

ORDINANCE NO. _____

1 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUSTIN, TEXAS
2 AUTHORIZING THE ISSUANCE AND SALE OF CITY OF AUSTIN, TEXAS
3 PUBLIC IMPROVEMENT REFUNDING BONDS, SERIES 2008, IN AN
4 AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$175,000,000;
5 ESTABLISHING PARAMETERS WITH RESPECT TO THE SALE OF THE
6 BONDS; DELEGATING TO THE DESIGNATED CITY OFFICIALS THE
7 AUTHORITY TO EFFECT THE SALE OF THE BONDS; ENACTING OTHER
8 PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN
9 IMMEDIATE EFFECTIVE DATE

10
11 WHEREAS, the City Council of the City of Austin, Texas (the "City" or the
12 "Issuer") has found and determined that the outstanding obligations described in
13 Schedule I attached to this ordinance (the "Refunded Obligations") are eligible to be
14 refunded to achieve a debt service savings with respect to Refunded Obligations; and

15
16 WHEREAS, the bonds hereinafter authorized are to be issued and delivered
17 pursuant to the laws of the State of Texas, including specifically Chapter 1207, Texas
18 Government Code, for the purposes set forth above; and

19
20 WHEREAS, because of fluctuating conditions in the municipal bond market, the
21 City Council has determined to delegate to an Authorized Representative (as defined
22 herein) the authority to effect the sale of the bonds hereinafter authorized for the purpose
23 of providing for the refunding of all or a portion of the Refunded Obligations described in
24 Schedule I, subject to the parameters hereinafter described; and

25
26 WHEREAS, the meeting at which this Ordinance is considered is open to the
27 public as required by law, and the public notice of the time, place and purpose of said
28 meeting was given as required by Chapter 551, Texas Government Code, as amended.
29 Now, Therefore,

30
31 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

32
33 1. BONDS TO BE SOLD; SERIES DESIGNATION. That the bond or bonds of
34 the City to be called "City of Austin, Texas Public Improvement Refunding Bonds, Series
35 2008" (the "Bonds" or the "Series 2008 Bonds"), be issued under and by virtue of the
36 Constitution and laws of the State of Texas and the Charter of the City, in an aggregate
37 principal amount not to exceed \$175,000,000 for the purpose of refunding the Refunded
38 Obligations. The City Manager and the Chief Financial Officer of the City each is

1 designated as an "Authorized Representative" of the City, and each is hereby authorized,
2 severally but not jointly, to effect the sale of the Bonds and the refunding of the Refunded
3 Obligations, subject to the parameters set forth in this Ordinance.
4

5 2. DATE, DENOMINATIONS, NUMBER, MATURITIES AND TERMS OF
6 BONDS. (a) That initially there shall be issued, sold, and delivered hereunder fully
7 registered bonds, without interest coupons, numbered consecutively from R-1 upward,
8 payable to the respective initial registered owners thereof, or to the registered assignee or
9 assignees of the Bonds or any portion or portions thereof, in the denomination of \$5,000
10 or any integral multiple thereof (an "Authorized Denomination"), maturing not later than
11 September 1, 2028, payable serially or otherwise on the dates, in the years and in the
12 principal amounts, and dated, all as set forth in the Purchase Agreement (hereinafter
13 defined).
14

15 (b) It is hereby found and determined to be in the best interests of the City for the
16 Bonds to be issued under this Ordinance to be sold through a negotiated sale pursuant to
17 the procedures set forth herein. An Authorized Representative, acting for and on behalf
18 of the City, is authorized to enter into a bond purchase agreement (the "Purchase
19 Agreement") with Lehman Brothers, as representative for the underwriters named in the
20 Purchase Agreement (the "Underwriters"), in the standard form previously approved by
21 the City Council. The Bonds shall be sold to the Underwriters at such price, and subject
22 to such terms and conditions as set forth in the Purchase Agreement, as shall be
23 determined by the Authorized Representative pursuant to subsection (c) below. The
24 authority of an Authorized Representative to execute the Purchase Agreement shall
25 expire if the Purchase Agreement has not been executed and delivered by the City and by
26 the Underwriters (acting through their duly designated representative) by 10:00 a.m.,
27 Thursday, July 10, 2008. Any finding or determination made by an Authorized
28 Representative relating to the issuance and sale of the Bonds and the execution of the
29 Purchase Agreement in connection therewith shall have the same force and effect as a
30 finding or determination made by the City Council.
31

