the Tender Agent Agreement, the Bonds, the Fee Letter, the Reoffering Document and any exhibits, instruments or agreements relating thereto, as the same may be amended from time to time in accordance with their respective terms and the terms hereof.

*“Remarketing Agent”* means initially the Person acting from time to time as the Remarketing Agent under the Supplemental Ordinance and the Remarketing Agreement, currently Goldman, Sachs & Co.

*“Remarketing Agreement”* means the Remarketing Agreement by and between the Issuer and the Remarketing Agent dated as of May 1, 2008 and any similar agreement between the Issuer and any successor Remarketing Agent, including, in each case, such amendments, modifications or supplements permitted pursuant to its terms and the terms hereof.

*“Remarketing Agreement Amendment”* means the First Amendment to the Remarketing Agreement executed and entered into as of May 9, 2011 between the City and the Remarketing Agent.

*“Reoffering Document”* means the Reoffering Circular dated May [\_\_\_], 2011 (including the cover page and all summary statements, appendices and other materials included or incorporated by reference or attached thereto), as amended or supplemented and any other preliminary or final official statement of the Issuer or prospectus used with respect to the remarketing of the Bonds or supplement to the Reoffering Document.

*“Required Payments”* means (a) all required payments in reimbursement of Drawings under the Letters of Credit for payment of the unpaid principal amount of, purchase price of, and accrued interest on, the Bonds, (b) all required payments of interest under this Agreement at the Bank Rate, (c) all amounts set forth in the Fee Letter, (d) the payment of interest on the Bank Bonds and (e) all other amounts, charges, costs, fees (including reasonable attorneys’ fees as set forth herein), expenses and sums due the Banks and the Agent under this Agreement, the Bank Bonds and the other Related Documents, whether in the form of a direct, reimbursement, or indemnity, payment obligation, and including all payment obligations of the Issuer to the Agent and the Banks, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Issuer of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

*“S&P”* means Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business, or any successor thereto.

*“S&P Weekly High Grade Index”* means for each date, the level of the “S&P Weekly High Grade Index” (formerly known as the J.J. Kenny Index) maintained by Standard and Poor’s Securities Evaluations Inc. for a one-week maturity as published each Wednesday, or if any Wednesday is not a Business Day, on the next succeeding Business Day.

*“Sale Date”* shall have the meaning assigned to such term in Section 2.03(g).

*“Sale Price”* shall have the meaning assigned to such term in Section 2.03(g).

*“Securities Depository”* shall have the meaning assigned to such term in the Supplemental Ordinance.

*“Settlement Amount”* means, with respect to a Person and any Hedge Agreement, any amount payable by such Person under the terms of such Hedge Agreement in respect of, or intended to compensate the other party for, the value of such Hedge Agreement upon early termination thereof.

*“SIFMA”* means, for any date, the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by the Securities Industry and Financial Markets Association and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day. If SIFMA is no longer published, then “SIFMA” shall mean the S&P Weekly High Grade Index.

*“SMBC”* means Sumitomo Mitsui Banking Corporation, its successors and assigns.

*“SMBC Letter of Credit”* means the Irrevocable Transferable Direct-Pay Letter of Credit No. [\_\_\_\_], dated May [\_\_\_\_], 2011, issued by SMBC for the account of the Issuer in favor of the Tender Agent and the Paying Agent/Registrar, including such amendments, modifications or supplements permitted pursuant to the terms hereof and thereof.

*“State”* means the State of Texas.

*“Stated Amount”* means, with respect to a Letter of Credit, the amount specified as the Stated Amount in Paragraph 2 of such Letter of Credit.

*“Stated Expiration Date”* has the meaning given to such term in Paragraph 1 of the Letters of Credit.

*“Supplemental Ordinance”* means Ordinance No. 20080306-053 of the Issuer adopted on March 6, 2008, including such amendments, modifications or supplements permitted pursuant to its terms and the terms hereof.

*“Tender Agent”* shall mean U.S. Bank National Association or any successor tender agent which may at any time be substituted in its place as provided in the Supplemental Ordinance.

*“Tender Agent Agreement”* means the Tender Agent Agreement by and between the Issuer and the Tender Agent dated as of May 2, 2008, as amended by the Tender Agent Agreement Amendment and any similar agreement between the Issuer and any successor Tender Agent, including, in each case, such additional amendments, modifications or supplements permitted pursuant to its terms and the terms hereof.

*“Tender Agent Agreement Amendment”* means the First Amendment to the Tender Agent Agreement executed and entered into as of May 9, 2011 between the Issuer and the Tender Agent

*“Termination Date”* has the meaning given to such term in Paragraph 1 of the Letters of Credit.

*“Termination Event of Default Notice”* has the meaning given to such term in Paragraph 1 of the Letters of Credit.

*“Term-Out End Date”* means, with respect to any Bank Bond, the date which is four (4) years after the Term-Out Start Date.

*“Term-Out Start Date”* means, with respect to any Bank Bond, the earlier of (a) the Termination Date of any Letter of Credit and (b) the 90th cumulative day that such Bank Bond is Outstanding.

*“To the best knowledge of”* (or any similar knowledge qualifier) means, when modifying a representation, warranty or other statement of any Person, that the fact or situation described therein is known by the Person (or, in the case of a Person other than a natural Person, known by an authorized representative of such Person) making the representation, warranty or other statement, or with the exercise of reasonable due diligence under the circumstances (in accordance with the standard of what a reasonably prudent Person in similar circumstances would have done) would have been known by the Person (or, in the case of a Person other than a natural Person, by such Person’s authorized representative).

*“Transaction Documents”* means, collectively, this Agreement, the Letters of Credit, the Fee Letter, the Reoffering Document, the Tender Agent Agreement Amendment, the Remarketing Agreement Amendment and Ordinance No. 20110407-[\_\_\_\_\_] and any exhibits, instruments or agreements relating thereto.

*“Transactions”* means the issuance of the Bonds, the execution and delivery by the Issuer of this Agreement and the other Related Documents, the performance by the Issuer of its obligations (including payment obligations) hereunder and thereunder, the borrowing of the Drawings under the Letters of Credit and the use of the proceeds thereof.

*“Water/Wastewater System”* shall have the meaning assigned to such term in the Ordinance.

*“Weekly Rate”* has the meaning assigned to such term in the Supplemental Ordinance.

*“Written”* or *“in writing”* means any form of written communication or a communication by means of facsimile device and as described in Section 11.16.

**Section 1.02. Incorporation of Certain Definitions by Reference.** Each capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Ordinance and the Bonds, as applicable, unless the context otherwise requires.

**Section 1.03. Accounting Matters.** All accounting terms used herein without definition shall be interpreted in accordance with GAAP, and except as otherwise expressly provided herein all accounting determinations required to be made pursuant to this Agreement shall be made in accordance with GAAP applicable to governments as in effect from time to time, applied on a consistent basis.

**Section 1.04. Computation of Time Periods.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise specified herein, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

**Section 1.05. New York City Time Presumption.** All references herein to times of the day shall be presumed to refer to New York City time unless otherwise specified.

**Section 1.06. Relation to Other Documents.** Nothing in this Agreement shall be deemed to amend, or relieve the Issuer of any of its obligations under any Related Document. To the extent that the Issuer undertakes in any provision of this Agreement representations, covenants or obligations which conflict with, or are more exacting than, a provision of any other Related Document to which the Issuer is a party, such provisions of this Agreement shall control for all purposes of this Agreement.

**Section 1.07. Interpretation.** All words used herein shall be construed to be of such gender as the circumstances require. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular includes the plural and the part includes the whole. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and

“including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless otherwise specified (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in such document or herein), (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not be limited to any particular provision of this Agreement, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and, when used in connection with any Person, to refer to all rights, title and interests of such Person in and to any and all property whether real, personal or mixed, or tangible or intangible, and wherever situated, including cash, securities, investment property, accounts, land, buildings, general intangibles, chattel, intellectual property, contract rights and other property and assets.

## **ARTICLE II**

### **REIMBURSEMENT, BANK BONDS, FEES AND PAYMENT PROVISIONS**

The Issuer shall pay and reimburse the Banks or the Agent, as applicable, for all amounts drawn under the Letters of Credit and shall pay such other amounts as are set forth in this Article II and the other provisions of this Agreement, all on and subject to the terms and conditions of this Agreement:

**Section 2.01. Reimbursement of Drawings.** The Issuer agrees to repay each Bank all amounts drawn under the Applicable Letter of Credit pursuant to a Principal Drawing, an Interest Drawing or an Interest Purchase Drawing, payable without any requirement of notice or demand by the Banks or the Agent, on the day on which such Drawing is paid by such Bank. The Issuer agrees to repay the Agent, on behalf of the Banks in accordance with their respective Percentages, all amounts drawn under the Letters of Credit pursuant to a Principal Purchase Drawing, without any requirement of notice or demand by the Banks or the Agent, on the day on which such Principal Purchase Drawing is paid by such Bank; provided, however, if on the date of any Principal Purchase Drawing the conditions set forth in Section 3.02 are satisfied, the Issuer shall be deemed to have requested the Banks to extend a loan to the Issuer on the terms set forth in this Section 2.01 and the Issuer shall be required to repay to the Agent, on behalf of the Banks, such loan and the amounts accruing in respect thereof in accordance with the provisions of this Section 2.01, as follows:

(a) (i) The Issuer shall pay to the Agent, for the benefit of the Banks in accordance with their respective Percentages, without any requirement of notice or demand by the Agent or any Bank, on the first [May 1 or November 1] occurring following the Term-Out Start Date and on each such date thereafter an amount sufficient, with interest thereon at the Bank Rate, to pay the principal owed on the Principal Purchase Drawing in approximately equal semiannual amounts over the period ending on

the earliest to occur of (A) the Early Expiration Date, (B) the Term-Out End Date, (C) the Maturity Date, (D) an Event of Default hereunder and (E) the acceleration, prepayment, redemption, defeasance or other payment of the Bank Bonds purchased pursuant to such Principal Purchase Drawing. The Issuer may prepay the amount of an Principal Purchase Drawing at any time in Authorized Denominations. The Issuer shall prepay amounts owed under this Section 2.01(a) upon any remarketing of Bank Bonds in amounts equal to the principal amount of the Bank Bonds remarketed. Any prepayments shall be applied pro rata between the Banks.

(ii) Upon delivery to the Agent, for the benefit of the Banks, of any such payment or prepayment, the Agent shall forward such payment or prepayment to the Banks in accordance with their respective Percentages, and the Applicable Bank shall apply such payment as provided in Section 2.07(b). To the extent of the principal payments actually received by the Applicable Banks in connection with the Bank Bonds and applied to principal under Section 2.07(b), such principal payments shall be credited to the payment of principal owed on the Principal Purchase Drawing, and the Agent, on behalf of the Banks, shall cause to be released a principal amount of Bank Bonds, if any, equal to the Principal Purchase Drawing repaid under this Section 2.01; provided, however, that if the prepayment is less than the minimum Authorized Denomination, Bank Bonds shall be released only at such time as prepayments accumulate to the minimum Authorized Denomination then available, and provided further that, prior to any release of Bank Bonds, the Issuer shall have paid to the Agent, for the benefit of the Banks in accordance with their respective Percentages, any Differential Interest Amount and any Excess Interest Amount owing in respect of the Principal Purchase Drawing pursuant to which such Bank Bonds were purchased.

(b) The Issuer shall pay to the Agent for the benefit of the Banks interest on any and all amounts drawn under the Letters of Credit pursuant to a Principal Purchase Drawing, such interest to accrue from the date of such Drawing until payment thereof in full, payable on the 15<sup>th</sup> day of each month or, if earlier, the date on which all or a portion of such principal amount is repaid, to the extent of such principal repayment, at a fluctuating interest rate per annum equal to the Bank Rate from time to time in effect, provided that (i) if any such amount is not paid when due and (ii) upon the occurrence and during the continuance of any Event of Default, amounts owed hereunder shall thereafter bear interest at the Default Rate.

(c) Interest shall accrue on Bank Bonds at the Bank Rate, which interest shall be due and payable on the 15<sup>th</sup> day of each month or, if earlier, the date on which all or a portion of the principal amount of any such Bank Bond is repaid, to the extent of such principal repayment and in the amounts described in this Article II. Interest actually received by the Banks on Bank Bonds shall be credited to the payment of interest owed pursuant to Section 2.01(b).

(d) In any event, an amount equal to each Interest Drawing, Interest Purchase Drawing or Principal Drawing shall be due and payable by the Issuer to the Applicable Bank on the date of any such Drawing.

(e) Each time the Tender Agent or the Paying Agent/Registrar makes a Drawing, the Issuer shall be deemed to represent and warrant on the date of each Drawing that (i) the conditions set forth in Section 3.02 have been satisfied, and (ii) the representations and warranties made by the Issuer herein are true and correct in all material respects on and as of such date, as if made on and as of such date; provided, however, that if either or both representations contained in clauses (i) and (ii) of this Section 2.01(e) are not true and correct in all material respects on the date of such Drawing, such event, in and of itself shall not affect the obligation of a Bank under its Letter of Credit with respect to such Drawing.

The Tender Agent and the Paying Agent/Registrar acknowledge and agree that all Drawings under the Letters of Credit shall be on a pro rata basis.

**Section 2.02. Default Interest.** The Issuer agrees to pay to the Agent and the Banks, as applicable, upon demand, interest on any and all amounts owed by the Issuer under this Agreement or under the Fee Letter from the earlier of (a) the date such amounts are due and payable but not paid until payment thereof in full and (b) a date on which an Event of Default occurs, at a fluctuating interest rate per annum equal to the Default Rate. The obligations of the Issuer under this Section 2.02 shall survive the termination of this Agreement.

### **Section 2.03. Bank Bonds.**

(a) The Issuer and the Banks agree that, pursuant to the Ordinance, Bonds purchased with the proceeds of Principal Purchase Drawings are purchased by the Agent, for the benefit of the Banks, and shall, if the Bonds are no longer in the book-entry-only system, be transferred and delivered by the Tender Agent to the Agent, or its nominee or designee, for the benefit of the Banks, as further provided in this Section 2.03, and prior to such delivery, shall be held in trust by the Tender Agent for the benefit of the Banks. Any Bonds so purchased shall constitute Bank Bonds and, from the Purchase Date and while they are Bank Bonds, shall have the characteristics of Bank Bonds as set forth herein and in the Ordinance.

(b) Bank Bonds shall be (i) transferred on the registration books of the Paying Agent/Registrar and registered on such books in the name of the Agent (or its nominee or designee), on behalf of the Banks, or (ii) if the Bonds are then registered under a book-entry-only system with the Securities Depository, delivered by transfer of such Bonds to an account specified from time to time by the Agent (or its nominee or designee) maintained at the Securities Depository.

