

ORDINANCE NO. 20140417-046

AN ORDINANCE AUTHORIZING THE EXTENSION OF CREDIT AGREEMENTS RELATING TO THE CITY'S HOTEL OCCUPANCY TAX SUBORDINATE LIEN VARIABLE RATE REVENUE REFUNDING BONDS, SERIES 2008; AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED AGREEMENTS.

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

PART 1. FINDINGS.

(A) Pursuant to Ordinance No. 20080724-101 (Original Ordinance) and the Pricing Certificate dated August 7, 2008, executed pursuant to the Original Ordinance (Pricing Certificate), the City of Austin (City) previously issued and has outstanding its Hotel Occupancy Tax Variable Rate Revenue Refunding Bonds, Series 2008, issued in two subseries designated as "Subseries 2008A" and "Subseries 2008B" (collectively, Bonds), in accordance with the provisions of Texas Government Code, Chapters 1207 and 1371.

(B) The Original Ordinance has been amended by Ordinance No. 20110623-084 (Amending Ordinance, and together with the Original Ordinance and the Pricing Certificate, the Authorizing Ordinance). The Authorizing Ordinance contains some capitalized terms that are used in this ordinance. Those terms have the same meaning in this ordinance as they do in the Authorizing Ordinance.

(C) The City previously entered into an Amended and Restated Reimbursement Agreement, dated December 1, 2012 (Original Reimbursement Agreement), between the City and JPMorgan Chase Bank, National Association (JPMorgan), and JPMorgan has issued a letter of credit securing the Subseries 2008A Bonds and a letter of credit securing the Subseries 2008B Bonds (collectively, Letters of Credit).

(D) The Letters of Credit are scheduled to expire on July 25, 2014.

(E) Council finds that it is necessary to extend the Letters of Credit.

(F) In connection with the extension of the Letters of Credit, council finds it necessary to authorize the execution and delivery of: (i) a First Amendment to Amended and Restated Reimbursement Agreement (Reimbursement Agreement Amendment) between the City and JPMorgan, and (ii) a First Amendment to Amended and Restated Fee Letter Agreement (Fee Agreement Amendment) between the City and JPMorgan.

(G) U.S. Bank National Association has succeeded Deutsche Bank Trust Company Americas as Paying Agent/Registrar and as Tender Agent with respect to the Bonds.

(H) The City is authorized to extend the Letters of Credit and to execute and deliver the Reimbursement Agreement Amendment and the Fee Agreement Amendment pursuant to Chapter 1371, Texas Government Code.

PART 2. AUTHORIZATION.

(A) Council authorizes, ratifies, and approves the extension of the Letters of Credit. The mayor, any designee of the mayor, the city manager, any designee of the city manager, the chief financial officer of the City, the city clerk, and the city treasurer (each, an Authorized Officer, and collectively, Authorized Officers) are authorized and directed to take all actions necessary or desirable to effect the extension of the Letters of Credit in accordance with the provisions of the Authorizing Ordinance and this ordinance at the times and in the manner as they decide are appropriate.

(B) Council authorizes the negotiation, execution, and delivery of the Reimbursement Agreement Amendment in substantially the form attached as Exhibit A, and (2) the Fee Agreement Amendment in substantially the form attached as Exhibit B. Each Authorized Officer is authorized to execute and deliver the Reimbursement Agreement Amendment and the Fee Agreement Amendment, with any changes as may be approved by an Authorized Officer. The execution of the Reimbursement Agreement Amendment and the Fee Agreement Amendment will be conclusive evidence the City approved each of these agreements.

(C) The Paying Agent/Registrar, the Tender Agent and the Remarketing Agents are authorized and directed to take all actions and give all notices as may be necessary or desirable to effect the extension of the Letters of Credit and all other actions authorized by this ordinance.

(D) Council approves, ratifies and confirms the appointment of U.S. Bank National Association as Paying Agent/Registrar and as Tender Agent for the Bonds. Each Authorized Officer is authorized and directed to take all actions, and to execute and deliver all documents, necessary or desirable to effect this appointment at the times and in the manner as they decide are appropriate.

PART 3. FURTHER PROCEDURES. Each Authorized Officer is authorized and directed to do any and all things necessary or convenient to carry out the terms of this ordinance.

PART 4. SEVERABILITY. The provisions of this ordinance are severable. If any provision of this ordinance or its applications to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance.