32 (c) As authorized by Chapter 1207, each Authorized Representative is hereby
33 authorized, appointed, and designated to act on behalf of the City in selling and
34 delivering the Bonds and carrying out the other procedures specified in this Ordinance,
35 including determining and fixing the date of the Bonds, any additional or different
36 designation or title by which the Bonds shall be known, the aggregate principal amount
37 of the Bonds, the date of delivery of the Bonds, the price at which the Bonds will be sold,
38 the years in which the Bonds will mature, the principal amount of Bonds to mature in
39 each of such years, that portion of the Bonds, if any, to be issued as capital appreciation
40 bonds and the maturity amount of any Bonds issued as capital appreciation bonds, the
41 rate of interest to be borne by or accrue on each such maturity, the interest payment

1 periods, the dates, price, and terms upon and at which the Bonds shall be subject to
2 redemption prior to maturity at the option of the City, as well as any mandatory sinking
3 fund redemption provisions, and all other matters relating to the issuance, sale, and
4 delivery of the Bonds, and the refunding of the Refunded Obligations, including, without
5 limitation, obtaining a municipal bond insurance policy in support of all or any portion of
6 the Bonds, all of which shall be specified in the Purchase Agreement; provided, that (i)
7 the price to be paid for the Bonds shall not be less than 95% of the aggregate original
8 principal amount thereof, plus accrued interest thereon from the date of their delivery, (ii)
9 none of the Bonds shall bear interest (or, in the case of Bonds, if any, issued as capital
10 appreciation bonds, producing a yield) at a rate greater than 10.00% per annum, and (iii)
11 the Bonds shall not be sold for the purpose of refunding the Refunded Obligations unless
12 the refunding of the Refunded Obligations results in achieving the minimum net present
13 value debt service savings threshold described in Section 17 of this Ordinance. The
14 amount of the savings to be realized from the refunding of the Refunded Obligations, on
15 both a gross and a present value basis, shall be set forth in a certificate (further described
16 in Section 17 of this Ordinance) to be executed by the Chief Financial Officer of the City.
17 In addition, an Authorized Representative is authorized to determine the principal amount
18 of Bonds to be issued and sold, if any, to provide for the refunding of Refunded
19 Obligations; provided, that the determination by an Authorized Representative to issue
20 Bonds for the purpose of refunding Refunded Obligations shall be subject to the
21 parameters set forth in Section 17 hereof.

22
23 (d) The City Manager and the Chief Financial Officer of the City are authorized
24 and directed to provide for and oversee the preparation of a preliminary and final official
25 statement in connection with the issuance of the Bonds, and to approve such preliminary
26 and final official statement and deem such preliminary official statement final in
27 compliance with the Rule and to provide it to the Underwriters of the Bonds in
28 compliance with the Rule.

29
30 Section 3. REDEMPTION. (a) That the Bonds may be subject to redemption
31 prior to their scheduled maturities at the option of the City, on the dates and in the
32 manner as provided in the Purchase Agreement. Should the Purchase Agreement provide
33 for the redemption of the Bonds prior to their scheduled maturities at the option of the
34 City, if less than all of the Bonds are to be redeemed by the City, the City shall determine
35 the maturity or maturities and the amounts thereof to be redeemed and shall direct the
36 Paying Agent/Registrar to call by lot Bonds, or portions thereof, within such maturity or
37 maturities and in such principal amounts, for redemption; provided, that during any
38 period in which ownership of the Bonds is determined only by a book entry at a securities
39 depository for the Bonds, if fewer than all of the Bonds of the same maturity and bearing
40 the same interest rate are to be redeemed, the particular Bonds of such maturity and

bearing such interest rate shall be selected in accordance with the arrangements between the City and the securities depository.