(c) With respect to any transfer referred to in Section 2.03(b)(i), the Issuer shall cause the Tender Agent to deliver, after such transfer, a principal amount of Bonds, appropriately registered as provided in clause (i), equal to the principal amount of Bank Bonds so purchased to the Agent (or its nominee or designee), on behalf of the Banks. With respect to any transfer referred to in Section 2.03(b)(ii), so long as Bank Bonds are book entry Bonds held by the Paying Agent/Registrar as part of DTC's FAST automated transfer program ("FAST Eligible Bonds"), concurrent with the Tender Agent's receipt of the Purchase Price for each purchase of Bank Bonds from proceeds of one or more



Drawings, the Tender Agent, as a participant of DTC (or any other successor Securities Depository) or an eligible transfer agent, shall, if so directed by the Agent, on behalf of the Banks, make a direct registration electronic book entry (A) crediting the DTC account of the Tender Agent at DTC Participation #: [ ] [Ref.: ] (the "Bank Bond Book Entry Account") with the principal amount of the Bank Bonds purchased using the appropriate Bank Bond CUSIP Number and (B) debiting the book entry account of DTC for such Bonds (thereby reducing the principal balance of the global certificate representing the Bonds) (the "DTC Book Entry Account") by the principal amount of the Bank Bonds purchased. So long as the Bonds are FAST Eligible Bonds, upon a remarketing of Bank Bonds and the Agent's receipt from the Tender Agent of the remarketing proceeds for the benefit of the Banks, the Tender Agent, as a participant of DTC (or any other successor Securities Depository) or an eligible transfer agent, shall, if the Tender Agent has previously credited the appropriate Bank Bond Book Entry Account as described in clause (A) of the second sentence of this Section 2.03(c), make a direct registration electronic book entry in its records (X) debiting the appropriate Bank Bond Book Entry Account for the principal amount of the Bank Bonds so remarketed and (Y) crediting the appropriate DTC Book Entry Account for the Bonds (thereby increasing the principal balance of the global certificate representing the Bonds) with the principal amount of the Bank Bonds so remarketed. The Tender Agent acknowledges that it is familiar with the procedures and requirements set forth in a notice from DTC, dated April 4, 2008, respecting "Variable Rate Demand Obligations ("VRDO") Failed Remarketings and Issuance of Bank Bonds", and agrees that, with respect to any and all Bonds, it will follow the procedures and requirements set forth in such notice and the same shall be applicable hereto, *mutatis mutandis*, and as the same may be amended, supplemented, restated or replaced from time to time. To the extent that, following any amendment of such notice, the procedures and requirements therein should become inconsistent with any aspect of the provisions of this Section 2.03(c), the Paying Agent/Registrar, the Tender Agent, the Issuer, the Agent and the Banks shall promptly negotiate in good faith and agree upon amendments of this paragraph so as to eliminate such inconsistency. All costs and expenses related to actions taken pursuant to this Section 2.03(c) or otherwise to register Bank Bonds or transfer legal or beneficial interests therein shall be borne by the Issuer. At any time that Bank Bonds are held in book-entry form as provided in this Section 2.03(c), promptly following receipt of a written request from the Agent, on behalf of the Banks, the Tender Agent shall take such steps as are necessary to cause such Bank Bonds to be converted to physical form and to be delivered to or at the direction of the Agent, on behalf of the Banks.

(d) Issuer shall cause the Tender Agent to comply with the provisions set forth in this Article II and those in the Supplemental Ordinance regarding Bank Bonds. The Agent and the Banks shall have no responsibility for, and shall not incur any liability in respect of, any act, or any failure to act, by the Tender Agent, the Remarketing Agent, the Paying Agent/Registrar or the Issuer which results in (i) the failure of the Tender Agent to effect the purchase of the Bonds by the Issuer, (ii) the failure of such Bank Bonds to be delivered to the Agent on behalf of the Banks or its nominee or designee or (iii) the failure of the Agent or the Banks to collect or realize upon the Bank Bonds or for any delay in so doing.

(e) Notwithstanding any other provision of this Agreement or the Ordinance, the Tender Agent shall not release Bank Bonds unless the Tender Agent has received written notice from each Bank that it has been paid all amounts owed with respect to the Bank Bonds and the Stated Amount of the Applicable Letter of Credit has been reinstated as provided in paragraph 4(b) of such Letter of Credit. The parties hereto hereby agree that the Bank Bonds are held as independent obligations and as additional security for the payment and performance of the Issuer's obligations hereunder.

(f) The Issuer shall cause the Remarketing Agent to use its best efforts to remarket Bank Bonds at the Sale Price.

(g) Prior to 12:00 noon on any Business Day on which the Agent holds Bank Bonds, unless and insofar as the Banks shall have issued a Termination Event of Default Notice pursuant to Section 7.02, the Remarketing Agent may deliver a notice (a "Purchase Notice") to the Tender Agent, the Agent and the Banks, stating that it has located a purchaser (the "Purchaser") for some or all of such Bank Bonds in an Authorized Denomination and that such Purchaser desires to purchase on the Business Day (a "Sale Date") following the Business Day on which the Banks receive, prior to 12:00 noon, a Purchase Notice at a price equal to the principal amount thereof plus unpaid accrued interest thereon from and including the Purchase Date to but excluding the Sale Date at the interest rate then applicable to the Bonds (other than Bank Bonds) (the "Sale Price").

(h) The Agent shall cause such Bank Bonds to be sold to a Purchaser on the Sale Date (subject to receipt by it of the funds set forth in this sentence) by causing the delivery of such Bank Bonds to the Tender Agent (or, in the case of Bank Bonds which are held in book entry form, shall cause the beneficial ownership thereof to be credited to the account of the Remarketing Agent at DTC) by 12:00 noon on the Sale Date, and upon receipt of the Sale Price therefor in immediately available funds by the Agent at the Agent's address listed in the Bond Register or such other address as specified by the Agent together with payment by the Issuer to the Agent of the Differential Interest Amount and any Excess Interest Amount in respect of the Principal Purchase Drawing being repaid, such Bonds shall thereupon no longer be considered Bank Bonds. When Bank Bonds are sold in accordance with this Section 2.03(h), the Tender Agent shall, upon receipt of such Bank Bonds and upon receipt by the Agent of the Sale Price and the Differential Interest Amount and any Excess Interest Amount, notify the Issuer and the Paying Agent/Registrar that such Bonds are no longer Bank Bonds. Any sale of a Bank Bond pursuant to this Section 2.03(h) shall be without recourse to the seller and without representation or warranty of any kind.

(i) In the event of any such sale (i) if the Bank Bonds are not then registered under a book-entry-only system with the Securities Depository, the Agent, on behalf of the Banks, shall deliver (or cause to be delivered) such Bank Bonds duly endorsed in blank for transfer, or (ii) if the Bank Bonds are then registered under a book-entry-only system with the Securities Depository, the Agent, on behalf of the Banks, shall deliver (or cause to be delivered) in accordance with Section 2.03(b) such Bank Bonds through the facilities of such Securities Depository.

(j) If an Event of Default shall have occurred, the Agent and the Banks may, without notice, exercise all rights, privileges or options under this Agreement upon such terms and conditions as it may determine, all without liability. The Issuer shall be liable for the deficiency if the proceeds of any sale or other disposition of the Bank Bonds are insufficient to pay all amounts to which the Agent and the Banks are entitled. If the Agent, on behalf of the Banks, sells Bank Bonds, the Agent shall inform the purchaser thereof that the Bonds do not enjoy the benefits of the Letters of Credit and do not carry a rating based on the Letters of Credit.

**Section 2.04. Taxes.** Any and all payments to the Banks, or to the Agent for the benefit of the Banks, by or on behalf of the Issuer hereunder or under the Fee Letter shall be made free and clear of, and without deduction for, any and all taxes, levies, imposts, deductions, charges or withholdings imposed, including but not limited to as a result of a change in, law, rule, treaty, or regulation, or any policy, guideline, or directive of, or any change in the interpretation, implementation, or administration thereof by, any Governmental Authority, and all liabilities with respect thereto, excluding only taxes imposed on or measured by the net income or capital of the Banks by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Banks and such jurisdiction or political subdivision, other than a connection resulting solely from executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement and the Fee Letter (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Issuer is required by law to withhold or deduct any sum from payments required under this Agreement or the Fee Letter, the Issuer shall, to the maximum extent permitted by Applicable Law, increase the amount paid by it so that, after all withholdings and deductions, the amount received by the Banks or the Agent, as applicable, shall equal the amount the Agent or the Banks, as applicable, would have received without any such withholding or deduction.

**Section 2.05. Fee Letter.** The Issuer hereby agrees to pay to the Agent and the Banks all amounts set forth in the Fee Letter on the dates and in the amounts stated in the Fee Letter. The Fee Letter and this Agreement shall be construed as one agreement among the Issuer, the Agent and the Banks and all obligations under the Fee Letter shall be construed as obligations payable hereunder.

**Section 2.06. Yield Protection.**

(a) If a Bank shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty, regulation, policy, guideline, supervisory standard or directive of, or any change in the interpretation, implementation, or administration thereof by, any Governmental Authority (in each case, whether or not having the force of law), or compliance by a Bank with any request by or directive of any Governmental Authority (in each case, whether or not having the force of law), including but not limited to any such law, rule, regulation, policy, guideline, standard, directive, interpretation or application implementing, invoking or in any way related to any provision (as now or hereafter amended) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any other statute referred to therein or amended thereby) or any rules, guidelines, standards, policies, regulations, or directives promulgated by the Basel Committee on

Banking Supervision or the Banks for International Settlements (BIS) (or any successor or similar organizations), shall (i) change the basis of taxation of payments to a Bank of any amounts payable hereunder (except for taxes on the overall net income of a Bank), (ii) impose, modify or deem applicable any reserve, liquidity, special deposit, insurance premium, fee, financial charge, monetary burden or similar requirement against issuing the Letters of Credit or honoring draws under the Letters of Credit, or complying with any term of this Agreement, or against assets held by, or deposits with or for the account of, a Bank or (iii) impose on a Bank any other condition, expense or cost regarding this Agreement or the Letters of Credit, and the result of any event referred to in clause (i), (ii) or (iii) above shall be to increase the cost to a Bank of issuing the Letters of Credit or honoring draws under the Letters of Credit or complying with any term of this Agreement or to reduce the amount of any sum received or receivable by a Bank hereunder, then, upon demand by such Bank(s), the Issuer shall pay to such Bank(s) such additional amount or amounts as will compensate such Bank(s) for such increased costs or reductions in amount.

(b) If a Bank shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty, regulation, policy, guideline, supervisory standard or directive of, or any change in the interpretation, implementation, or administration thereof by, any Governmental Authority (in each case whether or not having the force of law), or compliance by a Bank with any request by or directive of any Governmental Authority (in each case, whether or not having the force of law), including but not limited to any such law, rule, regulation, policy, guideline, standard, directive, interpretation or application implementing, invoking or in any way related to any provision (as now or hereafter amended) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any other statute referred to therein or amended thereby) or any rules, guidelines, standards, or directives promulgated by the Basel Committee on Banking Supervision or the Banks for International Settlements (BIS) (or any successor or similar organizations), shall impose, modify or deem applicable any capital (including but not limited to contingent capital) adequacy, reserve, insurance, liquidity or similar requirement (including, without limitation, a request or requirement that affects the manner in which a Bank allocates capital resources or reserves to its commitments (including its obligations under letters of credit)) that either (i) affects or would affect the amount of capital or reserves to be maintained by a Bank or (ii) reduces or would reduce the rate of return on a Bank's capital or reserves to a level below that which such Bank(s) could have achieved but for such circumstances (taking into consideration the policies of such Bank(s) with respect to capital adequacy or the maintenance of reserves) then, upon demand by such Bank(s), the Issuer shall pay to such Bank(s) such additional amount or amounts as will compensate such Bank(s) for such event.

(c) All payments of amounts referred to in clauses (a) and (b) above shall be paid by the Issuer to the Bank(s) within fifteen Business Days of such demand. A certificate as to such increased cost, increased capital or reserves or reduction in return incurred by a Bank as a result of any event mentioned in clause (a) or (b) of this subsection setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by the Banks to the Issuer simultaneously with such demand for payment and shall be conclusive as to the amount thereof absent manifest

error. In making the determinations contemplated by the above-referenced certificate, the Banks shall calculate the amount to be paid assuming that the Banks have not granted any participation interests in the Letters of Credit or this Agreement and in so doing may make such reasonable estimates, assumptions, allocations and the like that the Banks in good faith determine to be appropriate. The Issuer shall not be obligated to make any payment pursuant to this Section unless it receives the above-referenced certificate. The obligations of the Issuer under this Section shall survive the termination of this Agreement.

#### **Section 2.07. Payments Generally.**

(a) Except as may be otherwise provided herein or in the Fee Letter, all fees hereunder or under the Fee Letter and interest on amounts owed hereunder or under the Fee Letter or with respect to Bank Bonds shall be computed on the basis of a year of 365 days, and the actual number of days elapsed. All payments by or on behalf of the Issuer to the Agent or the Banks hereunder and under the Fee Letter shall be fully earned when due and nonrefundable when paid and made in lawful currency of the United States of America and in immediately available funds. Amounts payable to the Agent or the Banks hereunder and under the Fee Letter shall be transferred to the account thereof as set forth on the signature page of the Agent or such Bank to this Agreement (or to such other account of the Agent or the Banks as the Agent or the Banks, as applicable, may specify by written notice to the Issuer or the Paying Agent/Registrar) not later than [3:30 p.m.] on the date payment is due. Any payment received by the Agent or the Banks after [3:30 p.m.] shall be deemed to have been received on the next Business Day. If any payment hereunder is due on a day that is not a Business Day, then such payment shall be due on the next succeeding Business Day, and, in the case of the computation of the interest or fees hereunder, such extension of time shall, in such case, be included in the computation of the payment due hereunder.

(b) If at any time insufficient funds are received by and available to the Agent or the Banks to pay fully all amounts of principal, interest and fees then due hereunder and under the Fee Letter, such funds shall be applied first, to payment of that portion of the Required Payments constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and the Banks and amounts payable under Section 2.06) payable to the Agent or the Banks, as applicable, second, to payment of that portion of the Required Payments constituting accrued and unpaid interest on any Drawing or other amount unpaid hereunder, under the Fee Letter or on the Bank Bonds (and, in any such case, first to past due interest and second to current interest), and third, to payment of that portion of the Required Payments constituting unpaid principal of any Drawing or the Bank Bonds.

**Section 2.08. Maintenance of Accounts.** The Agent, on behalf of the Banks, shall maintain in accordance with its usual practice an account or accounts evidencing the Debt of the Issuer and the amounts payable and paid from time to time hereunder. In any legal action or proceeding in respect of this Agreement, the entries made in such account or accounts shall be presumptive evidence of the existence and amounts of the obligations of the Issuer therein recorded. The failure to record any such amount shall not, however, limit or otherwise affect the

obligations of the Issuer hereunder to repay all amounts owed hereunder, together with all interest accrued thereon as provided herein.

**Section 2.09. Cure.** The Issuer agrees to pay to the Banks on demand, any amounts advanced by or on behalf of the Banks, to the extent required to cure any Default or Event of Default under this Agreement or any Related Document. The Banks shall give the Issuer reasonably prompt notice of any such advances. The Banks shall have the right, but not the obligation, to cure any such Default or Event of Default.

**Section 2.10. Payment of Interest Amounts.** The amount of interest required to be paid on any date under Sections 2.01 or 2.02, or under any other provision of this Article II (each, an "Interest Payment Date") shall be due and payable by the Issuer on such date at the Bank Rate, including when the Bank Rate exceeds the Maximum Interest Rate, in accordance with the following provisions:

(a) Interest at the Bank Rate is due and payable by the Issuer to the Banks hereunder on each Interest Payment Date as a contractual obligation in respect of the loans and other advances made by the Banks hereunder and under the Letters of Credit.

(b) To the extent that interest hereunder is due and payable in respect of Bank Bonds, such interest shall be paid in accordance with the terms of the Bonds and Section 2.01(c) and shall be credited against the Issuer's repayment obligations in accordance with the terms of Section 2.01(c).

(c) If the amount of interest required to be paid on any Interest Payment Date calculated in accordance with the terms hereof (together with any fees, charges, and other amounts which are treated as interest on amounts advanced hereunder or on the Bank Bonds under Applicable Law (collectively, the "*Charges*")) exceeds the amount of interest that would have been payable for the applicable period had interest for such period been calculated at the Maximum Interest Rate, then the required interest for such period (together with any Charges payable with respect thereto) shall be payable in an amount of interest calculated on the basis of the Maximum Interest Rate.

(d) Any interest or Charges that would have been due and payable under any provision hereof but for the operation of subparagraph (c) immediately above, shall accrue and be payable as provided in this subparagraph (d) and shall constitute, less interest actually paid to the Banks on such Interest Payment Date, the "*Excess Interest Amount*." If there is any accrued and unpaid Excess Interest Amount as of any Interest Payment Date, then, on the current and each subsequent Interest Payment Date, interest shall be paid at the Maximum Interest Rate rather than the otherwise applicable rate until the earliest of (x) payment to the Banks of the entire accrued Excess Interest Amount, (y) the Term-Out End Date or (z) the date on which no principal amount hereunder remains unpaid.

