

EXHIBIT D

Second Amended Swap Agreement

DRAFT

**SECOND AMENDED AND RESTATED AGREEMENT
REGARDING INSURED SWAP TRANSACTION (CITY OF AUSTIN)**

THIS SECOND AMENDED AND RESTATED AGREEMENT REGARDING SWAP TRANSACTION (this “Agreement”) dated as of June 1, 2014, is entered into by and between ASSURED GUARANTY MUNICIPAL CORP. (formerly known as Financial Security Assurance, Inc.), a New York stock insurance company (“AGM”), and the CITY OF AUSTIN, TEXAS (the “City”), and amends and restates that certain Amended and Restated Agreement Regarding Insured Swap Transaction, dated as of May 1, 2012, by and between AGM and the City.

WHEREAS, AGM has previously issued a financial guaranty insurance policy number 205494-SWP (the “Swap Policy”), dated August 17, 2005, relating to a swap transaction (the “Swap Transaction”) between the City and Morgan Stanley Capital Services Inc. (the “Counterparty”), evidenced by a Confirmation dated July 2, 2004 with reference number AUCGV (the “Confirmation”), and governed by an ISDA Master Agreement dated as of July 2, 2004, including the Schedule and Credit Support Annex thereto (the “Master Agreement,” and together with the Confirmation, the “Swap Agreement”); and

WHEREAS, the Swap Transaction was entered into to hedge interest rate risk associated with the \$306,225,000 original principal amount of City of Austin, Texas Airport System Refunding Revenue Bonds, Series 2005 (the “Bonds”), which were insured by AGM under municipal bond insurance policy No. 205494-N (the “Bond Policy”); and

WHEREAS, the City has or is delivering one or more letters of credit (the “Letters of Credit”) issued by the Bank (as defined below) to further secure the Bonds and in connection therewith certain events may result in the Bank electing at some future date to cause the cancellation of the Bond Policy, and in connection therewith AGM, the City, Wells Fargo Bank, National Association, as paying and tender agent, and Sumitomo Mitsui Banking Corporation, acting through its New York Branch (the “Bank”) have entered into a Second Amended and Restated Insurance Policy Cancellation Agreement, dated as of June 1, 2014 (as such agreement may be hereafter amended, supplemented or otherwise modified, the “Cancellation Agreement”); and

WHEREAS, the Letters of Credit are being or have been issued pursuant to a Letter of Credit and Reimbursement Agreement entered into between the Bank and the City (the “Reimbursement Agreement”); and

WHEREAS, for the purposes of this Agreement, (i) the term “Letters of Credit” shall also include any “Direct-Pay Credit Facility” (as defined in the Ordinance) delivered in substitution therefor, (ii) the term “Bank” shall also include the issuer of any such Direct-Pay Credit Facility that is a party to the Cancellation Agreement, and (iii) the term “Reimbursement Agreement” shall also include any agreement hereafter entered into between the City and a Bank pursuant to which a Direct-Pay Credit Facility is issued in substitution of a then-existing Letter of Credit; and

WHEREAS, the City wishes to have the option to keep the Swap Transaction outstanding and insured by the Swap Policy, notwithstanding a cancellation of the Bond Policy; and

NOW, THEREFORE, in consideration of the agreement by AGM not to terminate the Swap Policy following a termination of the Bond Policy pursuant to the Cancellation Agreement and the other agreements set forth herein, the City does hereby agree and covenant with AGM as follows:

Section 1. *Reporting.* Following a termination of the Bond Policy pursuant to the Cancellation Agreement, the City shall provide the following to AGM: (i) on a monthly basis, a statement of the estimated aggregate mark-to-market value of the Swap Transaction in the form currently being provided to the City by the Counterparty and (ii) notice at such time, if any, as the aggregate mark-to-market value of the Swap Transaction is negative \$100,000 or an amount more favorable to the City within two (2) business days of that being the case (it being understood that such notice, if any, shall be based upon the monthly statement delivered pursuant to clause (i) hereinabove).

