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2 AN ORDINANCE APPROVING AND AUTHORIZING THE
3 EXECUTION OF A SUBSTITUTE REIMBURSEMENT
4 AGREEMENT AND RELATED FEE LETTER IN RELATION TO
5 THE "CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX
6 SUBORDINATE LIEN VARIABLE RATE REVENUE REFUNDING
7 BONDS, SERIES 2008"; AMENDING CERTAIN PROVISIONS OF
8 THE ORDINANCE AUTHORIZING THE ISSUANCE OF THE
9 BONDS AND RELATED DOCUMENTS

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

11 **PART 1. FINDINGS**

12 The City Council finds that:

13 A. Pursuant to Ordinance No. 20080724-101 adopted on July 24, 2008 and
14 the Pricing Certificate, dated August 7, 2008 executed pursuant thereto
15 (collectively, the “Ordinance”), “CITY OF AUSTIN, TEXAS, HOTEL
16 OCCUPANCY TAX VARIABLE RATE REVENUE REFUNDING BONDS,
17 SERIES 2008” (the “Bonds”) have been duly authorized, issued and sold, by the
18 City of Austin, Texas (the “City”) in accordance with the provisions of Texas
19 Government Code, Chapters 1207 and 1371, and the Ordinance approved and
20 authorized the execution of a Reimbursement Agreement, dated as of August 1,
21 2008 (the “Initial Liquidity Facility”), by and between the City and Dexia Credit
22 Local, acting through its New York Branch.

23 B. The Initial Liquidity Facility expires on August 14, 2011 and in order for
24 the City to maintain the Bonds in a weekly mode bearing interest at a weekly rate
25 the City is required by the Ordinance to provide a substitute liquidity facility to
26 support the Bonds on or before the expiration of the Initial Liquidity Facility.

C. A Reimbursement Agreement dated as of July 15, 2011 (the “Reimbursement Agreement”), by and among the City and Bank of America, N.A., as agent (the “Agent”) and as a bank, and JPMorgan Chase Bank, National Association, as a bank (collectively with Bank of America, N.A., the “Banks”), to be effective on July 27, 2011, pursuant to which each Bank will issue its irrevocable transferable letter of credit, and a Fee Letter Agreement, dated July 15, 2011 between the City, the Agent and the Banks (the “Fee Letter”) have been submitted to the City Council of the City (the “City Council”) for approval and

35 execution, and such letters of credit will replace the Initial Liquidity Facility and
36 the obligations associated with the Initial Liquidity Facility.

37 D. City Council finds and determines that the Reimbursement Agreement and
38 Fee Letter should be approved and Council should authorize the execution and
39 delivery of the Reimbursement Agreement and Fee Letter.

40 E. City Council finds and determines that certain provisions of the Ordinance
41 should be amended to conform to the provisions of the Reimbursement Agreement
42 and Fee Letter and the Subseries A Letter of Credit to be issued by JPMorgan
43 Chase Bank, National Association and the Subseries B Letter of Credit to be issued
44 by Bank of America, N.A. (collectively with the Reimbursement Agreement and
45 the Fee Letter referred to as the "Substitute Liquidity Facility") and, in connection
46 with these documents, a First Amendment to the Tender Agent Agreement (the
47 "First Amendment to the Tender Agent Agreement"), a First Amendment to the
48 Paying Agent/Registrar Agreement (the "First Amendment to the Paying
49 Agent/Registrar Agreement"), a First Amendment to the Subseries A Remarketing
50 Agreement with Morgan Keegan & Company, Inc. and a First Amendment to the
51 Subseries B Remarketing Agreement with Merrill Lynch, Pierce, Fenner & Smith
52 Incorporated (collectively, the "First Amendment to the Remarketing Agreement")
53 referred to in Part 2 should be approved and Council should authorize their
54 execution.