(e) Notwithstanding the foregoing, all unpaid Excess Interest Amount shall be, to the fullest extent permitted by applicable law, due and payable by the Issuer as a

fee on the earlier of (i) the Term-Out End Date or (ii) the date on which no principal amount hereunder remains unpaid.

(f) (i) It is expressly agreed that the amount of interest charged by the Banks hereunder (the "Interest Rate") shall not exceed the Maximum Lawful Rate. It is expressly agreed that the provisions of this Agreement and Applicable Law (A) permit the Banks to charge interest, in accordance with the terms hereof, up to the Maximum Lawful Rate, and such Maximum Lawful Rate will not be less than a net effective interest rate of 15% per annum (as defined by Texas Government Code, Section 1204.006 ("Section 1204.006")), and (B) permit the recapture of interest by allowing the Interest Rate to exceed a rate of 15% per annum so long as and provided that the Interest Rate does not at any time exceed the maximum net effective interest rate (as defined by Section 1204.006) permitted by Applicable Law at the time of issuance of the Bonds (or such higher interest rate as may be permitted by any amended or successor provision of Applicable Law).

(ii) If (A) for any Interest Accrual Period the Interest Rate (calculated as a net effective interest rate under Texas Government Code, Chapter 1204 ("Chapter 1204")) would exceed the Maximum Lawful Rate, then (B) the Interest Rate shall not exceed but shall be capped at such Maximum Lawful Rate and (C) in any Interest Accrual Period thereafter that the Interest Rate (calculated as a net effective interest rate under Chapter 1204) is less than the Maximum Lawful Rate, the Bank Bonds shall bear interest at the Maximum Lawful Rate until the earliest of (x) payment to the Banks of an amount equal to the amount which would have accrued but for the limitation on the Interest Rate set forth in this Section 2.10(f), (y) the Termination Date and (z) the date on which no principal amount hereunder or under the Bank Bonds remains unpaid.

### ARTICLE III

#### CONDITIONS PRECEDENT

**Section 3.01. Closing Conditions.** As conditions precedent to the issuance of the Letters of Credit, the Agent and the Banks shall have received the following items on or before the Closing Date, each in form and substance satisfactory to the Agent and the Banks and their counsel and the Issuer shall satisfy the Agent and the Banks that the following conditions have been fulfilled:

(a) The Related Documents, in form and substance satisfactory to the Agent and the Banks, shall have been duly executed and delivered by each of the respective parties thereto and shall not have been modified, amended or rescinded, shall be in full force and effect on and as of the Closing Date and executed originals of this Agreement and executed copies, certified on the Closing Date by the Issuer, of the Related Documents delivered prior to the Closing Date and an executed original of each of the Related Documents delivered on the Closing Date, shall have been delivered to the Agent and the Banks.

(b) The Agent and the Banks shall have received a certified copy of all resolutions and proceedings taken by the Issuer authorizing the issuance of the Bonds and the execution, delivery and performance of the Related Documents to which the Issuer is a party, and the transactions hereunder and thereunder, together with such other certifications as to the specimen signatures of the officers of the Issuer authorized to sign the Related Documents to which the Issuer is a party to be delivered by the Issuer hereunder and as to other matters of fact as shall reasonably be requested by the Agent and the Banks (including certification that all such resolutions are in full force and effect on the Closing Date). The Agent and the Banks shall also receive a certificate of the Issuer, in form and substance satisfactory to the Agent and the Banks, executed by an authorized officer of the Issuer, dated the Closing Date, to the effect that all actions required to be taken by, and all resolutions required to be adopted under applicable law (which resolutions shall be attached to such certificate or provided by the Issuer to the Agent and the Banks separately) by the Issuer in connection with the authorization of the Reoffering Document and the execution, delivery and performance of and under the Related Documents have been done and adopted.

(c) The Agent and the Banks shall have received originals (or copies certified to be true copies by the Issuer) of all Governmental Approvals, if any, necessary for the Issuer to execute, deliver and perform its obligations under the Related Documents to which it is a party, together with a list of any required approvals still to be received, if any.

(d) The Agent and the Banks shall be satisfied that on and as of the Closing Date (i) each representation and warranty on the part of the Issuer contained in this Agreement or any other Related Document is true and correct in all material respects as though made on and as of such date, (ii) and no Default or Event of Default has occurred and is continuing or would result from the execution or performance of this Agreement or the Related Documents, and (iii) no petition by or against the Issuer has at any time been filed under any Debtor Relief Law or under any similar law and the Agent and the Banks shall receive a certificate, signed by an authorized officer of the Issuer, to such effect.

(e) The Agent and the Banks shall have received a certificate signed by an authorized officer of the Issuer, dated the Closing Date, to the same effect as subsections (a), (b), (d) and (n) of this Section 3.01. Such certificate shall cover such other matters incident to the transactions contemplated by this Agreement or any Related Document as the Agent and the Banks may reasonably request.

(f) The Banks shall have received a Favorable Opinion of Bond Counsel (as defined in the Supplemental Ordinance), dated the Closing Date and addressed to the Agent and the Banks.

(g) The Agent and the Banks shall have received an opinion of Fulbright & Jaworski L.L.P., counsel to the Issuer, dated the Closing Date and addressed to the Agent and the Banks, with respect to such matters as the Agent and the Banks may require, including but not limited to, the due authorization, execution and enforceability of the Transaction Documents to which the Issuer is a party.



(h) The Banks shall have received an opinion of the Attorney General of the State, dated the Closing Date.

(i) The Agent and the Banks shall have received copies of the other legal opinions rendered in connection with the issuance of the Bonds and the delivery of the Related Documents, including without limitation an opinion of the Attorney General of the State delivered at the time of the original issuance of the Bonds.

(j) The Agent and the Banks shall have received certificates of authorized representatives of the Tender Agent and the Paying Agent/Registrar certifying as to the authority, incumbency and specimen signatures of the authorized representatives of the Tender Agent and the Paying Agent/Registrar authorized to sign the Related Documents to which they are a party and any other documents to be delivered by them hereunder and who will be authorized to represent the Tender Agent and the Paying Agent/Registrar in connection with this Agreement, upon which the Agent and the Banks may rely until it receives a new certificate.

(k) No law, regulation, ruling or other action of the United States, the State or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be, in the reasonable judgment of the Agent or the Banks, to prevent the Agent or Banks from fulfilling their obligations under this Agreement or the Letters of Credit.

(l) The fees and expenses of the Agent and the Bank (including attorney's fees and expenses described in the Fee Letter) payable on the Closing Date shall have been paid.

(m) Written confirmation that the Bonds have received long-term credit ratings of Aa2, A+ and A by Moody's S&P and Fitch and short-term credit ratings of P-1, A-1 and F1 by Moody's S&P and Fitch, and that a long-term rating of [\_\_\_\_] has been assigned to the Bank Bond CUSIP Number;

(n) There has been no Material Adverse Change in the business, financial condition or operations of the Issuer since the audited financial statements of the Issuer, for the Fiscal Year ended [September 30, 2010].

(o) The Agent and the Banks shall have received such other certificates, approvals or filings, opinions and documents as shall be reasonably requested by the Agent and the Banks.

(p) All other legal matters pertaining to the execution and delivery of the Transaction Documents and the issuance of the Letters of Credit shall be reasonably satisfactory to the Agent and the Banks and their counsel.

(q) The Agent and the Banks shall have received written confirmation that the Bank Bond CUSIP Number has been assigned.

(r) The Agent and the Banks shall have received an ordinance and a certificate meeting the requirements of Section 4.21(e) hereof in form and substance satisfactory to the Agent and the Banks.

**Section 3.02. Conditions.** All amounts drawn under the Letters of Credit as a Principal Purchase Drawing are due and payable on the date drawn unless on such date the following conditions are satisfied:

- (a) No Default or Event of Default shall have occurred;
- (b) No Material Litigation shall be pending;
- (c) No Material Adverse Change shall have occurred; and

(d) The Issuer shall be deemed to have made on and as of the date of such Drawing each of the representations and warranties of the Issuer made in this Agreement and in any certificate or document delivered in connection with this Agreement and each such representation and warranty shall continue to be accurate and complete in all material respects on and as of such date.

The Issuer shall be deemed to represent and warrant that the conditions described in this Section 3.02 have been satisfied on the date of such Drawing.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES**

The Issuer represents, warrants and covenants to and with the Banks as of the Closing Date and as of each date on which the Banks honor a Drawing under the Letters of Credit as follows:

**Section 4.01. Existence and Power.** The Issuer is a "Home Rule City," acting as such under the Constitution and laws of the State, and has full legal right, power and authority to (i) own, operate and maintain the Water/Wastewater System and Electric System, (ii) adopt, execute and deliver this Agreement and the Transaction Documents to which it is a party, (iii) pledge the Net Revenues, and (iv) perform fully and completely all its obligations and liabilities under the Ordinance, this Agreement and under the Related Documents.

**Section 4.02. Regulatory Authority.** The Issuer is duly authorized to conduct its business and activities under all laws, rules, regulations and ordinances applicable to the Issuer, its business and activities, and the Issuer has obtained all required approvals of the State and of federal, regional and local governmental bodies required to be obtained prior to the date of the adoption, execution and delivery of the Transaction Documents, as applicable, and this Agreement.

**Section 4.03. Noncontravention.** The adoption, execution and delivery by the Issuer of this Agreement and the Transaction Documents, as applicable, to which it is a party and the performance of its obligations hereunder and under the Related Documents, will not violate any

existing law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Issuer, or result in a breach of any of the terms of, or constitute a default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Issuer is a party or by which it or any of its property is bound or any of the rules or regulations applicable to it or its property or any decree, ruling or order of any court or other governmental body.

**Section 4.04. Due Authorization.** The (i) adoption, execution, and delivery by the Issuer of this Agreement and the Transaction Documents, as applicable, to which it is a party and (ii) the performance by the Issuer of this Agreement and the Related Documents to which it is a party is within its corporate power and authority, and has been duly authorized by all necessary action and will not contravene any provision of the Ordinance.

**Section 4.05. Valid and Binding Obligations.** This Agreement and the Related Documents to which the Issuer is a party have been duly executed and delivered by the Issuer and constitute the valid and binding obligations of the Issuer, payable solely from Net Revenues in accordance with the terms of the Master Ordinance and the Supplemental Ordinance, and enforceable against the Issuer in accordance with their respective terms, except as such enforceability may be limited by the Issuer's bankruptcy, insolvency, reorganization, moratorium or other laws or equitable principles relating to or limiting creditors' rights generally. The obligations of the Issuer under this Agreement and the Related Documents shall not be payable from funds raised or to be raised by taxation.

**Section 4.06. Reoffering Document.** The information contained in the Reoffering Document is correct in all material respects and does not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Issuer makes no representation as to information in the Reoffering Document relating to the Banks and provided by the Banks for inclusion therein.

**Section 4.07. Litigation.** There are no actions, suits, proceedings, inquiries or investigations pending nor, to the best knowledge of the Issuer after due inquiry, are there any actions, suits proceedings, inquiries or investigations threatened against the Issuer or any property of the Issuer in any court or before any arbitrator of any kind or before or by any other Governmental Authority, (i) wherein an unfavorable decision, ruling or finding could have a Material Adverse Effect, (ii) which seek to restrain or enjoin any of the Transactions, or (iii) which may adversely affect (A) the exclusion of interest on the Bonds from gross income for federal income tax purposes, (B) the validity, binding effect and perfection of the pledge of and Lien on the Net Revenues under the Ordinance, or (C) the ability of the Issuer to perform its obligations under this Agreement, the Bonds or any other Related Documents (any such action or proceeding being herein referred to a "Material Litigation").

**Section 4.08. Insurance.** The Issuer currently maintains insurance of such type and in such amounts or in excess of such amounts as are customarily carried by, and insures against such risks as are customarily insured against by, cities of like type, size and character to the Issuer.

**Section 4.09. Financial Statements.** The balance sheet of the Issuer as of September 30, 2010 and the related statement of revenues and expenses and changes in financial position for the year then ended and the auditors' reports with respect thereto and the balance sheet of the Issuer as of September 30, 2010 and the related statements of revenues and expenses and change in financial position for the period then ended, copies of which have heretofore been furnished to the Banks, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the Issuer at such dates and for such periods, and were prepared in accordance with GAAP except as stated in the notes thereto. Since September 30, 2010 there has been no Material Adverse Change nor any increase in the Issuer's long term debt. The Issuer has no material contingent liabilities or other material contracts or commitments payable from Gross Revenues or Net Revenues which are not reflected in such financial statements, or in the notes thereto.

**Section 4.10. Complete and Correct Information.** All information, reports and other papers and data with respect to the Issuer furnished to the Banks or their counsel by the Issuer were, taken in the aggregate and at the time the same were so furnished, complete and correct in all material respects. No fact is known to the Issuer which materially and adversely affects or in the future may (so far as it can foresee) materially and adversely affect the business, assets or liabilities, financial condition, results of operations of the Issuer relating to the Water/Wastewater System and Electric System, or any of its business prospects relating to the Water/Wastewater System and Electric System which has not been set forth in the financial statements referred to in Section 4.09 above or in such information, reports, papers and data or otherwise disclosed in writing to the Banks by the Issuer. When taken in the aggregate, no document furnished or statement made by the Issuer in connection with the negotiation, preparation or execution of this Agreement or any Related Document contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading.

**Section 4.11. Pending Legislation and Decisions.** There is no amendment, or to the best of the knowledge of the Issuer, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which will materially adversely affect the security for any of the Bonds or the Issuer's obligations hereunder or under any of the Related Documents, or the Issuer's ability to repay when due its obligations under this Agreement, any of the Bonds, and the Related Documents.

**Section 4.12. Bond.** Each Bond (including all Bank Bonds) has been duly and validly issued under the Ordinance and entitled to the benefits thereof.

**Section 4.13. Default.** No Default or Event of Default has occurred and is continuing.

**Section 4.14. Bank Bonds.** The Bank Bonds will be transferred to or held for the benefit of the Agent, on behalf of the Banks, free and clear of all Liens, security interests or claims of any Person other than the Agent, on behalf of the Banks, except for consensual Liens or other security interests as may be created by the Agent, on behalf of the Banks.

**Section 4.15. Incorporation of Representations and Warranties.** The Issuer hereby makes to the Agent and the Banks the same representations and warranties made by the Issuer in each of the other Related Documents to which it is a party, which representations and warranties, together with the related definitions of terms contained therein, are incorporated herein by this reference with the same effect as if each and every such representation and warranty and definition were set forth herein in its entirety, except to the extent the same relate to an earlier date. No amendment to or waiver of such representations, warranties or definitions made pursuant to the relevant Related Documents shall be effective to amend, or waive, such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Banks.

**Section 4.16. Employee Benefit Plan Compliance.** The Issuer has no funding deficiency with respect to any employee benefit plan and is otherwise in compliance with terms of any such plan in which the Issuer or any of its employees participate in. Neither the Issuer nor any employee benefit plan maintained by the Issuer is subject to the Employee Retirement Income Security Act of 1974, as amended.

**Section 4.17. Sovereign Immunity.** To the maximum extent authorized by the Texas Government Code Section 1371.059(c), the Issuer has effectively waived sovereign immunity from suit and liability for purposes of adjudicating a claim to enforce this Agreement or for damages for breach of this Agreement pursuant to Section 5.12 hereof. The Issuer further represents that its non-discretionary duties are subject to enforcement in State courts by writ of mandamus, and that it is not immune to an equitable mandamus action.

**Section 4.18. Interest.** None of the Related Documents to which the Issuer is a party or the Bonds provide for any payments that would violate any applicable State law regarding permissible maximum rates of interest or the calculation or collection of interest upon interest.