PART 5. OPEN MEETING. The City posted sufficient written notice of the date, hour, place, and subject of the meeting of the city council at which this ordinance was adopted at a place convenient and readily accessible at all times to the general public at the Austin City Hall for the time required by the Open Meetings Law, Chapter 551, Texas Government Code. This meeting has been open to the public as required by law at all times during which this ordinance and its subject matter were discussed, considered, and formally acted upon. The city council ratifies, approves, and confirms such written notice, its contents and its posting.

PART 6. REPEALER. All orders, resolutions, and ordinances (other than the Authorizing Ordinance), or their parts that are inconsistent with this ordinance are repealed only to the extent needed to eliminate the inconsistency.

PART 7. EFFECTIVE IMMEDIATELY. This ordinance takes effect immediately on its passage pursuant to Section 1201.028, Texas Government Code.

PASSED AND APPROVED

_____, April 17, 2014 §
 §
 §

 Lee Jeffingwell
 Mayor

APPROVED: _____ ATTEST: _____
 Karen M. Kennard Jannette S. Goodall
 City Attorney City Clerk

EXHIBIT A

[Reimbursement Agreement Amendment]

DRAFT

**FIRST AMENDMENT TO AMENDED AND RESTATED REIMBURSEMENT
AGREEMENT**

This First Amendment to the Amended and Restated Reimbursement Agreement (the "First Amendment") is executed and entered into as of April 18, 2014 (the "Effective Date"), and is by and between **CITY OF AUSTIN, TEXAS** ("City") and **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION** (the "Bank").

WITNESSETH:

WHEREAS, the City and the Bank have executed and delivered that certain Amended and Restated Reimbursement Agreement dated as of December 1, 2012 (the "Reimbursement Agreement"), relating to the City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Variable Rate Revenue Refunding Bonds, Series 2008, Subseries 2008A (the "Subseries A Bonds") and Subseries 2008B (the "Subseries B Bonds" and together with the Subseries A Bonds, collectively referred to herein as, the "Bonds"), (ii) that certain Irrevocable Transferable Letter of Credit dated July 27, 2011, issued by the Bank supporting the Subseries A Bonds (LC No. CPCS-920639) (the "2008 Subseries A Letter of Credit") and (iii) that certain Irrevocable Transferable Letter of Credit dated December 13, 2012, issued by the Bank supporting the Subseries B Bonds (LC No. CPCS-255269) (the "2008 Subseries B Letter of Credit" and together with the 2008 Subseries A Letter of Credit, collectively referred to herein as the "Letters of Credit"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Reimbursement Agreement or the Letters of Credit;

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

WHEREAS, contemporaneously with this First Amendment, the Stated Expiration Date for each of the Letters of Credit is being extended to October 15, 2017; and

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

Section 1. Amendment to Definitions. The following are added as definitions to Section 1.1 of the Reimbursement Agreement:

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the City from time to time concerning or relating to bribery or corruption.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

Section 2. Amendment to Representations in Article V. The following is hereby added as Section 5.22 of the Reimbursement Agreement:

Section 5.22. Anti-Corruption Laws and Sanctions. The City and its officers and employees, and to the knowledge of the City, its agents are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. No Liquidity Drawing, Liquidity Advance or Letter of Credit, use of proceeds of the foregoing or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

Section 3. Amendment to Section 6.15. The following is added to Section 6.15:

The City will not request any Liquidity Drawing or Liquidity Advance, and the City, including its officers, employees and agents, shall not use the proceeds of any Liquidity Drawing, Liquidity Advance or Letter of Credit (A) in violation of any Anti-Corruption Laws, or (B) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 4. Amendment to Section 2.13.

Section 2.13 is hereby amended to change the reference to the "Notice of Extension in the form of Exhibit J to the applicable Letter of Credit" to "Notice of Extension in the form of Annex I to the applicable Letter of Credit."

Section 5. Conditions Precedent. As condition to the effectiveness of this First Amendment (i) the City shall have paid to legal counsel to the Bank \$2,500 for the preparation of this First Amendment and the First Amendment to Amended and Restated Fee Agreement and (ii) the Bank shall have received such additional documents, instruments and information as the Bank or its legal counsel may reasonably request.

Section 6. Representations True; No Default. The City represents and warrants that the representations and warranties contained in the Reimbursement Agreement are true and correct in all material respects on and as of the date hereof as though made on and as of such date unless stated to relate to an earlier date. The City hereby certifies that no event has occurred and is continuing which constitutes an Event of Default (as defined in the Reimbursement Agreement) or which upon the giving of notice or the lapse of time or both would constitute an Event of Default.

Section 7. Ratification. Except as expressly amended hereby, the Reimbursement Agreement shall remain in full force and effect.