(b) Should the Purchase Agreement provide for the mandatory sinking fund redemption of the Bonds, the terms and conditions governing any such mandatory sinking fund redemption and the payment of sinking fund payments relating thereto shall be as set forth in the Purchase Agreement.

(c) At least 30 days prior to the date fixed for any such redemption the City shall cause a written notice of such redemption to be deposited in the United States Mail, first-class postage prepaid, addressed to each such registered owner at his address shown on the Registration Books (hereinafter defined) of the Paying Agent/Registrar. By the date fixed for any such redemption, due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Series 2008 Bonds or the portions thereof which are to be so redeemed, plus accrued interest thereon to the date fixed for redemption. If such notice of redemption is given, and if due provision for such payment is made, all as provided above, the Series 2008 Bonds or the portions thereof which are to be so redeemed, thereby automatically shall be redeemed prior to their scheduled maturities, and shall not bear interest after the date fixed for their redemption, and shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price plus accrued interest to the date fixed for redemption from the Paying Agent/Registrar out of the funds provided for such payment. The Paying Agent/Registrar shall record in the Registration Books all such redemptions of principal of the Series 2008 Bonds or any portion thereof. If a portion of any Series 2008 Bond shall be redeemed a substitute Series 2008 Bond or Series 2008 Bonds having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the registered owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the City, all as provided in this Ordinance. In addition to the foregoing, the City shall cause the Paying Agent/Registrar to give notice of any such redemption in the manner set forth in Section 5 hereof. The failure to cause such notice to be given, however, or any defect therein, shall not affect the validity or effectiveness of such redemption.

4. INTEREST. That the Series 2008 Bonds of each maturity shall bear interest calculated on the basis of a 360-day year composed of twelve 30-day months from the dates specified in the FORM OF BOND set forth in this Ordinance, to their respective dates of maturity at the rates set forth in the Purchase Agreement. Interest on the Bonds shall be payable on the dates set forth in the Purchase Agreement, until the maturity or prior redemption of the Bonds.

1
2 5. ADDITIONAL CHARACTERISTICS OF THE BONDS. (a) That the City
3 shall keep or cause to be kept at the designated corporate trust office in Houston, Texas
4 (the "Designated Payment/Transfer Office") of U.S. Bank National Association (the
5 "Paying Agent/Registrar"), or such other bank, trust company, financial institution, or
6 other agency named in accordance with the provisions of (g) below, books or records of
7 the registration and transfer of the Series 2008 Bonds (the "Registration Books"), and the
8 City hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep
9 such books or records and make such transfers and registrations under such reasonable
10 regulations as the City and Paying Agent/Registrar may prescribe; and the Paying
11 Agent/Registrar shall make such transfers and registrations as herein provided. It shall be
12 the duty of the Paying Agent/Registrar to obtain from the registered owner and record in
13 the Registration Books the address of such registered owner of each bond to which
14 payments with respect to the Series 2008 Bonds shall be mailed, as herein provided. The
15 City or its designee shall have the right to inspect the Registration Books during regular
16 business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar
17 shall keep the Registration Books confidential and, unless otherwise required by law,
18 shall not permit their inspection by any other entity. Registration of each Series 2008
19 Bond may be transferred in the Registration Books only upon presentation and surrender
20 of such bond to the Paying Agent/Registrar for transfer of registration and cancellation,
21 together with proper written instruments of assignment, in form and with guarantee of
22 signatures satisfactory to the Paying Agent/Registrar, evidencing the assignment of such
23 bond, or any portion thereof in any integral multiple of \$5,000, to the assignee or
24 assignees thereof, and the right of such assignee or assignees to have such bond or any
25 such portion thereof registered in the name of such assignee or assignees. Upon the
26 assignment and transfer of any Series 2008 Bond or any portion thereof, a new substitute
27 bond or bonds shall be issued in exchange therefor in the manner herein provided.
28

29 (b) The entity in whose name any Series 2008 Bond shall be registered in the
30 Registration Books at any time shall be treated as the absolute owner thereof for all
31 purposes of this Ordinance, whether or not such bond shall be overdue, and the City and
32 the Paying Agent/Registrar shall not be affected by any notice to the contrary; and
33 payment of, or on account of, the principal of, premium, if any, and interest on any such
34 bond shall be made only to such registered owner. All such payments shall be valid and
35 effectual to satisfy and discharge the liability upon such bond to the extent of the sum or
36 sums so paid.
37