**Section 4.19. Federal Reserve Board Regulations.** The Issuer will not use any part of the proceeds of the Bonds or the funds advanced under the Letters of Credit and has not incurred any Debt to be reduced, retired or purchased by the Issuer out of such proceeds, for the purpose of purchasing or carrying any Margin Stock, and the Issuer does not own and will not acquire any such Margin Stock.

**Section 4.20. Investment Company Act.** The Issuer is not an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

**Section 4.21. Revenues; the Ordinance.**

(a) The Bonds are Parity Water/Wastewater Obligations and the payment obligations of the Issuer under this Agreement and the Fee Letter are secured obligations under the Ordinance. The Ordinance creates, for the benefit of the Bonds and the obligations of the Issuer under this Agreement and the Fee Letter, a legally valid and binding Lien on and pledge of the Net Revenues, subject only to the Prior Bonds. No filing, registering, recording or publication of the Ordinance or any other instrument is

required to establish the pledge under the Ordinance or to perfect, protect or maintain the Liens created thereby on the Net Revenues.

(b) Other than the Prior Bonds, there are no obligations of the Issuer that are entitled to a prior benefit of the Net Revenues relative to the benefit of the Net Revenues conferred by the Ordinance upon the Bonds and the obligations of the Issuer under this Agreement and the Fee Letter.

(c) Except as provided or described in the Ordinance, the Issuer has not pledged or granted a Lien, security interest or other encumbrance of any kind on Gross Revenues or the Net Revenues.

(d) The Bonds are Parity Bonds.

(e) This Agreement, together with the Fee Letter, is a "Credit Agreement" as such term is used in Section 10(d) of the Master Ordinance. All payments required to be made by the Issuer hereunder and under the Fee Letter are therefore on a parity with the Parity Bonds. The Issuer hereby finds that Gross Revenues will be sufficient to meet the obligations of the Water/Wastewater System, including sufficient Net Revenues to satisfy the Annual Debt Service Requirements (as defined in the Ordinance) of Parity Water/Wastewater Obligations (as defined in the Ordinance) currently Outstanding and the financial obligations of the Issuer hereunder. Such finding is also set forth in Ordinance No. 20110407-[ ] and is supported by a certificate of [ ] of the Issuer as required by Section 10(d) of the Master Ordinance.

(f) This Agreement, together with the Fee Letter, constitutes a Liquidity Facility (as defined in the Supplemental Ordinance). All Bank Bonds will constitute Liquidity Provider Bonds (as defined in the Supplemental Ordinance). The Supplemental Ordinance provides that the Maximum Rate (as defined in the Supplemental Ordinance) applicable to Liquidity Provider Bonds (as defined in the Supplemental Ordinance) shall be the rate specified in the Liquidity Facility (as defined in the Supplemental Ordinance). The parties hereto agree that such Maximum Rate shall be the Maximum Lawful Rate.

(g) The Letters of Credit, together with this Agreement and the Fee Letter, constitute the Credit Enhancement (as defined in the Supplemental Ordinance). The Banks collectively are the Liquidity Provider and the Credit Provider (as such terms are defined in the Supplemental Ordinance).

**Section 4.22. No Preferential or Fraudulent Transfer.** Neither the issuance of the Letters of Credit, nor the making of any payment thereunder or the use of any proceeds thereof, constitutes or will constitute, or be part of, a preferential or fraudulent transfer or conveyance to any Person (including the Banks, the Paying Agent/Registrar and the Tender Agent) under any applicable law, including Section 544, 547, 548 or 550 of the United States Bankruptcy Code.

#### **Section 4.23. Anti-Terrorism Representation.**

(a) The Issuer is not in violation of any laws relating to terrorism or money laundering (“Anti-Terrorism Laws”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “Executive Order”), and the USA Patriot Act, Title III of Pub.L.107-56, 115 Stat. 272 (the “Patriot Act”);

(b) The Issuer is not any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which the Banks are prohibited from dealing or otherwise engaging in any transaction by an Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“OFAC”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list (collectively, the “OFAC Lists”);

(c) Neither the Issuer nor any of its Affiliates (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (b)(ii) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

**Section 4.24. Environmental Matters.** In the ordinary course of its business, the Issuer conducts an ongoing review of the effect of Environmental Laws on the business, operations and properties of the Issuer’s Water/Wastewater System and Electric System, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for clean-up or closure of properties presently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, and related constraints on operating activities, and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). The properties of the Issuer comprising its Water/Wastewater System and Electric System have not become subject to any Environmental Liability nor does the Issuer know of any basis for any Environmental Liability (which, in the case of the Electric System, could result in an Electric

System Material Adverse Effect). The Issuer has not received notice of any Environmental Claim in connection with the properties comprising its Water/Wastewater System and Electric System or of any failure or alleged failure to comply with applicable federal, state or local health and safety statutes or regulations. To the best of the knowledge of the Issuer, it is in compliance with all Environmental Laws in connection with the properties comprising its Water/Wastewater System and Electric System (which, in the case of the Electric System, noncompliance with which could result in an Electric System Material Adverse Effect) and has obtained and maintains or complies with any permit, license or other approval required under any Environmental Law, in each case, except with respect to any matters that, individually or in the aggregate, could not result in a Material Adverse Effect.

**Section 4.25. Affiliates.** The Issuer does not have any Affiliates created in connection with the Water/Wastewater System.

**Section 4.26. Proceeds of Bonds.** The proceeds of the Bonds have been used by the Issuer solely for the purposes described in the Ordinance.

**Section 4.27. Preservation of Lien.** The Issuer has taken all necessary action in accordance with Chapter 1208, Texas Government Code, to validly create the Lien on and security interest in the Net Revenues securing the Bonds and the payment and performance of the Issuer's obligations hereunder. No further action on the part of any Person is or will become necessary to maintain and preserve such Lien.

## **ARTICLE V**

### **AFFIRMATIVE COVENANTS**

The Issuer covenants and agrees that until the principal of and interest on the Bonds and all Required Payments have been indefeasibly paid in full and all other obligations of the Issuer under this Agreement or with respect to any Bank Bonds have been paid and performed and the Banks shall have no further obligation or liability under or in respect of the Letters of Credit:

**Section 5.01. Compliance With Laws and Regulations.** The Issuer shall comply with all Applicable Laws, including Environmental Laws, to which the Issuer's Water/Wastewater System and Electric System may be subject. With respect to the covenant in this Section 5.01 relating to the Electric System, such covenant is made by the Issuer to the extent noncompliance with such covenant could result in an Electric System Material Adverse Effect.

**Section 5.02. Reporting Requirements.** The Issuer shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Issuer on a consolidated or combined basis in accordance with GAAP. The Issuer shall furnish to the Banks two copies of each of the following:

- (a) **Annual Financial Statements.** As soon as available, and in any event within 180 days after the close of each Fiscal Year of the Issuer, (i) the complete audited financial statements of the Issuer including the balance sheet as of the end of such Fiscal Year and the related statements of revenues, expenses and cash flows and changes in



fund balance for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year all in reasonable detail, certified and prepared by an Accountant in accordance with GAAP.

(b) ***Quarterly Financial Statements.*** As soon as available, and in any event within 90 days after each of the first three quarters of each Fiscal Year of the Issuer, the unaudited financial statements of the Issuer's Water/Wastewater System and of the Issuer's Electric System, including the balance sheet as of the end of such quarter and a statement of income and expenses, all in reasonable detail and certified, subject to year-end adjustment, by the chief financial officer or the treasurer of the Issuer.

(c) ***Certificate of Compliance.*** Simultaneously with the delivery of each set of financial statements referred to in (a) above, a certificate signed by the chief financial officer or the treasurer of the Issuer stating that (i) under his/her supervision the Issuer has made a review of its activities during the preceding annual period for the purpose of determining whether or not the Issuer has complied with all of the terms, provisions and conditions of this Agreement and the Related Documents and (ii) to the best of his/her knowledge the Issuer is not in Default in the performance or observance of any of the terms, covenants, provisions or conditions of this Agreement or any of the Related Documents, or if the Issuer shall be in Default, such certificate shall specify each such Default, the nature and status thereof and any remedial steps taken or proposed to correct each such Default and (iii) whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 4.09 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(d) ***Other Reports.*** Promptly upon request by the Banks, copies of any financial statement or report furnished to any other holder of the long-term securities of the Issuer pursuant to the terms of the Ordinance.

(e) ***Budget.*** As soon as available and in any event within ninety (90) days after the end of each fiscal year of the Issuer, the approved budget of the Issuer for the current fiscal year (including therein detailed budget information relating to the Water/Wastewater System and the Electric System), together with a certificate from the chief financial officer or the treasurer of the Issuer certifying that (A) the rates and charges for the Water/Wastewater System set forth in such approved budget are sufficient to allow the Issuer to comply with the provisions of Section 4 of the Master Ordinance at all times during such fiscal year, (B) containing the Issuer's calculation of its compliance for the preceding fiscal year of the covenant set forth in Section 4 of the Master Ordinance and (C) a statement as to the net revenues of the Electric System and the debt service paid on debt of such Electric System secured by a Lien on such net revenues in the preceding fiscal year and the amount of projected net revenues for the Electric System for the upcoming fiscal year and the amount of projected debt service for all debt secured by such net revenues for such upcoming fiscal year.

(f) **Amendments.** Promptly after the adoption thereof, copies of any amendments of or supplements to the bylaws of the Issuer and copies of any amendments to the Related Documents.

(g) **Material Event Notices.** Immediately following any dissemination, distribution or provision thereof to any Person, a copy of any Material Event Notice disseminated, distributed or provided in satisfaction of or as may be required by the provisions of Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240 15c2-12), or any successor or similar legal requirement.

(h) **EMMA Filings.** Copies of all filings made by the Issuer with EMMA promptly after such filings are made.

(i) **Ordinance Information.** Copies of all notices, certificates, opinions and other reports or documents required to be filed pursuant to the Ordinance.

(j) **Offering Documents.** As soon as available, copies of each official statement or offering memorandum related to the debt of the Issuer's Water/Wastewater System or the Issuer's Electric System.

(k) **Other Information.** Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the Issuer as the Banks may from time to time reasonably request.

### **Section 5.03. Notices.**

(a) **Notice of Default.** The Issuer shall provide to the Banks and the Paying Agent/Registrar immediate notice by telephone, promptly confirmed in writing, of any Default or Event of Default or any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect relating to the Water/Wastewater System or an Electric System Material Adverse Effect.

(b) **Litigation.** Together with the information described in Section 5.02(b), the Issuer shall provide to the Banks written notice of all actions, suits and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, against the Issuer and which if adversely determined, could have a Material Adverse Effect.

(c) **Certain Notices.** The Issuer shall furnish to the Banks a copy of any notice, certification, demand or other writing or communication given by the Remarketing Agent, the Paying Agent/Registrar, or the Tender Agent to the Issuer or by the Issuer to the Remarketing Agent, the Paying Agent/Registrar, or the Tender Agent under or in connection with any of the Related Documents, in each case promptly after the receipt or giving of the same, if the Banks were not recipients of the same.

(d) **Ordinance.** Promptly upon becoming available, the Issuer shall furnish to the Banks copies of all notices, certificates, opinions and other reports or documents

required to be filed pursuant to the Ordinance. The Issuer shall, upon request, provide or cause to be provided, to the Banks the list of the name and address of the last known holders of the Bonds.

(e) ***S&P, Fitch & Moody's.*** Promptly after S&P, Fitch or Moody's shall have announced a change in an Obligor Rating, the Issuer shall furnish to the Banks written notice of such rating change.

(f) ***Other Notices.*** The Issuer shall promptly give written notice to the Banks of any (i) material dispute which may exist between the Issuer and any of the Remarketing Agent, the Paying Agent/Registrar, or Tender Agent or any dispute in connection with any transaction contemplated under this Agreement or any Related Document, and (ii) any failure by the Remarketing Agent, the Tender Agent or the Paying Agent/Registrar to perform any of their respective obligations under the Related Documents.

**Section 5.04. Further Assurances.** The Issuer shall, upon the request of the Banks, from time to time, execute and deliver and, if necessary, file, register and record such further financing statements, amendments, confirmation statements and other documents and instruments and take such further action as may be reasonably necessary to effectuate the provisions of this Agreement and the Related Documents. Except to the extent it is exempt therefrom, the Issuer will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, the Related Documents and such instruments of further assurance. In addition, the Issuer shall, promptly upon the request of the Agent or the Banks, provide the Agent and the Banks with any additional documentation or agreement necessary for the Agent or the Banks to pledge the Bank Bonds as collateral pursuant to federal banking regulations.

**Section 5.05. Right of Entry.** The Issuer shall permit the duly authorized representatives of the Banks during normal business hours and upon reasonable notice to enter the premises of the Issuer, or any parts thereof, to examine and copy the financial and corporate books, records and accounts of the Issuer's Water/Wastewater System and Electric System and to make copies thereof and extracts therefrom, and to discuss the affairs, finances, business and accounts of the Issuer's Water/Wastewater System and Electric System with the Issuer's officers and employees.

**Section 5.06. Payment of Obligations; Removal of Liens.** The Issuer shall pay (a) all indebtedness and obligations of the Issuer in accordance with the terms thereof and (b) all amounts payable by it and them hereunder and under the other Related Documents according to the terms hereof and thereof and (c) all assessments or other governmental charges as the same respectively become due, all taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to the Issuer's property and assets comprising the Issuer's Water/Wastewater System and Electric System, or any interest thereon and promptly discharge or cause to be discharged all

Liens, encumbrances and charges on such property and assets. With respect to the covenant in this Section 5.06 relating to the Electric System, such covenant is made by the Issuer to the extent noncompliance with such covenant could result in an Electric System Material Adverse Effect.

**Section 5.07. Related Obligations.** The Issuer shall promptly pay all amounts payable by it hereunder and under the Related Documents according to the terms hereof or thereof and shall duly perform each of its obligations under this Agreement and the other Related Documents to which it is a party; which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety without giving effect to any expiration, amendment, supplement or termination of the Related Documents to which the Banks have not given their express written consent. The Issuer shall cause the Paying Agent/Registrar, the Tender Agent and the Remarketing Agent at all times to comply with the terms of the Related Documents to which they are a party.

**Section 5.08. Insurance.** The Issuer will at all times maintain insurance with respect to its business operations and properties against such risks, in such amounts, with such companies and with such deductibles as is customary for business operations and properties of like size, location and character to those of each such entity.

**Section 5.09. Alternate Credit Facility.**

(a) The Issuer agrees that any Alternate Credit Facility or written commitment, as the case may be, will require, as a condition to the effectiveness of the Alternate Credit Facility or written commitment, as the case may be, that the provider of the Alternate Credit Facility or underwriter will provide funds to the extent necessary, in addition to other funds available, on the date the Alternate Credit Facility or written commitment, as the case may be, becomes effective, for the purchase of all Bank Bonds at par plus accrued interest through the date purchased. On such date all Required Payments owing to the Banks hereunder or under the Ordinance or the Bonds shall be paid in full to the Banks.

(b) The Issuer shall not permit an Alternate Credit Facility or written commitment of an underwriter to purchase the Bonds to become effective with respect to less than all of the Bonds without the prior written consent of the Banks. No Alternate Credit Facility shall become effective unless the Issuer shall have given the Agent and the Banks at least 20 days' prior written notice thereof and paid any amounts required to be paid in connection with the termination of the Letters of Credit pursuant to the Fee Letter.

**Section 5.10. Employee Benefit Plan Compliance.** The Issuer shall in a timely fashion comply in all material respects with all requirements under any employee benefit plan in which the Issuer, or any of its employees, participate.

**Section 5.11. Disclosure of Participants.** The Issuer agrees to permit the Banks to disclose any information received by the Banks in connection herewith, including without

limitation the financial information described in Section 5.02, to any assignees or Participants of the Banks in this Agreement without notice to or further consent from the Issuer.