Section 8. Definitions and References. Any term used herein which is defined in the Reimbursement Agreement shall have the meaning therein ascribed to it unless otherwise indicated herein. The term "Reimbursement Agreement" as used in the Reimbursement Agreement or any other instrument, document or writing furnished to the Bank by the City and referring to the Reimbursement Agreement shall mean the Reimbursement Agreement as hereby amended.

Section 9. Governing Law. THIS FIRST AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW

YORK; PROVIDED, HOWEVER, THAT THE RIGHTS, DUTIES AND OBLIGATIONS OF THE CITY SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.

Section 10. Miscellaneous. This First Amendment (a) may be executed in several counterparts, and by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original agreement, and all such separate counterparts shall constitute but one and the same agreement, and (b) together with the Reimbursement Agreement, embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter. The headings herein shall be accorded no significance in interpreting this First Amendment. This First Amendment may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

Section 11. Consent of Bank. Pursuant to Sections 6.16 and 9.1 of the Reimbursement Agreement, the Bank hereby consents to U.S. Bank National Association serving as the Paying Agent/Registrar and as Tender Agent with respect to the Bonds.

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

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment 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: _____

**JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION**

By: _____
Name: David M. Bayer
Title: Executive Director

EXHIBIT B

[Fee Agreement Amendment]

First Amendment to Amended and Restated Fee Letter Agreement

This First Amendment (the "First Amendment") to Amended and Restated Fee Letter Agreement is executed and entered into as of April 18, 2014 (the "Effective Date"), and is by and between CITY OF AUSTIN, TEXAS (the "City), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association (together with its successors and assigns, the "Bank").

WITNESSETH

WHEREAS, the City and the Bank have previously entered into the Amended and Restated Fee Letter Agreement dated as of December 1, 2012 (the "Fee Letter Agreement") with respect to that certain Amended and Restated Reimbursement Agreement dated as of December 1, 2012 (the "Reimbursement Agreement"), between the City and the Bank relating to the City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Variable Rate Revenue Refunding Bonds, Series 2008, Subseries 2008A (the "Subseries A Bonds") and Subseries 2008B (the "Subseries B Bonds" and together with the Subseries A Bonds, collectively referred to herein as, the "Bonds"), pursuant to which the Bank issued Irrevocable Transferable Letter of Credit dated July 27, 2011 supporting the Subseries A Bonds (LC No. CPCS-920639) (the "2008 Subseries A Letter of Credit") and Irrevocable Transferable Letter of Credit dated December 13, 2012, supporting the Subseries B Bonds (LC No. CPCS-255269) (the "2008 Subseries B Letter of Credit" and together with the 2008 Subseries A Letter of Credit, collectively referred to herein as the "Letters of Credit");

WHEREAS, the City and the Bank have agreed to amend the Fee Letter Agreement in connection with the extension of the Stated Expiration Date of each of the Letters of Credit to October 15, 2017; and

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto hereby agree as follows:

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Reimbursement Agreement.

ARTICLE I. AMENDMENTS

Section 1.1. Amendment to Letter of Credit Fee. Section 1.1. of the Fee Letter Agreement is hereby deleted and replaced with the following:

Beginning on the Effective Date, the City hereby agrees to pay to the Bank in arrears on the first Business Day of each January, April, July and October beginning on July 1, 2014, and on

the Termination Date of each of the Letters of Credit, a non-refundable fee in an amount equal to the rate per annum associated with the Rating as specified below (the "Letter of Credit Fee Rate") on the Available Amount of each Letter of Credit issued by the Bank (the "Letter of Credit Fee") for each day during each period.

| LEVEL | MOODY'S RATING | S&P RATING | LETTER OF CREDIT FEE RATE |
|---------|----------------|--------------|---------------------------|
| Level 1 | Aa3 or above | AA- or above | .42% |
| Level 2 | A1 | A+ | .67% |
| Level 3 | A2 | A | .92% |
| Level 4 | A3 | A- | 1.17% |
| Level 5 | Baa1 | BBB+ | 1.42% |
| Level 6 | Baa2 | BBB | 1.67% |
| Level 7 | Baa3 | BBB- | 1.92% |