38 (c) The City hereby further appoints the Paying Agent/Registrar to act as the
39 paying agent for paying the principal of and interest on the Series 2008 Bonds, and to act
40 as its agent to exchange or replace Series 2008 Bonds, all as provided in this Ordinance.
41 The Paying Agent/Registrar shall keep proper records of all payments made by the City

1 and the Paying Agent/Registrar with respect to the Series 2008 Bonds, and of all
2 exchanges thereof, and all replacements thereof, as provided in this Ordinance.
3

4 (d) Each Series 2008 Bond may be exchanged for fully registered bonds in the
5 manner set forth herein. Each bond issued and delivered pursuant to this Ordinance, to
6 the extent of the unredeemed principal amount thereof, may, upon surrender thereof at
7 the Designated Payment/Transfer Office of the Paying Agent/Registrar, together with a
8 written request therefor duly executed by the registered owner or the assignee or
9 assignees thereof, or its or their duly authorized attorneys or representatives, with
10 guarantee of signatures satisfactory to the Paying Agent/Registrar, at the option of the
11 registered owner or such assignee or assignees, as appropriate, be exchanged for fully
12 registered bonds, without interest coupons, in the form prescribed in the FORM OF
13 BOND, in the denomination of \$5,000, or any integral multiple thereof (subject to the
14 requirement hereinafter stated that each substitute bond shall have a single stated maturity
15 date), as requested in writing by such registered owner or such assignee or assignees, in
16 an aggregate principal amount equal to the unredeemed principal amount of any Series
17 2008 Bond or Series 2008 Bonds so surrendered, and payable to the appropriate
18 registered owner, assignee, or assignees, as the case may be. If a portion of any Series
19 2008 Bond shall be redeemed prior to its scheduled maturity as provided herein, a
20 substitute bond or bonds having the same maturity date, bearing interest at the same rate,
21 in the denomination or denominations of any integral multiple of \$5,000 at the request of
22 the registered owner, and in an aggregate principal amount equal to the unredeemed
23 portion thereof, will be issued to the registered owner upon surrender thereof for
24 cancellation. If any Series 2008 Bond or portion thereof is assigned and transferred, each
25 bond issued in exchange therefor shall have the same principal maturity date and bear
26 interest at the same rate as the bond for which it is being exchanged. Each substitute
27 bond shall bear a letter and/or number to distinguish it from each other bond. The Paying
28 Agent/Registrar shall exchange or replace Series 2008 Bonds as provided herein, and
29 each fully registered bond or bonds delivered in exchange for or replacement of any
30 Series 2008 Bond or portion thereof as permitted or required by any provision of this
31 Ordinance shall constitute one of the Series 2008 Bonds for all purposes of this
32 Ordinance, and may again be exchanged or replaced. It is specifically provided,
33 however, that any Series 2008 Bond delivered in exchange for or replacement of another
34 Series 2008 Bond prior to the first scheduled interest payment date on the Series 2008
35 Bonds (as stated on the face thereof) shall be dated the same date as such Series 2008
36 Bond, but each substitute bond so delivered on or after such first scheduled interest
37 payment date shall be dated as of the interest payment date preceding the date on which
38 such substitute bond is delivered, unless such substitute bond is delivered on an interest
39 payment date, in which case it shall be dated as of such date of delivery; provided,
40 however, that if at the time of delivery of any substitute bond the interest on the bond for
41 which it is being exchanged has not been paid, then such substitute bond shall be dated as