**Section 5.12. Sovereign Immunity.** To the maximum extent authorized by the Texas Government Code Section 1371.059(c), the Issuer agrees to waive sovereign immunity from suit and liability for purposes of adjudicating a claim to enforce this Agreement or for damages for breach of this Agreement

**Section 5.13. Reserved.**

**Section 5.14. Proceeds of Letters of Credit.** The Issuer shall cause the amounts under the Letters of Credit to be used only to pay the principal of, interest on or purchase price of Bonds which are not Excluded Bonds.

**Section 5.15. Conversions; Defeasance.** The Issuer (a) shall promptly furnish, or cause to be furnished, to the Banks and the Paying Agent/Registrar, not later than its furnishing the same to the Remarketing Agent, a copy of any written notice furnished by the Issuer to the Remarketing Agent pursuant to the Ordinance indicating a proposed conversion of the interest rate on the Bonds, and (b) shall not permit a conversion of the Bonds to Bonds bearing an interest rate other than a Covered Rate without the prior written consent of the Banks if, after giving effect to such conversion, any Bonds remain as Bank Bonds. In addition, the Issuer will not defease, nor allow the defeasance of, the Bonds without having contemporaneously satisfied all of its obligations hereunder.

**Section 5.16. Reserved.**

**Section 5.17. The Tender Agent, the Paying Agent/Registrar and Remarketing Agent.**

(a) The Issuer shall maintain one or more financial institutions acceptable to the Banks as the Tender Agent, the Paying Agent/Registrar and the Remarketing Agent.

(b) Unless the Bank shall otherwise consent in writing, the roles of Tender Agent and Paying Agent/Registrar shall at all times be performed by the same financial institution.

**Section 5.18. Paying Agent/Registrar, Tender Agent and Remarketing Agent.** The Issuer shall provide the Banks written notice of any change in the identity of the Paying Agent/Registrar, the Tender Agent or the Remarketing Agent upon becoming aware of the same. Upon written notice from the Banks that the Paying Agent/Registrar, the Tender Agent, or the Remarketing Agent is failing to perform its respective duties in the manner contemplated by the Ordinance or the other Related Documents (or upon suspension or termination by the Remarketing Agent of its obligations under the Remarketing Agreement), the Issuer shall promptly replace or cause to be replaced (in any event within forty-five (45) days of such suspension, termination or receipt of such notice, as applicable) the Paying Agent/Registrar, the Tender Agent or the Remarketing Agent, as the case may be, with a successor acceptable to the Banks. If the position of Paying Agent/Registrar, the Tender Agent or Remarketing Agent

becomes vacant, the Issuer shall promptly appoint a successor which is reasonably acceptable to the Banks.

**Section 5.19. Additional Bond or Collateral.** If at any time the Issuer shall seek to restrain or preclude payment of or Drawing under the Letters of Credit or any court shall extend the term of the Letters of Credit or take any other action which has a similar affect, then, in each case, the Issuer shall provide the Banks with a bond or other collateral of a type and value satisfactory to the Banks as security for the obligations of the Issuer hereunder.

**Section 5.20. Most Favored Covenant.** In the event that the Issuer has previously entered into or shall hereafter enter into or otherwise consent to any agreement or instrument (or any amendment, supplement or modification thereto) in connection with the Parity Bonds or Electric System Supported Bonds (each a "Relevant Agreement") under which any Person undertakes to make loans, to refinance or restructure existing Debt or to extend credit or liquidity to the Issuer pursuant to which the Issuer and a Person agree to a Hedge Agreement or other similar arrangement, which Relevant Agreement (i) provides such Person with a covenant, provision or agreement which is more restrictive, as to the Issuer, or (ii) gives or grants greater rights or remedies to such Person whether as to timing of payment, priority of payment or Lien or otherwise (each, a "Favored Covenant") than, in the case of (i), are undertaken by the Issuer herein or, in the case of (ii), are given or granted to the Banks herein, then each such Favored Covenant shall automatically be deemed to be incorporated into this Agreement and the Banks shall have the benefits of each such Favored Covenant as if specifically set forth in this Agreement for the duration of such Relevant Agreement. If necessary, the Issuer shall promptly enter into an amendment to this Agreement to include the Favored Covenant; provided that the Banks shall maintain the benefit of such Favored Covenant even if the Issuer fails to provide such amendment.

**Section 5.21. CUSIP Numbers.** The Issuer shall at all times (i) cause Bonds which are not Bank Bonds to be assigned a CUSIP Number and (ii) cause Bank Bonds to be assigned a Bank Bond CUSIP Number.

**Section 5.22. Rating Maintenance.** (a) The Issuer covenants that it shall at all times from and including the Date of Issuance until and including the Term-Out End Date, cause at least two of Moody's, S&P and Fitch to assign long term and short term ratings to the Bonds.

(b) At any time Bank Bonds are Outstanding, upon the request of the Banks, the Issuer (i) shall promptly obtain from at least one of Moody's, S&P or Fitch which is then rating the Bonds a rating specifically assigned to such Bank Bonds and (ii) shall take all actions which may be necessary or appropriate to cause the Bank Bond CUSIP number and the rating assigned to such Bank Bonds to be available electronically to the Banks pursuant to a third party provider of such information.

**Section 5.23. Rating Reduction, Withdrawal or Suspension.** The Issuer covenants and agrees that if at any time any Obligor Rating is reduced by any of S&P, Fitch or Moody's to below "A-" in the case of S&P, "A-" in the case of Fitch or "A3" in the case of Moody's or any such rating is withdrawn or suspended by any of S&P, Fitch or Moody's, then on or prior to the 180th day after such reduction, withdrawal or suspension is announced, the Issuer shall (a) pay

to the Banks all amounts owed to the Banks in respect of any Drawings under the Letters of Credit and all other Required Payments owing to the Banks, including the Differential Interest Amount and any Excess Interest Amount, and (b) provide for the purchase of any Bank Bonds and the payment to the Banks of the Sale Price therefor.

## ARTICLE VI

### NEGATIVE COVENANTS

The Issuer covenants and agrees that until the principal of and interest on the Bonds and all Required Payments have been indefeasibly paid in full and all other obligations of the Issuer under this Agreement or with respect to any Bank Bonds have been paid and performed and the Banks shall have no further obligation or liability under or in respect of the Letters of Credit:

**Section 6.01. Amendments.** The Issuer shall not amend, modify or supplement, nor agree to any amendment or modification of, or supplement to, any of the Related Documents without the prior written consent of the Banks.

**Section 6.02. Preservation of Existence, Ownership, Etc.** The Issuer shall not dissolve nor shall it sell, lease, assign, transfer or otherwise dispose of all or substantially all of its assets. The Issuer shall preserve and maintain its existence, right (charter and statutory) and franchises and licenses.

**Section 6.03. Certain Information.** The Issuer shall not include in an offering document or circular or reoffering supplement for the Bonds any information concerning the Banks that is not supplied in writing, or otherwise approved in writing, by the Banks expressly for inclusion therein.

#### **Section 6.04. Liens, Additional Debt and Rate Setting.**

(a) ***Liens.*** Except for those Liens on Gross Revenues or Net Revenues existing on the Closing Date and described in the Ordinance, the Issuer shall not grant any Lien, pledge or security interest in the Gross Revenues or Net Revenues which is on parity with or senior to the Lien on Net Revenues that secure the payment of the Issuer's obligations hereunder and under the Fee Letter.

(b) ***Additional Senior Debt.*** The Issuer shall not incur any debt after the Closing Date which is payable from Net Revenues on a priority or secured by a Lien on Net Revenues which is senior to that securing the Bonds.

(c) ***Additional Parity Debt.*** The Issuer shall not incur Parity Water/Wastewater Obligations except to the extent permitted by Section 10 of the Master Ordinance.

(d) ***Gross Revenues.*** The Issuer shall not use or permit the use of Gross Revenues for any purpose other than those described in Sections 6 and 9 of the Master Ordinance.

**Section 6.05. Consolidation or Merger.** The Issuer shall not consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it or acquire all or substantially all of the property and assets of any other Person.

**Section 6.06. Paying Agent/Registrar, Tender Agent and Remarketing Agent.** The Issuer shall not remove the Paying Agent/Registrar, the Tender Agent or the Remarketing Agent or appoint a tender agent, paying agent or co-paying agent or appoint a successor Paying Agent/Registrar, the Tender Agent or Remarketing Agent without the written consent of the Banks.

**Section 6.07. Accounting Methods and Fiscal Year.** The Issuer will not adopt, permit or consent to any change in accounting practices other than as required by GAAP and will not adopt, permit or consent to any change in its Fiscal Year.

**Section 6.08. Exempt Status.** The Issuer shall not take any action or omit to take any action that, if taken or omitted, would adversely affect the excludability of interest on the Bonds from the gross income of the holders thereof for purposes of Federal income taxation under the Code.

**Section 6.09. Optional Redemption.** The Issuer shall not permit or cause any Bonds to be optionally redeemed pursuant to Section 6(b) of the Supplemental Ordinance unless and insofar as the Issuer complies with each of the following requirements: (i)(A) all Bank Bonds, if any, will be redeemed at a redemption price equal to the Sale Price therefor as a part of such optional redemption and (B) after giving effect to such redemption, all Differential Interest Amount, Excess Interest Amount and other amounts owing in respect of the Principal Purchase Drawing pursuant to which any such Bank Bonds were purchased together with any other Required Payments owing hereunder shall have been paid in full to the Agent, for the benefit of the Banks in accordance with their respective Percentages and (ii) the amount necessary to reimburse each Bank in accordance with Section 2.01 for the Drawing under the Applicable Letter of Credit to effect the redemption shall have been irrevocably deposited with the Paying Agent/Registrar 45 days prior to the date fixed for redemption, as certified by the Paying Agent/Registrar to the Agent and the Banks in writing.

**Section 6.10. Off-Balance Sheet Liabilities.** The Issuer has not entered into, nor will the Issuer enter into, any Off-Balance Sheet Liabilities in connection with its Water/Wastewater System or Electric System except in compliance with Applicable Law and except as disclosed in the consolidated or combined financial statements insofar as disclosure therein is required under GAAP. With respect to the covenant in this Section 6.10 relating to the Electric System, such covenant is made by the Issuer to the extent noncompliance with such covenant could result in an Electric System Material Adverse Effect.

**Section 6.11. Certain Mandatory Tenders.** The Issuer shall not cause a mandatory tender of the Bonds pursuant to subclause (viii) of the definition of Mandatory Tender Date in the Supplemental Ordinance without the prior written consent of the Banks, which consent shall not be unreasonably withheld provided that the Issuer shall have provided written evidence satisfactory to the Banks that such mandatory tender will not result in a draw on the Letters of Credit that will not be reimbursed in full on the same day as the draw.



## ARTICLE VII

### EVENTS OF DEFAULT

**Section 7.01. Events of Default.** The occurrence of any of the following events shall constitute an “Event of Default,” unless waived by the Banks in writing:

- (a) Failure of the Issuer to pay or cause to be paid when due any amount owed by the Issuer hereunder or under any of the other Related Documents.
- (b) Failure of the Issuer to observe or perform the covenants set forth in Sections 5.06, 5.07, 5.09, 5.12, 5.14, 5.15, 5.17(b), 5.19, 5.21, 5.22(a) or Article VI.
- (c) Failure of the Issuer to observe or perform any covenant, condition or provision of this Agreement or of any of the other Related Documents (other than as specified in (a) or (b) above) and such failure remains uncured for thirty (30) days.
- (d) Any representation or warranty made or deemed made by or on behalf of the Issuer in this Agreement or any other Related Document or in any amendment of, or waiver under, this Agreement or other Related Document, or in any certificate, financial statement or other document furnished by or on behalf of the Issuer pursuant to or in connection with this Agreement or any of the other Related Documents shall have been inaccurate or incomplete in any material respect when made or deemed to have been made.
- (e) The occurrence and continuation of a default, event of default or termination event under the Ordinance or any of the other Related Documents, irrespective of whether said default, event of default or termination event is declared, undeclared or has been waived under the terms of the Ordinance or such respective document, or a mandatory redemption or acceleration has occurred with respect to the Bonds.
- (f) Default in the payment of the principal of or the interest on (i) the Bonds, (ii) the Parity Bonds, (iii) the Prior Bonds, (iv) the Electric System Supported Bonds or (v) any other Debt payable from or secured by Gross Revenues, Net Revenues or the assets comprising the Water/Wastewater System.
- (g) The occurrence of any (i) default by the Issuer in the payment of any amount due in respect of any Debt owed to the Banks or its Affiliates, (ii) default by the Issuer in the payment of any amount due in respect of any general obligation Debt of the Issuer or Debt payable from the general fund of the Issuer (“General Debt”) in an aggregate amount in excess of \$5,000,000 (measured in the case of any Hedge Agreement, by the Issuer’s Exposure thereunder), as and when the same shall become due, or (iii) default (other than a default covered by clause (g)(i) or (ii) of this paragraph) under any Contract under or pursuant to which such General Debt is incurred or issued, and continuance of such default beyond the period of grace, if any, allowed with respect thereto, or (iv) the occurrence of any event, default, event of default or act or omission by the Issuer under any such Contract which results in such General Debt

becoming, or being capable of becoming, immediately due and payable (or, with respect to any Hedge Agreement, which results in such Hedge Agreement being terminated early or being capable of being terminated early).

(h) The entry or filing of one or more final, non-appealable judgments, writs or warrants of attachment or of any similar process which, individually or in the aggregate, equals or exceeds \$5,000,000, shall be rendered against the general fund of the Issuer or the assets comprising the Water/Wastewater System and the same shall remain undismissed or unbonded (by property other than any of the Gross Revenues or Net Revenues) for a period of 30 days, or any action shall be taken by a judgment creditor to attach or levy upon the general fund of the Issuer or the assets comprising the Water/Wastewater System to enforce any such judgment. The entry or filing of one or more final, non-appealable judgments, writs or warrants of attachment or of any similar process which, individually or in the aggregate, equals or exceeds \$5,000,000, shall be rendered against the assets comprising the Electric System and the same shall remain undismissed or unbonded (by property other than any of the Gross Revenues or Net Revenues) for a period of 30 days, or any action shall be taken by a judgment creditor to attach or levy upon the general fund of the Issuer or the assets comprising the Electric System to enforce any such judgment, to the extent that the foregoing could result in an Electric System Material Adverse Effect

(i) The occurrence of an Event of Insolvency with respect to the Issuer.

(j) The rating assigned to the Bonds or any Parity Bonds by Moody's, S&P or Fitch, shall for any reason be withdrawn, suspended or falls below "Baa2" by Moody's, "BBB" by S&P or "BBB" by Fitch.

(k) This Agreement, any other Related Document or any provision of this Agreement or any of the other Related Documents shall cease to be valid and binding on the Issuer, or a Governmental Authority with jurisdiction to rule on the validity of this Agreement or any other Related Document shall so find, announce or rule, or the Issuer or any Person on its or their behalf shall (i) contest the validity or enforceability of this Agreement or any Related Document or any provision of this Agreement or any such Related Document, (ii) deny that the Issuer has any further liability under one or more provisions of this Agreement or any of the other Related Documents or (iii) seek an adjudication that (y) this Agreement or (z) any provision of any Related Document relating to, or the absence or invalidity of which could adversely affect, the security for the Bonds, the Bank Bonds, or the Issuer's ability to pay the Bonds or the Bank Bonds or perform its obligations under this Agreement or any of the other Related Documents or the rights and remedies of the Banks, is not valid and binding on the Issuer.

(l) Any Net Revenues, Gross Revenues or other funds or investments on deposit in, or otherwise to the credit of, any of the funds or accounts established under the Ordinance or any of the other Related Documents, or any of the assets comprising the Water/Wastewater System, shall become subject to any writ, judgment, warrant or attachment, execution or similar process.