Section 2. *Termination.* Subject to Section 5 hereof, unless AGM directs or agrees otherwise, not later than the earlier of (a) ten (10) business days after the first date on which the estimated aggregate mark-to-market value of the Swap Transaction payable by the City is zero or on which such estimated value aggregate mark-to-market value is positive to the City (in each case as set forth in the reports delivered pursuant to Section 1 above), and (b) three (3) years of the date of the cancellation of the Bond Policy pursuant to the Cancellation Agreement, the City shall do one of the following:

(a) designate an Early Termination Date, or other optional termination, with respect to the Swap Transaction in accordance with the provisions of the Swap Agreement; or

(b) deliver to AGM the original Swap Policy together with an instrument from the Counterparty satisfactory to AGM deeming the Swap Transaction to no longer be an Insured Transaction under the Swap Agreement and releasing AGM from all further liability under the Swap Policy.

Section 3. *Not an Insurer-Directed Termination.* Enforcement of this Agreement by AGM shall not be deemed to constitute designation of an Early Termination Date by AGM for purpose of the Swap Agreement or the Swap Policy. Nothing herein shall otherwise limit or impair the rights granted to AGM under the Swap Agreement (including any right to designate an Early Termination Date as provided therein).

Section 4. *Swap Agreement Modification; Notional Amount Adjustment.* Notwithstanding anything to the contrary in the Swap Agreement or the transaction documents relating to the Bonds, the City hereby agrees and covenants to AGM that the Notional Amount shall not exceed the outstanding principal amount of the Bonds. In accordance with the foregoing, the City agrees and covenants to AGM that it shall not redeem, defease, refund, prepay or repurchase (other than to satisfy any scheduled mandatory sinking fund requirements that correspond to scheduled reductions in the Notional Amount of the Swap Transaction) any portion of the Bonds unless

prior to or at the time of such redemption, defeasance, refunding, prepayment or repurchase, the City terminates all or a portion of the Swap Transaction so that the Notional Amount does not exceed the principal amount of the Bonds immediately following any such redemption, defeasance, refunding, prepayment or repurchase, unless AGM otherwise consents in writing to the Notional Amount not being so reduced. In addition (subject to Section 5 hereof), the City agrees that in the event any reimbursement obligation in respect of the principal amount of any Bonds (including Bank Bonds) owed a Bank under a Reimbursement Agreement is payable within a term of less than five years, the City shall terminate a portion of the Swap Transaction in a like Notional Amount at the time any such payment is made by the City to the Bank.

Section 5. *Effectiveness.* This Agreement shall become effective when each party hereto has delivered executed counterparts of this Agreement to the other party. Notwithstanding any other provision of this Agreement to the contrary, the parties hereto acknowledge and agree that in the event the Bond Policy is canceled as a result of the occurrence of an Insurer Event of Default (as defined in the Reimbursement Agreement), the City shall not be obligated to perform its obligations set forth in Section 2 or the last sentence of Section 4 of this Agreement.

Section 6. *Miscellaneous.*

(a) *Notices.* All notices and other communications provided for under this Agreement shall be delivered to the address set forth below or to such other address as shall be designated by the recipient in a written notice to the other party or parties hereto.

If to AGM:

Assured Guaranty Municipal Corp.
31 West 52nd Street
New York, New York 10019
Attention: Risk Management Department
(with a copy to the attention of the General
Counsel)
Telecopy No.: 212-581-3268
Email: munihealth@assuredguaranty.com

If to the City:

City of Austin, Texas
700 Lavaca, Suite 940
Austin, Texas 78701
Attention: City Treasurer
Email: art.alfaro@austintexas.gov

(b) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York, except that the laws of the State of Texas shall govern all matters relating to the power, authority and obligations of the City.

(c) *Definitions.* Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in the Swap Agreement or the Swap Policy.

(d) *Due Authorization, Etc.* Each party to this Agreement represents to the other party that such party has full power and authority to enter into and perform this

Agreement, and that this Agreement has been duly authorized, executed and delivered by such party and constitutes the valid, binding and enforceable legal agreement of such party.

(e) *Assignments.* This Agreement may not be assigned by either party hereto without the express written consent of the other party hereto. Any assignment made in violation of this Agreement shall be null and void.

(f) *Amendments.* Amendments of this Agreement shall be in writing signed by each party hereto.

(g) *Counterparts.* This Agreement may be executed in counterparts by the parties hereto, and all such counterparts shall constitute one and the same instrument. This Agreement may be delivered by the exchange of executed signature pages by facsimile transmission or by email 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 the originally signed version of such signature page.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of this ___ day of _____, 2014

ASSURED GUARANTY MUNICIPAL CORP.

By: _____
Name: _____
Title: _____

CITY OF AUSTIN, TEXAS

By: _____
Name: _____
Title: _____