1 of the date to which such interest has been paid in full. On each substitute bond issued in
2 exchange for or replacement of any Series 2008 Bond or Series 2008 Bonds issued under
3 this Ordinance there shall be printed thereon a Paying Agent/Registrar's Authentication
4 Certificate, in the form hereinafter set forth in the FORM OF BOND (the "Authentication
5 Certificate"). An authorized representative of the Paying Agent/Registrar shall, before
6 the delivery of any such substitute bond, date such substitute bond in the manner set forth
7 above, and manually sign and date the Authentication Certificate, and no such substitute
8 bond shall be deemed to be issued or outstanding unless the Authentication Certificate is
9 so executed. The Paying Agent/Registrar promptly shall cancel all Series 2008 Bonds
10 surrendered for exchange or replacement. No additional ordinances, orders, or
11 resolutions need be passed or adopted by the City Council or any other body or person so
12 as to accomplish the foregoing exchange or replacement of any Series 2008 Bond or
13 portion hereof, and the Paying Agent/Registrar shall provide for the printing, execution,
14 and delivery of the substitute bonds in the manner prescribed herein. Pursuant to Chapter
15 1206, Texas Government Code, the duty of exchange or replacement of any Series 2008
16 Bond as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the
17 execution of the Authentication Certificate, the exchanged or replaced bond shall be
18 valid, incontestable, and enforceable in the same manner and with the same effect as the
19 Series 2008 Bonds which originally were delivered pursuant to this Ordinance, approved
20 by the Attorney General, and registered by the Comptroller of Public Accounts. Neither
21 the City nor the Paying Agent/Registrar shall be required to transfer or exchange any
22 Series 2008 Bond so selected for redemption, in whole or in part, within 45 calendar days
23 of the date fixed for redemption; provided, however, such limitation of transfer shall not
24 be applicable to an exchange by the registered owner of the uncalled principal of a Series
25 2008 Bond.

26
27 (e) All Series 2008 Bonds issued in exchange or replacement of any other Series
28 2008 Bond or portion thereof, (i) shall be issued in fully registered form, without interest
29 coupons, with the principal of and interest on such Series 2008 Bonds to be payable only
30 to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities,
31 (iii) may be transferred and assigned, (iv) may be exchanged for other Series 2008 Bonds,
32 (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) the principal of
33 and interest on the Series 2008 Bonds shall be payable, all as provided, and in the manner
34 required or indicated, in the FORM OF BOND.

35
36 (f) The City shall pay the Paying Agent/Registrar's reasonable and customary fees
37 and charges for making transfers of Series 2008 Bonds, but the registered owner of any
38 Series 2008 Bond requesting such transfer shall pay any taxes or other governmental
39 charges required to be paid with respect thereto. The registered owner of any Series 2008
40 Bond requesting any exchange shall pay the Paying Agent/Registrar's reasonable and
41 standard or customary fees and charges for exchanging any such bond or portion thereof,

1 together with any taxes or governmental charges required to be paid with respect thereto,
2 all as a condition precedent to the exercise of such privilege of exchange, except,
3 however, that in the case of the exchange of an assigned and transferred bond or bonds or
4 any portion or portions thereof in any integral multiple of \$5,000, and in the case of the
5 exchange of the unredeemed portion of a Series 2008 Bond which has been redeemed in
6 part prior to maturity, as provided in this Ordinance, such fees and charges will be paid
7 by the City. In addition, the City hereby covenants with the registered owners of the
8 Series 2008 Bonds that it will (i) pay the reasonable and standard or customary fees and
9 charges of the Paying Agent/Registrar for its services with respect to the payment of the
10 principal of and interest on the Series 2008 Bonds, when due, and (ii) pay the fees and
11 charges of the Paying Agent/Registrar for services with respect to the transfer or
12 registration of Series 2008 Bonds solely to the extent above provided, and with respect to
13 the exchange of Series 2008 Bonds solely to the extent above provided.
14