The term "Rating" as used above shall mean the long-term, unenhanced debt ratings assigned by each of S&P and Moody's (each a "Rating Agency" and collectively, the "Rating Agencies") to any Indebtedness of the City secured by the Security. In the event of a split Rating (*i.e.*, one of the foregoing Rating Agency's Rating is at a different level than the Rating of the other Rating Agency) the Letter of Credit Fee Rate shall be based upon the level in which the lowest rating appears. Any change in the Letter of Credit Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system by any such Rating Agency, each of the Ratings from the agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The City acknowledges, and the Bank agrees, that as of the date hereof the Letter of Credit Fee Rate is that specified above for Level 1. The Letter of Credit Fees shall be payable quarterly in arrears, together with interest on the Letter of Credit Fees from the date payment is due until payment in full at the Default Rate. The computation of the Letter of Credit Fees payable by the City under this Fee Letter Agreement shall be made on the basis of a year of 360 days and the actual number of days elapsed, including date of issuance and expiration. Upon the occurrence and during the continuance of an Event of Default, or in the event any Rating is suspended, withdrawn or is otherwise unavailable, the Letter of Credit Fee Rate shall be increased from the rate then in effect by an additional one percent (1.00%) per annum.

Prior to the Effective Date, the Letter of Credit Fee Rate shall be as set forth in the Fee Letter Agreement without consideration of this First Amendment.

Section 1.2. Amendment to Termination and Reduction Fee. Section 1.5. of the Fee Letter Agreement is hereby deleted and replaced with the following:

(i) Subject to paragraph (ii) of this Section 1.5, in the event a Letter of Credit is terminated prior to the Stated Expiration Date, the City hereby agrees to pay to the Bank a termination fee in connection with such termination of such Letter of Credit in an amount equal to the product of (x) the Letter of Credit Fee Rate in effect pursuant to Section 1.1 hereof on the date of termination, (y) the Available Amount of such Letter of Credit (without regard to any temporary reductions thereof) and (z) a fraction, the numerator of which is equal to the number of days from and including the date of termination to and including the Stated Expiration Date and the denominator of which is 360 (the "Termination Fee"), payable on the date the Agreement is terminated.

(ii) Notwithstanding the foregoing and anything set forth herein or in the Agreement to the contrary, the City agrees not to permanently reduce the Available Amount prior to the Stated Expiration Date, without the payment by the City to the Bank of a reduction fee in connection with each and every permanent reduction of the Available Amount as set forth herein in an amount equal to the product of (A) the Letter of Credit Fee Rate in effect on the date of such reduction, (B) the difference between the Available Amount of such Letter of Credit (without regard to any temporary reductions thereof) prior to such reduction and the Available Amount (without regard to any temporary reductions thereof) after such reduction, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including the Stated Expiration Date, and the denominator of which is 360 (the "Reduction Fee"); *provided, however*, that in the event that (A) the short-term unenhanced ratings of the Bank falls below "P-1" (or its equivalent) by Moody's or "A-1" (or its equivalent) by S&P, (B) the Bank charges increased costs pursuant to Section 3.2 of the Agreement, or (C) all of the Bonds are converted to a Fixed Rate Mode, no Termination Fee or Reduction Fee pursuant to this Section 1.5 shall be required to be paid to the Bank.

ARTICLE I. MISCELLANEOUS

Section 2.1. Parties in Interest.

All of the terms and provisions of this First Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 2.2. Counterparts.

This First Amendment may be executed in counterparts, and all parties need not execute the same counterpart; however, no party shall be bound by this First Amendment until all parties have executed a counterpart. Facsimiles or pdf copies shall be effective as originals.

Section 2.3. Full Force and Effect of the Amended Agreement. Except as specifically waived or amended pursuant to this First Amendment, the terms of the Fee Letter Agreement shall continue in full force and effect and are hereby ratified and confirmed in all respects. As

used in the Reimbursement Agreement or other related documentation, the term "Fee Letter Agreement" shall mean the Fee Letter Agreement as amended by this First Amendment.

Section 2.4. Complete Agreement. THIS FIRST AMENDMENT AND THE FEE LETTER AGREEMENT REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN OR AMONG THE PARTIES.

Section 2.5. Governing Law. THE OBLIGATIONS OF THE BANK PURSUANT TO THIS FIRST AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CHOICE OF LAW RULES, AND THE OBLIGATIONS OF THE CITY PURSUANT TO THIS FIRST AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CHOICE OF LAW RULES.

Section 2.6. Headings. The headings, captions and arrangements used in this First Amendment are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify or modify the terms of this First Amendment, nor affect the meaning thereof.

Section 2.7. Representations. Each party hereto hereby represents and warrants to the other party hereto that this First Amendment has been duly authorized and validly executed by it and that the Fee Letter Agreement as further amended by this First Amendment constitutes its valid obligation enforceable in accordance with its terms. The City further represents and warrants that no Event of Default with respect to the City has occurred under the Reimbursement Agreement.

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

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION.

By: _____

Name: _____

Title: _____

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: _____