

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A SUBSTITUTE LETTER OF CREDIT REIMBURSEMENT AGREEMENT IN RELATION TO THE “CITY OF AUSTIN, TEXAS WATER AND WASTEWATER SYSTEM VARIABLE RATE REVENUE REFUNDING BONDS, SERIES 2008”; 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 expired on May 15, 2011.

(C) Council reviewed and approved the execution of a Letter of Credit Reimbursement Agreement, dated as of May 1, 2011 (2011 Reimbursement Agreement), by and among the City and Sumitomo Mitsui Banking Corporation, as agent and as bank, and The Bank of Tokyo – Mitsubishi UFJ, Ltd., as bank, effective on May 9, 2011, and a Fee Letter, dated May 9, 2011, among the City, the Agent and the Banks (2011 Fee Letter), and the City Manager executed and delivered the 2011 Reimbursement Agreement and the 2011 Fee Letter in substitution for the Initial Liquidity Facility.

(D) Council reviewed and approved the execution of a Letter of Credit Reimbursement Agreement, dated as of May 7, 2015 (2015 Reimbursement Agreement), by and between the City and Citibank, N.A., as bank, effective on May 7, 2015, and the City Manager executed and delivered the 2015 Reimbursement Agreement in substitution for the 2011 Reimbursement Agreement.

(E) The letter of credit delivered in accordance with 2015 Reimbursement Agreement expires on October 15, 2018, and the City is required by the Ordinance to provide a substitute liquidity facility to support the Bonds on or before its expiration.

(F) A Letter of Credit Reimbursement Agreement, dated as of October 1, 2018 (2018 Reimbursement Agreement), by and between the City and Barclays Bank PLC (Bank), and a Fee Agreement, October 15, 2018 (2018 Fee Agreement), by and between the City and the Bank, each dated to be effective October 15, 2018 is submitted to Council, with this Ordinance, for approval and execution.

(G) Council finds and determines that the 2018 Reimbursement Agreement and the 2018 Fee Agreement should be approved and Council should authorize the execution of the 2018 Reimbursement Agreement and the 2018 Fee Agreement.

(H) Council finds and determines that in connection with the approval of the 2018 Reimbursement Agreement and the corresponding Letter of Credit from the Bank (collectively with the 2018 Reimbursement Agreement referred to as the “Substitute Liquidity Facility”) and, in connection with these documents, a Third Amendment to the Tender Agent Agreement (Third Amendment to the Tender Agent Agreement) and a Third Amendment to the Remarketing Agreement (Third Amendment to the Remarketing Agreement) should be approved and Council should authorize its execution.

(I) 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 the Master Ordinance and the Supplements (as defined in the Master Ordinance) that authorized the issuance of the currently outstanding Previously Issued Parity Water/Wastewater Obligations (the “Prior Supplements”), which Previously Issued Parity Water/Wastewater Obligations consist of the outstanding (1) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2004A”, (2) the Bonds, 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), (3) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2009”, (4) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2009A”, (5) “City of Austin, Texas,

Water and Wastewater System Revenue Bonds, Series 2010”, (6) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2010A”, (7) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2010B (Direct Subsidy-Build America Bonds)”, (8) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2011”, (9) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2012”, (10) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2013A”, (11) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2014”, (12) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2015A”, (13) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Taxable Series 2015B”, (14) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2016”, (15) “City of Austin, Texas, Water and Wastewater System Revenue Bonds, Series 2016A”, (16) “City of Austin, Texas, Water and Wastewater System Revenue Refunding Bonds, Series 2017” and (17) “City of Austin, Texas, Water and Wastewater System Revenue Bonds, Series 2017A” each of which were authorized for issuance by the Master Ordinance and the Prior Supplements.

(J) Council finds and determines that the letter of credit to be issued under the terms of the 2018 Reimbursement Agreement (Letter of Credit) will constitute a Liquidity Facility and a Credit Facility for purposes of the Supplemental Ordinance.

(K) Council finds and determines that the City 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 H above) relating to the Water/Wastewater System. Capitalized terms used in this paragraph shall have the meanings assigned in the Ordinance.

PART 2. APPROVAL AND AUTHORIZATION FOR EXECUTION.

(A) Council approves and authorizes the 2018 Reimbursement Agreement substantially in the form attached as Exhibit A.

(B) Council approves and authorizes the 2018 Fee Agreement substantially in the form attached as Exhibit B.

(C) Council approves and authorizes the Third Amendment to the Tender Agent Agreement substantially in the form attached as Exhibit C.

(D) Council approves and authorizes the Third 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, and City Attorney are authorized and directed to negotiate, execute and deliver the 2018 Reimbursement Agreement, the 2018 Fee Agreement, the Third Amendment to the Tender Agent Agreement and the Third 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 is authorized to attest such signature or signatures, if so required, and affix the seal of the City to, if necessary, the 2018 Reimbursement Agreement, the 2018 Fee Agreement, the Third Amendment to the Tender Agent Agreement and/or the Third 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, 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 expiration date of the existing letter of credit that was issued in support of the Bonds pursuant to the 2015 Reimbursement Agreement, that may have occurred prior to the date of this ordinance, are ratified.

PART 4. FACILITY FEE.

Council approves and authorizes payment of the Facility Fee described in the 2018 Fee Agreement.

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 LLC, 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. EFFECTIVE DATE.

The ordinance takes effect on _____, 2018.

PASSED AND APPROVED

_____, 2018

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Steve Adler
Mayor

APPROVED:

ATTEST:

Anne L. Morgan
City Attorney

Jannette S. Goodall
City Clerk

EXHIBIT A

2018 Reimbursement Agreement

DRAFT

EXHIBIT B

2018 Fee Agreement

DRAFT

EXHIBIT C

Third Amendment to the Tender Agent Agreement

DRAFT

EXHIBIT D

Third Amendment to the Remarketing Agreement

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