- (m) A Determination of Taxability shall occur.
- (n) The breach by the Issuer of any material covenant of the Remarketing Agreement.
- (o) The Lien on and security interest in the Net Revenues securing the Bonds and the payment and performance of the Issuer's obligations hereunder shall not constitute a valid and perfected Lien or shall fail to have the priority required by the Related Documents, or, the Issuer shall so assert in writing.

#### **Section 7.02. Rights and Remedies.**

- (a) If an Event of Default has occurred:
  - (i) the Agent shall (upon the written direction of the Banks) notify the Paying Agent/Registrar, the Tender Agent and the Issuer that an Event of Default has occurred;
  - (ii) (A) pursuant to a Termination Event of Default Notice, the Banks may jointly and in their sole discretion, notify the Tender Agent and the Paying Agent/Registrar that an Event of Default has occurred and that the Letters of Credit shall terminate, and (B) in such notice further direct the Tender Agent to draw upon the Letters of Credit in accordance with the terms thereof and purchase all Outstanding Bonds on the earliest possible date, whereupon such Bonds shall be Bank Bonds; and
  - (iii) by notice to the Issuer, the Agent (upon the written direction of the Banks) shall declare the entire unpaid principal and interest amount of any advances outstanding as a result of any Purchase Drawing (including any Purchase Drawing following the notice to the Tender Agent and Paying Agent/Registrar described in clause (ii) above) together with accrued interest thereon, and all other amounts owing under this Agreement, to be, whereupon the same shall become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer; *provided* that in the case of any of the Events of Default specified in Section 7.01(i) above, without any notice to the Issuer or any other Person or any other act by the Agent or the Banks, the entire unpaid principal and interest amount of any advances outstanding as a result of any Drawing (including any Drawing thereafter occurring), together with accrued interest thereon, and all other amounts owing under this Agreement, shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Issuer.
- (b) If any Event of Default has occurred the Banks (or the Agent on behalf of and with the consent of the Banks) may (i) cure any default, event of default or event of nonperformance under this Agreement or under any of the Related Documents (in which event the Issuer shall reimburse the Banks therefor pursuant to Section 2.09 hereof), (ii) exercise their banker's lien, or right of set-off, (iii) proceed to protect their rights by

suit in equity, action at law or other appropriate proceedings, whether for specific performance of any covenant or agreement of the Issuer herein contained or in the exercise of any power or remedy granted to the Agent or the Banks under any of the Related Documents, or (iv) exercise any other rights or remedies available under any Related Document, any other agreement or at law or in equity.

(c) Upon receipt by the Tender Agent of a Termination Event of Default Notice from the Banks pursuant to Section 7.02(a)(ii) and to the extent it has not already done so, the Tender Agent shall immediately draw under the Letters of Credit in accordance with their terms and to the extent permitted by the Letters of Credit, to purchase the Outstanding Bonds for the account of the Issuer, whereupon such Bonds shall be Bank Bonds, as directed by the Banks pursuant to the Termination Event of Default Notice. The Letters of Credit shall then terminate immediately upon distribution of the proceeds of such drawing to the Tender Agent.

(d) If the Event of Default is the result of the failure by the Issuer to reimburse the Banks on a timely basis for an Interest Drawing, as provided in the Letters of Credit the Banks jointly may cause the Letters of Credit not to be reinstated by delivering to the Tender Agent and the Paying Agent/Registrar a Notice of Non-Reinstatement on or before the close of business on the fourth (4<sup>th</sup>) day after such Drawing was honored by the Banks, all in accordance with the Letters of Credit. The rights and remedies of the Agent and the Banks specified herein are for the sole and exclusive benefit, use and protection of the Agent and the Banks, and the Agent and the Banks are entitled, but shall have no duty or obligation to the Issuer, the Paying Agent/Registrar, the Tender Agent, the Bondholders or any other Person, (i) to exercise or to refrain from exercising any right or remedy reserved to the Banks hereunder, or (ii) to cause the Paying Agent/Registrar, the Tender Agent or any other party to exercise or to refrain from exercising any right or remedy available to it under any of the Related Documents.

(e) From and after the occurrence of an Event of Default, all amounts owing to the Banks hereunder and under the Fee Letter shall bear interest at the Default Rate.

**Section 7.03. No Waiver; Remedies.** No failure on the part of the Agent or the Banks to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any right under this Agreement preclude any other further exercise of such right or the exercise of any other right.

## **ARTICLE VIII**

### **NATURE OF OBLIGATIONS; INDEMNIFICATION**

**Section 8.01. Obligations Absolute.** The obligations of the Issuer to pay all Required Payments under this Agreement and the other Related Documents shall be absolute, unconditional and irrevocable, notwithstanding any other provision of this Agreement or any other Related Document, and shall not be subject to any right of setoff, recoupment or counterclaim against the Agent, the Banks or any Participant and shall be paid and performed strictly in accordance with the terms of this Agreement under all circumstances whatsoever.

Until the principal of and interest on the Bonds and all Required Payments including the repayment of all Drawings, have been indefeasibly paid in full and all other obligations of the Issuer hereunder and under the Related Documents have been performed and discharged, the Issuer waives and covenants not to assert any right of setoff or recoupment against its and their obligations to make all payments of principal, interest and all other Required Payments due hereunder and under the other Related Documents in the amounts and at the times required hereby and thereby, and without abatement, diminution, deduction, counterclaim or defense for any reason, including, without limitation, in the following circumstances:

(a) any lack of validity or enforceability of the Letters of Credit or any of the Related Documents;

(b) any amendment or waiver of any provision, term or condition of any of the Related Documents;

(c) any failure of any portion of the Water/Wastewater System to be delivered, constructed or completed, any defects, malfunctions, breakdowns or infirmities in the Water/Wastewater System, any accident, condemnation, destruction or unforeseen circumstances, or any damage, destruction or condemnation of the Issuer's facilities or any part thereof or any acts or circumstances that may constitute failure of consideration or commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State, or any political subdivision of either thereof;

(d) the existence of any dispute with, or any claim, right of setoff or recoupment, defense or other rights which the Issuer may have at any time against, the Paying Agent/Registrar or the Tender Agent, any beneficiary or any transferee of the Letters of Credit (or any persons or entities for whom the Paying Agent/Registrar or the Tender Agent, any such beneficiary or any such transferee may be acting), the Banks (other than the defense of payment to the Banks in accordance with the terms of this Agreement), any Participant or any other Person, whether in connection with this Agreement, the other Related Documents or any transaction contemplated thereby or any unrelated transaction;

(e) any statement or any other document presented under the Letters of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(f) payment by the Banks under the Letters of Credit against presentation of a sight draft or certificate which does not comply with the terms of the Letters of Credit; and

(g) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff or recoupment against, the Issuer's, the Issuer's obligations hereunder or under any of the other Related Documents.

**Section 8.02. Continuing Obligation.** All covenants, agreements, representations and warranties made by the Issuer in this Agreement and in the certificates or other instruments

delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Agent and the Banks and shall survive the execution and delivery of this Agreement, the issuance of the Letters of Credit and any Drawings under the Letters of Credit including any Principal Purchase Drawings, regardless of any investigation made by the Banks or on behalf thereof and notwithstanding that the Agent and the Banks may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the Bonds or any Required Payments remain outstanding and unpaid. The obligations of the Issuer under this Agreement and the Fee Letter shall survive the expiration or termination of the Letters of Credit and continue until the date upon which all amounts due and owing to the Agent and the Banks hereunder and under any Bank Bonds shall have been indefeasibly paid in full; *provided, however*, that the obligations of the Issuer pursuant to Sections 2.02, 8.03, and 8.04 hereof shall survive any expiration or termination of this Agreement.

**Section 8.03. Liability of the Banks.** With respect to the Agent and the Banks, except as provided below, the Issuer, to the extent permitted by law, assumes any and all risks with respect to the acts or omissions of each of the Paying Agent/Registrar, the Tender Agent, the Remarketing Agent, the Agent and any transferee of the Letters of Credit and any other Person in connection with its or their use of the Letters of Credit or of any amounts made available by the Banks thereunder. Neither the Agent, the Banks, any Affiliates thereof or any Participant, nor any of their respective officers, directors, employees or agents, shall be liable or responsible for any of the following: (a) the use that may be made of the Letters of Credit or any amounts made available by the Banks thereunder or for any acts or omissions of the Paying Agent/Registrar, the Tender Agent, the Issuer, the Remarketing Agent or any other Person in connection with the Letters of Credit or the use of its proceeds; (b) any of the acts, omissions, agreements, circumstances or conditions covered by the indemnification provided in Section 8.04 hereof, (c) any act or omission of the Agent or the Banks not constituting negligence or willful misconduct; (d) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (e) payment by the Banks against presentation of documents which do not comply with the terms of the Letters of Credit, including failure of any documents to bear any reference or adequate reference to the Letters of Credit; or (f) any other circumstances whatsoever in making or failing to make payment under the Letters of Credit; provided, that, the Issuer shall have a claim against the Banks, and the Banks shall be liable to the Issuer, to the extent, but only to the extent, of any direct, actual damages, but expressly not for any lost profits or any consequential, special, indirect or punitive damages (the right to recover or receive lost profits, consequential, special, indirect or punitive damages being hereby waived), suffered by the Issuer and not required to be mitigated by the Issuer, which direct, actual damages are determined by a final and nonappealable judgment of a court of competent jurisdiction to have been directly caused by (i) the Banks' willful misconduct or negligence in determining whether documents presented under the Letters of Credit comply with the terms thereof or (ii) the Banks' willful failure to pay under the Letters of Credit after the presentation to them by the Paying Agent/Registrar or Tender Agent (or a successor paying agent/registrar or tender agent under the Ordinance in accordance with its terms) of a draft and certificate strictly complying with the terms and conditions thereof; provided, however, that the maximum amount of damages recoverable by the Issuer from a Bank as provided above is expressly limited to the Stated Amount of such Bank's Letter of Credit. In furtherance and not in limitation of the

foregoing, the Banks may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

**Section 8.04. Indemnification; Taxes, Etc.** In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Issuer hereby agrees, to the extent permitted by law, to defend, indemnify and hold harmless the Banks, the Agent, the Affiliates thereof, each Participant and each of the respective officers, directors, employees and agents of the foregoing Persons (each an "Indemnified Party") from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys' fees) that an Indemnified Party may incur (or which may be claimed against an Indemnified Party by any Person whatsoever) that arises out of or in connection with any of the Transactions contemplated by this Agreement or the Related Documents, including, without limitation, (i) any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in the Reoffering Document or any other offering circular or document used in connection with the Bonds or the Letters of Credit, or in any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements, in the light of the circumstances under which they are or were made, not misleading or the failure to deliver the Reoffering Document or any other offering circular or document to any offeree or purchaser of Bonds (but excluding the Bank Disclosure or equivalent disclosure information relating to the Banks included in such other offering circular or document and provided in writing by the Banks for inclusion therein); (ii) the execution and delivery or transfer of, or payment or failure to pay under the Letters of Credit; (iii) (A) the issuing, offering, sale, remarketing or resale of the Bonds or (B) the pledge, holding, transfer, registration, delivery, sale or other disposition of the Bank Bonds under the Ordinance or this Agreement; (iv) the proposed or actual use of the proceeds of the Bonds or any amounts drawn under the Letters of Credit; (v) the untruth or material inaccuracy of any warranty or representation undertaken or given by the Issuer in this Agreement or any Related Document or in any certificate furnished hereunder or thereunder or the breach or nonperformance by any Person of any covenant of this Agreement or any other Related Document; any act or omission of the Issuer or any imposition arising from, burden imposed by, violation of, or failure to comply with any applicable law by the Issuer; (vii) any Taxes or Other Taxes; or (viii)(A) any patent or latent condition of the Water/Wastewater System, including without limitation, any Environmental Claim or Environmental Liability, (B) the construction, reconstruction, improvement, use, occupancy, conduct or management of or any work or anything whatsoever done or omitted to be done in or about the Water/Wastewater System or (C) any accident, injury or damage whatsoever to any person occurring in or about the Water/Wastewater System; provided, in each case, that the Issuer shall not be required to indemnify the Agent or the Banks for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, directly caused by (1) the willful misconduct or gross negligence of the Agent or the Banks or (2) the Banks' willful failure to pay under the Letters of Credit after the presentation to them by the Paying Agent/Registrar or the Tender Agent of a draft and certificate strictly complying with the terms and conditions of the Letters of Credit, to the extent that there has been a final and nonappealable judgment of a court of competent jurisdiction that such claims, damages, losses, liabilities, costs and expenses were directly caused by the willful misconduct or gross negligence of the Agent or the Banks. If any proceeding shall be brought or threatened against an Indemnified Party by reason of or in connection with the events described in (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii), such Indemnified Party shall

promptly notify the Issuer in writing and the Issuer shall assume the defense thereof, including the employment of counsel and the payment of all costs of litigation. The Issuer will not settle or compromise any such action or claim without the prior written consent of the relevant Indemnified Party if the settlement or compromise would require any act or admission by such Indemnified Party or any of its Affiliates, or impose any cost or expense on the Indemnified Party or its Affiliates or impose any limitation on the business or future actions of the Indemnified Party or its Affiliates. Notwithstanding the preceding sentence, an Indemnified Party shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of an Indemnified Party unless (x) the employment of such counsel has been authorized in writing by the Issuer or (y) the Issuer, after due notice of the action, shall not have employed counsel to have charge of such defense, in either of which events the reasonable fees and expenses of counsel for such Indemnified Party shall be borne by the Issuer. The Issuer shall not be liable for any settlement of any such action effected without its consent. Nothing under this Section 8.04 shall or shall be construed to limit the Issuer's payment obligations under Article II. Nothing in this Section 8.04 shall be construed to cause the Issuer to create a debt under the laws of the State.

The provisions of this Section 8.04 shall survive the termination of this Agreement and the payment in full of the Bonds and the obligations of the Issuer thereunder and hereunder.

**Section 8.05. Facsimile Documents.** At the request of the Issuer, the Letters of Credit provide that Drawings thereunder may be presented to the Banks by, among other methods, facsimile. The Issuer acknowledges and assumes all risks relating to the use of such facsimile demands for payment and agrees that its obligations under this Agreement and the Related Documents shall remain absolute, unconditional and irrevocable as provided in Section 8.01 above if the Banks honors such facsimile demands for payment.

## **ARTICLE IX**

### **TRANSFER, REDUCTION, REINSTATEMENT OR EXTENSION OF LETTER OF CREDIT**

**Section 9.01. Transfer, Reduction and Reinstatement.** The Letters of Credit may be transferred, reduced and reinstated in accordance with the provisions set forth therein.

**Section 9.02. Extension.**

(a) The Issuer may by written notice to the Banks, not sooner than one hundred eighty (180) days and not later than one hundred twenty (120) days prior to the Stated Expiration Date then in effect (such current Stated Expiration Date without regard to such requested extension, the "Existing Expiration Date"), request that the Banks consent to the extension of the Existing Expiration Date. The Banks will make reasonable efforts to respond to such request within sixty (60) days after receipt of all information necessary, in the Banks' reasonable judgment, to permit the Banks to make an informed credit decision. In the event the Banks fail to definitively respond to such request within such period of time, the Banks shall be deemed to have refused to grant



the extension requested. The Banks may, in their sole and absolute discretion, decide to accept or reject any such proposed extension. The consent of the Banks, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance reasonably satisfactory to the Banks and consistent with this Agreement. If such an extension request is accepted by the Banks in their absolute discretion, the Existing Expiration Date for the Letters of Credit shall be extended to the date agreed to by the Issuer and the Banks.

(b) As a condition precedent to the effectiveness of such consent to the extension of the Existing Expiration Date, the Issuer shall deliver to the Banks a certificate of the Issuer dated as of the date that such extension is scheduled to become effective signed by an authorized officer of the Issuer, certifying that, before and after giving effect to such extension, (1) the representations and warranties contained in Article IV hereof and in the other Related Documents are true and correct in all material respects on such date, except, in each case, to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and the representations and warranties contained in Section 4.09 shall be deemed to refer to the most recent statements furnished pursuant to Section 5.02(a) hereof, and (2) no Default or Event of Default then exists or would result from the extension of the Existing Expiration Date.