15 (g) The City covenants with the registered owners of the Series 2008 Bonds that at
16 all times while the Series 2008 Bonds are outstanding the City will provide a competent
17 and legally qualified bank, trust company, or other entity duly qualified and legally
18 authorized to act as and perform the services of Paying Agent/Registrar for the Series
19 2008 Bonds under this Ordinance, and that the Paying Agent/Registrar will be one entity.
20 The City reserves the right to, and may, at its option, change the Paying Agent/Registrar
21 upon not less than 60 days written notice to the Paying Agent/Registrar. In the event that
22 the entity at any time acting as Paying Agent/Registrar (or its successor by merger,
23 acquisition, or other method) should resign or otherwise cease to act as such, the City
24 covenants that promptly it will appoint a competent and legally qualified national or state
25 banking institution which shall be a corporation organized and doing business under the
26 laws of the United States of America or of any state, authorized under such laws to
27 exercise trust powers, subject to supervision or examination by federal or state authority,
28 and whose qualifications substantially are similar to the previous Paying Agent/Registrar
29 to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying
30 Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver
31 the Registration Books (or a copy thereof), along with all other pertinent books and
32 records relating to the Series 2008 Bonds, to the new Paying Agent/Registrar designated
33 and appointed by the City. Upon any change in the Paying Agent/Registrar, the City
34 promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar
35 to each registered owner of the Series 2008 Bonds, by United States Mail, first-class
36 postage prepaid, which notice also shall give the address of the new Paying
37 Agent/Registrar. By accepting the position and performing as such, each Paying
38 Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a
39 certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.
40

1 6. FORM OF BONDS. That the form of all Series 2008 Bonds, including the
2 form of the Comptroller's Registration Certificate to accompany the Series 2008 Bonds
3 on the initial delivery thereof, the form of the Authentication Certificate, and the Form of
4 Assignment to be printed on each of the Series 2008 Bonds, shall be, respectively,
5 substantially in the form set forth in Exhibit A to this Ordinance, with such appropriate
6 variations, omissions, or insertions as are permitted or required by this Ordinance.
7

8 7. LEVY OF TAX; INTEREST AND SINKING FUND. (a) That a special fund
9 or account, to be designated the "City of Austin, Texas Series 2008 Public Improvement
10 Refunding Bonds Interest and Sinking Fund" (the "Interest and Sinking Fund") is hereby
11 created and shall be established and maintained at an official depository of the City. The
12 Interest and Sinking Fund shall be kept separate and apart from all other funds and
13 accounts of the City, and shall be used only for paying the interest on and principal of the
14 Series 2008 Bonds. All ad valorem taxes levied and collected for and on account of the
15 Series 2008 Bonds shall be deposited, as collected, to the credit of the Interest and
16 Sinking Fund. During each year while any Series 2008 Bond is outstanding and unpaid,
17 the City Council of the City shall compute and ascertain the rate and amount of ad
18 valorem tax, based on the latest approved tax rolls of the City, with full allowances being
19 made for tax delinquencies and costs of tax collections, which will be sufficient to raise
20 and produce the money required to pay the interest on the Series 2008 Bonds as such
21 interest comes due, and to provide a sinking fund to pay the principal of the Series 2008
22 Bonds as such principal matures, but never less than 2% of the outstanding principal
23 amount of the Series 2008 Bonds as a sinking fund each year. Said rate and amount of ad
24 valorem tax is hereby ordered to be levied and is hereby levied against all taxable
25 property in the City for each year while any Series 2008 Bond is outstanding and unpaid,
26 and said ad valorem tax shall be assessed and collected each such year and deposited to
27 the credit of the Interest and Sinking Fund. Said ad valorem taxes necessary to pay the
28 interest on and principal of the Series 2008 Bonds, as such interest comes due, and such
29 principal matures, are hereby pledged for such purpose, within the limit prescribed by
30 law. Money in the Interest and Sinking Fund, at the option of the City, may be invested
31 in such securities or obligations as permitted under applicable law and the City's
32 investment policy. Any securities or obligations in which money is so invested shall be
33 kept and held in trust for the benefit of the owners of the Series 2008 Bonds and shall be
34 sold and the proceeds of sale shall be timely applied to the making of all payments
35 required to be made from the Interest and Sinking Fund. Interest and income derived
36 from the investment of money in the Interest and Sinking Fund shall be credited thereto.
37

38 (b) Chapter 1208, Texas Government Code, applies to the issuance of the Series
39 2008 Bonds and the pledge of ad valorem taxes made under Section 7(a) of this
40 Ordinance, and such pledge is therefore valid, effective, and perfected. If Texas law is
41 amended at any time while the Series 2008 Bonds are outstanding and unpaid such that

1 the pledge of ad valorem taxes made by the City under Section 7(a) of this Ordinance is
2 to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code,
3 then in order to preserve to the registered owners of the Series 2008 Bonds the perfection
4 of the security interest in said pledge, the City agrees to take such measures as it
5 determines are reasonable and necessary under Texas law to comply with the applicable
6 provisions of Chapter 9, Texas Business & Commerce Code, and enable a filing to
7 perfect the security interest in said pledge to occur.