55 **PART 2. APPROVAL AND AUTHORIZATION FOR**
56 **EXECUTION.**

57 A. City Council approves and authorizes the Reimbursement Agreement
58 substantially in the form attached as Exhibit A, including the letters of credit
59 substantially in the forms attached to the Reimbursement Agreement as
60 Appendices I and II.

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

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

65 D. City Council approves and authorizes the First Amendment to the Paying
66 Agent/Registrar Agreement substantially in the form attached as Exhibit D

67 E. City Council approves and authorizes the First Amendment to the
68 Remarketing Agreement substantially in the forms attached as Exhibit E.

69 **PART 3. EXECUTION OF DOCUMENTS.**

70 The Mayor, City Manager, Chief Financial Officer, Treasurer, City Clerk,
71 Deputy City Clerk, and City Attorney, or any of them, are authorized and directed
72 to negotiate, execute and deliver the Reimbursement Agreement, Fee Letter, First
73 Amendment to the Tender Agent Agreement, First Amendment to the Paying
74 Agent/Registrar Agreement, First Amendment to the Subseries A Remarketing
75 Agreement and First Amendment to the Subseries B Remarketing Agreement and
76 any and all certificates and other instruments described in or by the conditions
77 described in these documents, all upon the terms approved in this Ordinance, and
78 the City Clerk or the Deputy City Clerk, or either of them, is authorized to attest
79 such signature or signatures, if so required, and affix the seal of the City to, if
80 necessary, the Reimbursement Agreement, Fee Letter, First Amendment to the
81 Tender Agent Agreement, First Amendment to the Paying Agent/Registrar
82 Agreement, First Amendment to the Subseries A Remarketing Agreement and/or
83 First Amendment to the Subseries B Remarketing Agreement and any and all
84 certificates and other instruments described in or required by these documents, and
85 the Mayor, Mayor Pro Tem, City Manager, Chief Financial Officer, City
86 Treasurer, City Clerk, Deputy City Clerk, and City Attorney, or any of them, are
87 authorized to negotiate and approve such completions to and changes in the terms
88 of each instrument (prior to the execution and delivery) as such officers, or any of
89 them, shall deem necessary or appropriate and advisable based on the advice of
90 counsel, and such officers, or any of them, so acting are appointed for such purpose
91 with power to exercise the authority of the Council in such regard, and approval
92 and advisability of the terms of each such instrument by such officers, or any of
93 them, shall be conclusively evidenced by their execution and delivery. Any
94 actions by officials of the City with respect to the extension of the Letter of Credit
95 expiration date that may have occurred prior to the date of this ordinance are
96 ratified.

97 **PART 4. AMENDMENTS TO ORDINANCE.**

98 A. Part 2.01 of the Ordinance shall be and is amended to delete the definitions
99 “Amortization End Date”, “Amortization Payment Date” and “Amortization Start
100 Date” and the use of such terms in the Ordinance should be disregarded.

101 B. The definition of “Parity Obligations” contained in Part 2.01 of the
102 Ordinance shall be and is amended to read as follows:

“Parity Obligations” mean at any time all (i) Parity Bonds, (ii) all Reimbursement Obligations, (iii) obligations of the City to make scheduled payments under an Interest Rate Management Agreement, (iv) all other obligations of the City under any Credit Agreements owing to the Credit Facility Provider or the Liquidity Facility Provider by the City, and (v) any future obligation of the City under Credit Agreements or other agreements to the extent such obligations are secured by a lien on Pledged Hotel Occupancy Tax Revenues on an equal and ratable basis with the lien securing the Parity Bonds.

C. Paragraphs (c) and (g) of Part 3.04 of the Ordinance shall be and is amended to read as follows:

“(c) Optional Redemption of Bonds in the Daily Mode or Weekly Mode. The City may at its option redeem Bonds of a subseries in the Daily Mode or Weekly Mode, in whole or in part, on any Business Day, at the redemption price equal to the principal amount thereof, plus accrued interest from the Closing Date or the most recent interest payment date to the Redemption Date; provided, however, prior to the exercise of an optional redemption under this paragraph, the City shall obtain the consent of the applicable Credit Facility Provider unless money is on deposit with the Paying Agent/Registrar to effect such redemption in which case no consent shall be required.”