(c) Any such extension of the Existing Expiration Date shall be subject to such additional terms, including payment of extension fees to the Banks, as shall be agreed with the Issuer.

(d) Upon the effectiveness of any such consent to the extension of the Existing Expiration Date, each Bank shall deliver to the Tender Agent and Paying Agent/Registrar a written notice of such extension in the form attached to the Applicable Letter of Credit (the "Notices of Extension") designating the date to which the Existing Expiration Date is being extended. Such extension of the Existing Expiration Date shall be effective on the date of issue of such Notices of Extension, and thereafter all references in this Agreement to the Existing Expiration Date shall be deemed to be references to the date designated as such in the most recent Notices of Extension delivered to the Tender Agent and Paying Agent/Registrar.

## ARTICLE X

### THE AGENT

The provisions of this Article X shall be applicable to the Banks and the Agent and shall not affect the relationship between the Issuer and the Banks or the Issuer and the Agent.

**Section 10.01. Appointment, Powers and Immunities.** Except as provided in Section 10.08, each Bank hereby irrevocably appoints and authorizes the Agent to act as its agent hereunder and under the Related Documents with such powers as are specifically delegated to the Agent by the terms of this Agreement or any Related Document, together with such other powers as are reasonably incidental thereto including (without limitation) the power to enter into

such agreements, documents and instruments as are incidental thereto or authorized by all of the Banks, as applicable, in accordance with this Agreement. The Agent hereby accepts such appointment and authorization on the terms and conditions of this Agreement. The Banks expressly agree that, as between the Banks and the Agent, the Agent: (a) shall not have any duties or responsibilities except those expressly set forth herein and in any Related Document and shall not by reason of this Agreement be a trustee or fiduciary for any Bank; (b) shall not be responsible to the Banks for any recitals, statements, representations or warranties contained herein or in any Related Document, or in any certificate or other documents referred to or provided for in, or received by any of them under, this Agreement or any Related Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency this Agreement or of any Related Document or any other document referred to or provided for herein or for any failure by the Issuer or any other Person to perform any of its obligations hereunder or thereunder; (c) shall not be required to initiate or conduct any litigation or collection proceedings hereunder or under any Related Document; and (d) shall not be responsible for any action taken or omitted to be taken by it hereunder or under any Related Document or under any other document or instrument referred to or provided for herein or in connection herewith, except for its own gross negligence or willful misconduct. The Agent may employ agents and attorneys in fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys in fact selected by it in good faith. The Agent may deem and treat the payee of any obligations hereunder as the holder thereof for all purposes hereof unless and until a written notice of the assignment or transfer of the payee's rights to payment shall have been filed with the Agent.

**Section 10.02. Reliance by Agent.** The Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone or facsimile) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the Person or Persons authorized to do so and upon advice and statements of legal counsel, independent accountants and other experts selected by the Agent. As to any matters not expressly provided for by this Agreement, the Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by all of the Banks and such instructions and any action taken or failure to act pursuant thereto shall be binding on the Banks.

**Section 10.03. Defaults.** The Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or an Event of Default unless the Agent has received written notice from a Bank, the Issuer, the Tender Agent or the Paying Agent/Registrar specifying such Default or Event of Default. In the event that the Agent receives such written notice of a Default or Event of Default, the Agent shall give prompt written notice thereof to the Banks. The obligations of the Agent hereunder and under the Related Documents are only those expressly set forth herein and therein. Without limiting the generality of the foregoing, the Agent shall not be required to take any action hereunder with respect to any Default or Event of Default, except as expressly provided herein. In no event, however, shall the Agent be required to take any action in violation of applicable law or of any provision hereof or of any Related Document, and the Agent shall in all cases be fully justified in failing or refusing to act hereunder or under any Related Document unless it shall be first indemnified to its reasonable satisfaction by the Banks against any and all costs, expense and liability which may be incurred by it by reason of taking or continuing to take any such action. In all cases in which this Agreement and the Related

Documents do not require the Agent to take certain actions, the Agent shall be fully justified in using its discretion and failing to take or in taking any action hereunder and thereunder.

**Section 10.04. Rights as a Bank.** The Agent shall have the same rights and powers under this Agreement and the Related Documents as any other Bank and may exercise or refrain from exercising the same as though it were not the Agent, and the terms “Bank” and “Banks” as used herein and in the Related Documents shall, unless the context otherwise indicates, include the Agent in its individual capacity as a Bank. The Agent and its Affiliates may (without having to account therefor to any Bank) accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with the Issuer (and any of its Affiliates) as if it were not acting as the Agent, and the Agent and its Affiliates may accept fees and other consideration from the Issuer for services other than in connection with this Agreement without having to account for the same to the Banks.

**Section 10.05. Indemnification.** The Banks agree to indemnify and hold the Agent and its directors, officers employees, agents and representatives harmless from and against, ratably in accordance with their respective Percentage, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of this Agreement or any Related Document or any other document contemplated by or referred to herein or the transactions contemplated hereby, except to the extent promptly reimbursed for the same by the Issuer, provided that no Bank shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Agent. The obligations of the Banks under this Section 10.05 shall survive the termination of this Agreement.

**Section 10.06. Non Reliance on Agent and other Banks.** Each Bank agrees that it has, independently and without reliance on the Agent or any other Bank, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Issuer and its own decision to enter into this Agreement and that it will, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any Related Document. The Agent shall not be required to keep itself informed as to the performance or observance by the Issuer of this Agreement or any Related Document or any other document referred to or provided for herein or to inspect the properties or books of the Issuer. The Agent shall provide to each Bank a copy of each notice or report from the Issuer, the Tender Agent, the Paying Agent/Registrar or the Remarketing Agent which may be provided to the Agent under this Agreement or the Related Documents. Except for notices, reports and other documents and information expressly required to be furnished to the Banks by the Agent hereunder, the Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the affairs, financial condition or business of the Issuer which may come into the possession of the Agent or any of its Affiliates.

**Section 10.07. Failure to Act.** Except for action expressly required of the Agent hereunder or under any Related Document, the Agent shall in all cases be fully justified in failing or refusing to act hereunder or under any Related Document unless it shall receive further

assurances to its satisfaction from the Banks of their indemnification obligations under Section 10.05 hereof against any and all liability and expense which may be incurred by it in its capacity as Agent hereunder by reason of taking or continuing to take any such action.

**Section 10.08. Resignation or Removal of Agent.** Subject to the appointment and acceptance of a successor Agent as provided below, the Agent may resign at any time by giving 30 days' notice thereof to the Banks, the Issuer, the Remarketing Agent, the Tender Agent and the Paying Agent/Registrar. Upon any such resignation of the Agent, the Banks shall have the right to appoint a successor to the resigning or removed Agent, which shall be (a) any Bank hereunder or (b) any other commercial bank which has an office in the United States. If no successor Agent shall have been so appointed by the Banks, and shall have accepted such appointment, within 30 days after the retiring Agent's giving of notice of resignation or removal, then the retiring Agent may, on behalf of the Banks, appoint a successor Agent which shall be any Bank hereunder or any commercial bank satisfying the foregoing conditions. Upon the acceptance of its appointment as the Agent hereunder, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. After the Agent's resignation or removal hereunder, the provisions of this Article X shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Agent. Upon the termination of a Bank's Letter of Credit, such Bank shall no longer be eligible to serve as Agent hereunder.

**Section 10.09. Bank Bonds.** In the event that the Agent receives written notice from a Bank, the Paying Agent/Registrar, the Tender Agent, the Remarketing Agent or the Issuer that any Bond has become a Bank Bond, the Agent shall give prompt written notice thereof to the Banks.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01. Right of Setoff.** Upon the occurrence of an Event of Default, the Banks and its Affiliates may, at any time and from time to time, without notice to the Issuer or any other Person (any such notice being expressly waived), set off and appropriate and apply, against and on account of, any obligations and liabilities of the Issuer to the Banks or their Affiliates, whether or not arising under or connected with this Agreement or the Related Documents and without regard to whether or not the Banks shall have made any demand therefor and although such obligations and liabilities may be contingent or unmatured and regardless of currency, place of payment or booking office thereof, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, but not including trust accounts) and any other Debt or other payment obligation at any time held or owing by the Banks or its Affiliates to or for the credit or the account of the Issuer, whether or not arising under or connected with this Agreement or the Related Documents, whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office thereof. The rights of the Banks under this Section are in addition to other rights and remedies (including other rights of setoff) which the Banks may have at law or in equity.

**Section 11.02. Amendments and Waivers; Remedies Cumulative.** No amendment or waiver of any provision of this Agreement nor consent to any departure by the Issuer from any such provision shall in any event be effective unless the same shall be in writing and signed by the Banks. A copy of any such amendment or waiver shall be promptly provided by the Issuer to the Paying Agent/Registrar. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In the event any covenant or agreement contained in this Agreement is breached by the Issuer and thereafter waived by the Banks, such waiver shall be limited to the particular breach so waived for the specific period set out in such waiver and such waiver shall not constitute a waiver of such breach for any other period and shall not waive any other or similar breach hereunder. Specifically and not in limitation of the foregoing, this Agreement may not be amended or modified by course of dealing, oral acknowledgement or agreement or by any writing, unless it is a writing which is expressly stated to constitute an amendment of this Agreement and is signed by an authorized officer of the Banks and an authorized officer of the Issuer. The rights and remedies of the Banks hereunder are cumulative and are not exclusive of any rights or remedies that it would otherwise have under law or equity.

**Section 11.03. Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

**Section 11.04. Notices.** Unless specifically indicated otherwise herein, all notices and other communications provided for hereunder shall be in writing and if to the Issuer, the Issuer, addressed to the Issuer at:

City of Austin, Texas  
Suite 1510  
700 Lavaca  
Austin, TX 78701  
Attention: Treasurer  
Telephone: (512) 974-7883  
Facsimile: (512) 370-3838

With a copy to:

City of Austin, Texas  
[ADDRESS]  
Attention: City Attorney  
Telephone: [PLEASE PROVIDE]  
Facsimile: [PLEASE PROVIDE]

or if to the Agent, addressed to it at:

Sumitomo Mitsui Banking Corporation  
6<sup>th</sup> Floor  
277 Park Avenue  
New York, NY 10172  
Attention: Trade Services Credit Dept.  
Telephone: (212) 224-4000  
Facsimile: (212) 224-4566  
E-Mail: [ ]

or if to the Banks, addressed to them at:

For Administrative Matters:

Sumitomo Mitsui Banking Corporation  
6<sup>th</sup> Floor  
277 Park Avenue  
New York, NY 10172  
Attention: Trade Services Credit Department  
Telephone: (212) 224-4000  
Facsimile: (212) 224-4566  
E-Mail: [ ]

And

The Bank of Tokyo-Mitsubishi UFJ, Ltd.  
1251 Avenue of The Americas  
New York, NY, 10020  
Attention: James Burr  
Telephone: (212) 782-4312  
Facsimile: (212) 782-6440  
E-Mail: jburr@us.mufg.jp

or if to the Paying Agent/Registrar or Tender Agent, addressed to it at:

U.S. Bank National Association  
5555 San Felipe  
Suite 1150  
Houston, TX 77056  
Attention: Mauri J. Cowen  
Telephone: (713) 235-9206  
Facsimile: (713) 235-9123

or if to the Remarketing Agent, addressed to it at:

Goldman, Sachs & Co.  
[Address]  
Attention: [PLEASE PROVIDE]  
Telephone: [PLEASE PROVIDE]  
Facsimile: [PLEASE PROVIDE]

or as to each party at such other address as shall be designated by such party in a written notice to the other parties.

Any notice or other communication shall be sufficiently given and shall be deemed given when delivered to the addressee in writing or when given by telephone immediately confirmed in writing by tested telex, telecopier or other telecommunication device.

**Section 11.05. Severability.** Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

**Section 11.06. GOVERNING LAW.** THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND TOGETHER WITH ANY DISPUTES OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE FEDERAL LAW, WITHOUT REGARD TO CHOICE OF LAW RULES OTHER THAN NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401 (OR ANY SUCCESSOR STATUTE THERETO); PROVIDED, HOWEVER, THE OBLIGATIONS OF THE ISSUER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE.

**Section 11.07. Service of Process.** The Issuer, the Agent and the Banks irrevocably consent to the service of any and all process in any action, suit or proceeding arising out of or relating to this Agreement by the mailing of copies of such process to the respective address set forth for such party in Section 11.04. All mailings under this Section 11.07 shall be by certified mail, return receipt requested. Nothing in this Section 11.07 shall affect the right of the Banks to serve legal process in any other manner permitted by law.

**Section 11.08. Headings.** Section headings in this Agreement 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 Agreement.

**Section 11.09. Participations.** The Issuer acknowledges and agrees that the Banks may participate all or any portion of their obligations under the Letters of Credit and the obligations of the Issuer under the Bank Bonds, and the obligations of the Issuer under this Agreement and any other Related Documents (collectively, the "Participated Obligations") to other financial institutions and waives any notice of such participations. The Issuer agrees to provide to the Banks, promptly upon request, a copy of the most recent financial information concerning the Issuer thereof in connection with any such participation or prospective participation. The Banks

may disclose to any Participants or prospective Participants any information or other data or material in the Banks' possession relating to this Agreement, the Reoffering Document or any Related Document, without the consent of or notice to the Issuer. The Issuer further acknowledges and agrees that upon any such participation the Participants will become owners of a pro rata portion of the Participated Obligations and the Issuer waives any right of setoff it may at any time have against the Banks or any Participant with regard to the Participated Obligations. The grant of any participation interest in the Participated Obligations shall not impair the Banks' obligation to honor Drawings made in accordance with the express terms of the Letters of Credit.

**Section 11.10. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Issuer, the Banks and their respective successors, endorsees and assigns, provided that the Issuer may assign, transfer or delegate all or any portion of its respective rights or obligations hereunder without the prior written consent of the Banks. The Banks may grant interests in its rights hereunder as provided in Section 11.09; provided, however, that no such grant shall affect the obligations of the Banks under the Letters of Credit.

Notwithstanding any other provision of this Agreement, the Banks may at any time pledge or grant a security interest in all or any portion of its rights (including, without limitation, rights to payment under this Agreement) to secure obligations of the Banks to a Federal Reserve Bank, without notice to or consent of the Issuer; provided that no such pledge or grant of a security interest shall release the Banks from any of its obligations hereunder, as the case may be, or substitute any such pledgee or grantee for the Banks as a party hereto, as the case may be.

**Section 11.11. Complete and Controlling Agreement.** This Agreement and the other Related Documents completely set forth the agreements between the Banks and the Issuer and fully supersede all prior and contemporaneous understandings, agreements, and contracts, both written and oral, between the Banks and the Issuer relating to the issuance of the Letters of Credit and all matters set forth herein and in the Related Documents.

**Section 11.12. Waiver of Rule of Construction.** The Issuer hereby waives any and all provisions of law to the effect that an ambiguity in a contract or agreement should be interpreted against the party responsible for its drafting.

**Section 11.13. WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY LAW, THE ISSUER AND THE BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (WHETHER AS CLAIM, COUNTER-CLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE) BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ISSUER OR THE BANKS. THE ISSUER ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND RECOGNIZES AND AGREES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENT AND THE BANKS ENTERING INTO THIS AGREEMENT AND ISSUING THE LETTERS OF CREDIT. THE ISSUER REPRESENTS AND ACKNOWLEDGES THAT IT HAS REVIEWED THIS



PROVISION WITH ITS LEGAL COUNSEL AND THAT IT HAS KNOWINGLY AND VOLUNTARILY WAIVED ANY JURY TRIAL RIGHTS IT MAY HAVE FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL.