8
9 **8. DAMAGED, LOST, STOLEN OR DESTROYED BONDS.** (a) That in the
10 event any outstanding Series 2008 Bond is damaged, mutilated, lost, stolen, or destroyed,
11 the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new bond
12 of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost,
13 stolen, or destroyed Series 2008 Bond, in replacement for such Series 2008 Bond in the
14 manner hereinafter provided.

15
16 (b) Application for replacement of damaged, mutilated, lost, stolen, or destroyed
17 Series 2008 Bonds shall be made to the Paying Agent/Registrar. In every case of loss,
18 theft, or destruction of a Series 2008 Bond, the applicant for a replacement bond shall
19 furnish to the City and to the Paying Agent/Registrar such security or indemnity as may
20 be required by them to save each of them harmless from any loss or damage with respect
21 thereto. Also, in every case of loss, theft, or destruction of a Series 2008 Bond, the
22 applicant shall furnish to the City and to the Paying Agent/Registrar evidence to their
23 satisfaction of the loss, theft, or destruction of such Series 2008 Bond, as the case may be.
24 In every case of damage or mutilation of a Series 2008 Bond, the applicant shall
25 surrender to the Paying Agent/Registrar for cancellation the Series 2008 Bond so
26 damaged or mutilated.

27
28 (c) Notwithstanding the foregoing provisions of this Section, in the event any such
29 Series 2008 Bond shall have matured, and no default has occurred which is then
30 continuing in the payment of the principal of, redemption premium, if any, or interest on
31 the Series 2008 Bond, the City may authorize the payment of the same (without surrender
32 thereof except in the case of a damaged or mutilated Series 2008 Bond) instead of issuing
33 a replacement Series 2008 Bond, provided security or indemnity is furnished as above
34 provided in this Section.

35
36 (d) Prior to the issuance of any replacement bond, the Paying Agent/Registrar
37 shall charge the owner of such Series 2008 Bond with all legal, printing, and other
38 expenses in connection therewith. Every replacement bond issued pursuant to the
39 provisions of this Section by virtue of the fact that any Series 2008 Bond is lost, stolen, or
40 destroyed shall constitute a contractual obligation of the City whether or not the lost,
41 stolen, or destroyed Series 2008 Bond shall be found at any time, or be enforceable by

1 anyone, and shall be entitled to all the benefits of this Ordinance equally and
2 proportionately with any and all other Series 2008 Bonds duly issued under this
3 Ordinance.
4

5 (e) In accordance with Chapter 1206, Texas Government Code, this Section of this
6 Ordinance shall constitute authority for the issuance of any such replacement bond
7 without necessity of further action by the governing body of the City or any other body or
8 person, and the duty of the replacement of such bonds is hereby authorized and imposed
9 upon the Paying Agent/Registrar, subject to the conditions imposed by this Section 8 of
10 this Ordinance, and the Paying Agent/Registrar shall authenticate and deliver such bonds
11 in the form and manner and with the effect, as provided in Section 5(d) of this Ordinance
12 for Series 2008 Bonds issued in exchange for other Series 2008 Bonds.
13