“(g) Special Mandatory Redemption Provisions. Liquidity Provider Bonds held by a Liquidity Facility Provider shall be subject to special mandatory redemption in accordance with the requirements of the Liquidity Facility.”

D. There shall be added a new paragraph before the fourth paragraph of Part 5.05 of the Ordinance, and shall read as follows:

“If a Credit Facility is in effect with respect to the Bonds, then, to the extent required under the applicable Reimbursement Agreement, the City shall disburse money from the Bond Fund to reimburse the Credit Facility Provider when due to the extent the same has been paid or advanced funds to pay debt service on, or the redemption of, any Bonds.”

E. The first paragraph of Part 7.04 of the Ordinance shall be and is amended to read as follows:

PART 7.04. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance, and other obligations due under any Credit Facility or Liquidity Facility are paid in full or otherwise provided for and any related Credit Facility or Liquidity Facility has been canceled, then the pledge of the Pledged Revenues under this Ordinance and all other obligations of the City to the Holders shall thereupon cease, terminate, and become void and be discharged and satisfied.

F. The definitions of “Reimbursement Agreement” and “Termination Tender Date” contained in Part 1.1 of Appendix A to the Ordinance shall be and is amended to read as follows:

“Reimbursement Agreement” means a reimbursement agreement, standby bond purchase agreement, or other applicable agreement pursuant to which a Credit Facility or a Liquidity Facility has been issued, as applicable.”

“Termination Tender Date” has the meaning set forth in clause (b) of Part 4.5 hereof.

G. Part 4.8(c)(2) of Appendix A to the Ordinance shall be and is hereby amended to read as follows:

“(2) To the extent a Liquidity Facility is in effect, the Paying Agent/Registrar or the Tender Agent acting on its behalf shall draw on the Liquidity Facility, in accordance with the terms thereof before 10:30 a.m. on the Purchase Date or Mandatory Purchase Date, as the case may be, in an amount equal to the Purchase Price of all Bonds of the subseries tendered or deemed tendered less the aggregate amount of remarketing proceeds confirmed to the Paying Agent/Registrar and the Tender Agent by the Remarketing Agent pursuant to clause (1) of this subpart and shall cause the proceeds of such draw to be transferred to the Tender Agent by no later than 2:30 p.m. provided notice of such draw is delivered to the Paying Agent/Registrar (or the Tender Agent acting on its behalf) in accordance with the terms of the

Credit Facility Agreement. Notwithstanding the foregoing, the Paying Agent/Registrar (or the Tender Agent acting on its behalf) shall draw on the Liquidity Facility, if any, in an amount equal to the Purchase Price of all Bonds of the subseries tendered or deemed tendered for purchase on each Purchase Date or Mandatory Purchase Date, as the case may be, if it does not receive a confirmation from the Remarketing Agent pursuant to clause (1) above of this subpart.”

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 Banc of America Securities LLC and Morgan Keegan & Company, Inc., as remarketing agents.

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 _____, 2011.

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PASSED AND APPROVED

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§
§

_____, 2011

Lee Leffingwell
Mayor

APPROVED:

ATTEST:

Karen M. Kennard
City Attorney

Shirley A. Gentry
City Clerk

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EXHIBIT A

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REIMBURSEMENT AGREEMENT

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DRAFT

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EXHIBIT B
FEE AGREEMENT

DRAFT

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EXHIBIT C

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FIRST AMENDMENT TO THE TENDER AGENT AGREEMENT

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DRAFT

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EXHIBIT D

211 FIRST AMENDMENT TO THE PAYING AGENT/REGISTRAR AGREEMENT

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EXHIBIT E

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FIRST AMENDMENT TO THE REMARKETING AGREEMENT

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