**Section 11.14. Payments Set Aside.** To the extent that any payment by or on behalf of the Issuer is made to the Banks, or the Banks exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Banks in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

**Section 11.15. Usury.** If notwithstanding the application of Section 2.10 of this Agreement, Applicable Law shall be interpreted by a court of competent jurisdiction to render usurious any amount or amounts payable to the Banks under this Agreement or the Fee Letter or under the Bonds (including Bank Bonds), or contracted for, charged or received by the Banks with respect to the obligations of the Issuer hereunder or under the Bonds, or if any acceleration or optional or extraordinary prepayment results in the Issuer having paid any interest (together with any Charges) in excess of that permitted by Applicable Law, then it is the Banks' express intent that all excess amounts theretofore collected by the Banks shall be credited against the principal balance of the Issuer's obligations to the Banks and the provisions of this Agreement and the other Related Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder modified, without the necessity of the execution of any new documents, so as to comply with the Applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to the Banks, which may be characterized as interest under Applicable Law shall, to the extent permitted thereby, be amortized, prorated, allocated, and spread throughout the full stated term of the Bonds or other obligations of the Issuer until payment in full so that the rate or amount of interest on account of such obligations does not exceed the Maximum Lawful Rate from time to time in effect and applicable to such obligations for so long as the obligations are outstanding.

**Section 11.16. Electronic Signature; Electronically Signed Document.** For purposes hereof, "electronic signature" means a manually-signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the Internet as a pdf (portable document format) or other replicating image attached to an e-mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature. The parties agree that the electronic signature of a party to this Agreement (or any amendment or supplement of this Agreement) shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative

proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

**Section 11.17. No Advisory or Fiduciary Responsibility.** In connection with all aspects of the Transactions contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), the Issuer acknowledges and agrees that: (i) (A) the arranging, structuring and other services regarding this Agreement provided by the Banks and any of its Affiliates are arm's-length commercial transactions between the Issuer and its Affiliates, on the one hand, and the Banks and its Affiliates, on the other hand, (B) the Issuer has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Issuer is capable of evaluating, and understands and accepts, the terms, risks and conditions of the Transactions contemplated hereby and by the other Related Documents; (ii) (A) the Banks and each of its Affiliates is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Issuer or any of its Affiliates, or any other Person and (B) neither the Banks nor any of its Affiliates has any obligation to the Issuer or any of its Affiliates with respect to the Transactions, except those obligations expressly set forth herein; and (iii) the Banks and each of its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Issuer, and neither the Banks nor any of its Affiliates has any obligation to disclose any of such interests to the Issuer, or its Affiliates. To the fullest extent permitted by Applicable Law, the Issuer hereby waives and releases any claims that it may have against the Banks and each of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**Section 11.18. Amounts Payable to the Banks and the Agent.** The parties hereto agree and acknowledge that the amounts payable to the Banks and the Agent hereunder are payable on parity with the Bonds.

**Section 11.19. Sharing.** If either Bank shall obtain from the Issuer payment of any amount under this Agreement or the Bank Bonds through the exercise of any right of set-off, banker's Lien or counterclaim or similar right or otherwise, and, as a result of such payment, such Bank shall have received a greater percentage of such amounts then due hereunder by the Issuer to such Bank than the percentage received by the other Bank, it shall promptly purchase from such other Banks participations in (or, if and to the extent specified by such Bank, direct interests in) such amounts owing to such other Banks in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Banks shall share the benefit of such excess payment (net of any expenses that may be incurred by such Bank in obtaining or preserving such excess payment) pro rata in accordance with the Banks' Percentages. To such end all the Banks shall make appropriate adjustments among themselves (by the rescission of participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

[Remainder of page intentionally left blank]



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

CITY OF AUSTIN, TEXAS

By \_\_\_\_\_  
Name:  
Title:

Attest:

By \_\_\_\_\_  
Name:  
Title:

[SEAL]

SUMITOMO MITSUI BANKING  
CORPORATION, as Agent

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Payment Delivery Instructions:

SUMITOMO MITSUI BANKING  
CORPORATION, as Bank

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Percentage: 50%

Payment Delivery Instructions:

THE BANK OF TOKYO – MITSUBISHI UFJ,  
LTD., as Bank

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Percentage: 50%

Payment Delivery Instructions:

The undersigned acknowledges this Agreement and agrees to perform its obligations hereunder, including without limitation, its obligations contained in Sections 2.01, 2.03 and 7.02.

U.S. BANK NATIONAL ASSOCIATION, as  
Tender Agent and Paying Agent/Registrar

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



EXHIBIT B  
FEE LETTER

**FEE LETTER**

May \_\_\_\_, 2011

City of Austin, Texas  
Suite 1510  
700 Lavaca  
Austin, TX 78701  
Attention: Treasurer

**\$160,740,000**  
**City of Austin, Texas**  
**Water and Wastewater System**  
**Variable Rate Revenue Refunding Bonds**  
**Series 2008**

Ladies and Gentlemen:

Reference is hereby made to that certain Letter of Credit Reimbursement Agreement, dated as of May 1, 2011 (together with any subsequent amendments thereto, the "Agreement"), among City of Austin, Texas (together with any successors and permitted assigns, the "Issuer"), Sumitomo Mitsui Banking Corporation, as Agent (the "Agent") Sumitomo Mitsui Banking Corporation, as Bank ("SMBC") and The Bank of Tokyo-Mitsubishi UBJ, Ltd., as Bank ("BTMU," and, together with SMBC, the "Banks"), relating to the above captioned bonds (the "Bonds"). Capitalized terms used herein without definition shall have the meanings assigned thereto in the Agreement.

Section 2.05 of the Agreement makes reference to a Fee Letter containing an agreement as to certain fees payable by the Issuer to the Agent and the Banks in consideration for the issuance and maintenance by the Banks of the Letters of Credit. This is the Fee Letter referenced in Section 2.05 of the Agreement. By countersigning this Fee Letter where indicated below, the Issuer agrees to pay the Agent and the Banks the following:

1. **Facility Fee.** The Issuer hereby agrees to pay to each Bank a facility fee (the "Facility Fee"), payable upon presentation of an invoice, in immediately available funds, quarterly in arrears on the last day of each March, June, September and December (commencing on June 30, 2011, for the period from and including the Closing Date to but not including June

30, 2011) occurring prior to the Termination Date and on the Termination Date; provided, however, that if any such day is not a Business Day, then such payment shall be due on the next succeeding Business Day, and such extension of time shall, in such case, be included in the computation of the payment due hereunder. The Facility Fee payable to each Bank shall be calculated at the rate per annum stated below with regard to the Level (the "Facility Fee Rate") associated with the applicable Obligor Rating (determined below) on the Stated Amount of the Applicable Letter of Credit (without regard to reductions of the Stated Amount subject to reinstatement) on the basis of a year of 360 days and the actual number of days elapsed. Any failure of a Bank to present an invoice for the Facility Fee shall not be construed as a waiver by such Bank of its right to receive such Facility Fee or as a waiver by such Bank of the right to present an invoice on a future date.

**Obligor Rating**  
**(lowest rating to be used)**

<b><u>Level</u></b>	<b><u>Moody's</u></b>	<b><u>S&amp;P</u></b>	<b><u>Fitch</u></b>	<b><u>Facility Fee Rate</u></b>
Level 1	Aa3 or higher	AA- or higher	AA- or higher	0.85%
Level 2	A1	A+	A+	1.05%
Level 3	A2 or A3	A or A-	A or A-	1.35%%
Level 4	Baa1	BBB+	BBB+	1.75%
Level 5	Baa2	BBB	BBB	2.00%
Level 6	Baa3	BBB-	BBB-	2.25%

In the event of a split rating (i.e., one of the Rating Agencies has assigned an Obligor Rating that is at a different Level than the Obligor Rating assigned by the other Rating Agency), the Facility Fee Rate shall be based upon the Level in which the lowest of the three Obligor Ratings appears. In addition, upon the earlier of (i) the date on which any Event of Default has occurred and (ii) the the date on which the Obligor Rating shall be suspended, withdrawn or fall below Baa3 by Moody's, BBB- by S&P or BBB- by Fitch, the Facility Fee Rate shall be increased immediately and automatically by to 3.00% per annum.

Each change in the Facility Fee Rate resulting from a change in the Obligor Rating shall become effective on the date of announcement or publication by the respective Rating Agency of a change in such Obligor Rating, or in the absence of such announcement or publication, on the effective date of such changed Obligor Rating. References to ratings above are references to rating categories as determined by the Rating Agencies as of the Closing Date and in the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration or realignment of the Obligor Rating in connection with the adoption of a "global" rating scale, 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 in effect on the Closing Date.

2. **Costs and Expenses.**

(a) The Issuer agrees to pay on demand all necessary and reasonable costs and expenses incurred by the Agent, the Banks and counsel thereto in connection with the preparation, negotiation, execution and delivery of this Fee Letter, the Agreement, the other Related Documents and any other documents and certificates which may be delivered in connection with this Fee Letter, the Agreement and the other Related Documents; provided that the legal fees of counsel to the Agent and the Banks shall not exceed \$45,000. In addition, the Issuer shall pay or cause to be paid on demand, upon not less than fifteen (15) days' prior written notice to the Issuer, the actual out-of-pocket expenses and disbursements of the Agent, the Banks and the actual fees, expenses and disbursements of counsel to the Agent and the Banks in connection with (i) the administration of this Fee Letter or the Agreement including any waiver or consent under this Fee Letter, the Agreement or any other Related Document or other document or certificate delivered in connection with the Transactions or any amendment or requested amendment hereof or thereof (whether or not the transactions contemplated thereby shall be consummated) or any Default or Event of Default (or alleged Default or Event of Default) under the Agreement, (ii) the preparation, execution, delivery, administration and enforcement or preservation of rights in connection with a workout, refinancing, restructuring or waiver with respect to this Fee Letter, the Agreement or any of the other Related Documents and (iii) the occurrence of an Event of Default and collection and other enforcement proceedings resulting therefrom.

(b) In addition, the Issuer shall pay or cause to be paid on demand, upon not less than fifteen (15) days' prior written notice to the Issuer, any present or future stamp, recording, or Other Taxes and fees payable or determined to be payable under Applicable Law in connection with the execution, delivery, filing and recording of this Fee Letter, the Agreement, the other Related Documents and such other documents and certificates delivered in connection with the Transactions and agrees to defend, indemnify and hold the Banks harmless from and against any and all liabilities with respect to or resulting from any failure to pay, or any delay in paying, such taxes and fees.

3. **Transfer Fee; Amendment Fee.** Upon each transfer of a Letter of Credit in accordance with its terms and any amendment of a Letter of Credit requested by the Issuer, the Issuer agrees to pay to the Applicable Bank the sum of \$2,500 plus the Applicable Bank's actual costs and expenses associated with such transfer or amendment, payable without any requirement of notice or demand on the date of such transfer or amendment. Upon each amendment of the Agreement or this Fee Letter requested by the Issuer, the Issuer agrees to pay each Bank the sum of \$2,500 plus the Bank's actual costs and expenses associated with such amendment, payable without any requirement of notice or demand on the date of such amendment.

4. **Drawing Fee.** Upon each drawing under a Letter of Credit, the Issuer agrees to pay to the Applicable Bank a Letter of Credit drawing fee of \$250, payable without any requirement of notice or demand on the day on which such drawing is paid by the Applicable Bank.

5. **Audit Confirmation Fee.** Upon any request by or on behalf of the Issuer that a Bank provide a letter or other documentation to the Issuer's auditors, the Issuer shall pay an audit confirmation fee of \$50 per Bank, payable without any requirement of notice or demand on the day such request is submitted by or on behalf of the Issuer.

6. **Termination Fee.** In the event that the Letters of Credit are terminated or replaced or the Stated Amounts thereof are reduced (other than as a result of reductions thereto required pursuant to the Supplemental Ordinance) prior to the Stated Expiration Date, the Issuer shall pay to each Bank a termination fee (the "Termination Fee") equal to the Facility Fee that would have been payable to such Bank with respect to the Applicable Letter of Credit if the Applicable Letter of Credit had remained in place (or the Stated Amount had not been reduced) until the Stated Expiration Date, less the amount of Facility Fee theretofore received by such Bank with respect to the Applicable Letter of Credit. In computing the Termination Fee, the Level shall be deemed to be Level I, and the Stated Amount of the Letter of Credit shall be deemed to be the Stated Amount in effect with respect to such Letter of Credit as of the Closing Date without giving effect to any reductions thereto except those required pursuant to the Supplemental Ordinance. Notwithstanding the foregoing, no Termination Fee shall be payable to a Bank if (a) one of the short-term ratings assigned to such Bank by Moody's, S&P or Fitch shall have been reduced below P-1, A-1 or F-1, respectively, or (b) such Bank shall have made a claim for any amounts pursuant to Section 2.06 of the Agreement.

7. **Agent Closing Fee.** The Issuer shall pay to the Agent, on the Closing Date, an agent closing fee equal to of \$10,000.

8. **Payments to Bank's Account.** All payments hereunder shall be made in immediately available funds and by wire transfer of funds to the account specified on the applicable signature page of the Agreement (or to such other address as the Agent or the Banks, as applicable, may specify in writing from time to time).

9. **Counterparts.** This Fee Letter 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.

10. **Modifications to this Fee Letter.** This Fee Letter may be amended, terminated or otherwise modified only by written instrument executed by the Issuer, the Agent and the Banks.

11. **Fees Nonrefundable.** All fees paid shall be fully earned when due and nonrefundable when paid.

12. **Governing Law.** This Fee Letter and the Agreement shall be construed as one agreement between the Issuer and the Bank and shall be governed as described in Section 11.06 of the Agreement.

[Remainder of page intentionally left blank]

[Signature page to Fee Letter]

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

Very truly yours,

SUMITOMO MITSUI BANKING  
CORPORATION, as Agent and as Bank

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

BANK OF TOKYO-MITSUBISHI UFJ, LTD.,  
as Bank

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Acknowledged and agreed  
as of the first date written above:

CITY OF AUSTIN, TEXAS, ISSUER

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

EXHIBIT C

FIRST AMENDMENT TO THE TENDER AGENT AGREEMENT

**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, 6<sup>th</sup> 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, 6<sup>th</sup> 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. 2<sup>nd</sup> Street, 3<sup>rd</sup> Floor  
Austin, Texas 78701

EXHIBIT D

FIRST AMENDMENT TO THE REMARKETING AGREEMENT

**FIRST AMENDMENT**  
**TO THE REMARKETING AGREEMENT**

This First Amendment to the Remarketing 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 **GOLDMAN SACHS & CO.**, as Remarketing Agent (the "Remarketing Agent"):

**WITNESSETH:**

WHEREAS, the City and Sumitomo Mitsui Banking Corporation and The Bank of Tokyo – Mitsubishi UFJ, Ltd. will, as of the date hereof, execute and deliver a Letter of Credit Reimbursement Agreement, dated as of May 1, 2011 (as amended, supplemented, restated or otherwise modified from time to time the "Reimbursement Agreement"), pursuant to which each Bank issued an irrevocable transferable direct pay letter of credit 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 Remarketing Agent now desire to amend the Remarketing Agreement, dated as of May 1, 2008 (the "Original Remarketing Agreement"), between the City and the Remarketing 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 Remarketing Agreement to the (a) "Reimbursement Agreement" or "Credit Provider" shall have the meanings set forth in Ordinance No. 20080306-053, dated as of March 6, 2008 (the "Ordinance") and (b) "Letter of Credit" shall have the meaning assigned to the term Liquidity Facility set forth in the Ordinance.

**SECTION 2:** The City and the Remarketing Agent hereby ratify and reaffirm all of the terms, conditions and provisions of the Remarketing Agreement, as specifically amended by this First Amendment, and each hereby acknowledges that the Remarketing Agreement remains in full force and effect as so amended.

SECTION 3: 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.

GOLDMAN SACHS & CO.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF AUSTIN, TEXAS

By \_\_\_\_\_  
Title: Chief Financial Officer