14 9. SUBMISSION OF PROCEEDINGS TO ATTORNEY GENERAL. That the
15 Mayor or the designee thereof is hereby authorized to have control of the Series 2008
16 Bonds and all necessary records and proceedings pertaining to the Series 2008 Bonds
17 pending their delivery and their investigation, examination and approval by the Attorney
18 General of the State of Texas, and their registration by the Comptroller of Public
19 Accounts of the State of Texas. Upon registration of the Series 2008 Bonds, said
20 Comptroller of Public Accounts (or a deputy designated in writing to act for said
21 Comptroller) shall manually sign the Comptroller's Registration Certificate
22 accompanying the Series 2008 Bonds, and the seal of said Comptroller shall be
23 impressed, or placed in facsimile, on each such certificate. After registration by said
24 Comptroller, delivery of the Bonds shall be made to the representative for the
25 underwriters named in Section 10 below under and subject to the general supervision and
26 direction of the Mayor, against receipt by the City of all amounts due to the City under
27 the terms of sale. The City Council hereby authorizes the payment of the fee of the
28 Office of the Attorney General of the State of Texas for the examination of the
29 proceedings relating to the issuance of the Series 2008 Bonds, in the amount determined
30 in accordance with the provisions of Section 1202.004, Texas Government Code.
31

32 10. OFFICIAL STATEMENT. That the "Preliminary Official Statement"
33 prepared in connection with the sale of the Bonds, in substantially the form attached to
34 this Ordinance, is hereby accepted, approved and authorized to be delivered in executed
35 form to the Underwriters. The Preliminary Official Statement prepared in connection
36 with the sale of the Series 2008 Bonds is hereby deemed final for purposes of the Rule
37 (as defined in Section 13 of this Ordinance). Each Authorized Representative is
38 authorized to cause the preparation of a final Official Statement to be completed in
39 conformity with the terms of the Purchase Agreement.
40

1 11. FEDERAL TAX COVENANTS. That the City covenants to take any action
2 to assure, or refrain from any action which would adversely affect, the treatment of the
3 Series 2008 Bonds as obligations described in section 103 of the Internal Revenue Code
4 of 1986 (the "Code"), the interest on which is not includable in the "gross income" of the
5 holder for purposes of federal income taxation. In furtherance thereof, the City covenants
6 as follows:
7

8 (a) to take any action to assure that no more than 10 percent of the proceeds of
9 the Series 2008 Bonds or the projects financed therewith (less amounts deposited to a
10 reserve fund, if any) are used for any "private business use," as defined in section
11 141(b)(6) of the Code or, if more than 10 percent of the proceeds are so used, that
12 amounts, whether or not received by the City, with respect to such private business use,
13 do not, under the terms of this Ordinance or any underlying arrangement, directly or
14 indirectly, secure or provide for the payment of more than 10 percent of the debt service
15 on the Series 2008 Bonds, in contravention of section 141(b)(2) of the Code;
16

17 (b) to take any action to assure that in the event that the "private business use"
18 described in subsection (a) hereof exceeds 5 percent of the proceeds of the Series 2008
19 Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if
20 any) then the amount in excess of 5 percent is used for a "private business use" which is
21 "related" and not "disproportionate," within the meaning of section 141(b)(3) of the
22 Code, to the governmental use;
23

24 (c) to take any action to assure that no amount which is greater than the lesser of
25 \$5,000,000, or 5 percent of the proceeds of the Series 2008 Bonds (less amounts
26 deposited into a reserve fund, if any) is directly or indirectly used to finance loans to
27 persons, other than state or local governmental units, in contravention of section 141(c)
28 of the Code;
29

30 (d) to refrain from taking any action which would otherwise result in the Series
31 2008 Bonds being treated as "private activity bonds" within the meaning of section
32 141(b) of the Code;
33

34 (e) to refrain from taking any action that would result in the Series 2008 Bonds
35 being "federally guaranteed" within the meaning of section 149(b) of the Code;
36

37 (f) to refrain from using any portion of the proceeds of the Series 2008 Bonds,
38 directly or indirectly, to acquire or to replace funds which were used, directly or
39 indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code)
40 which produces a materially higher yield over the term of the Series 2008 Bonds, other
41 than investment property acquired with --

1
2 (1) proceeds of the Bonds invested for a reasonable temporary period
3 until such proceeds are needed for the purpose for which the bonds are issued,
4

5 (2) amounts invested in a bona fide debt service fund, within the meaning
6 of section 1.148-1(b) of the Treasury Regulations, and
7

8 (3) amounts deposited in any reasonably required reserve or replacement
9 fund to the extent such amounts do not exceed 10 percent of the proceeds of the
10 Series 2008 Bonds;
11

12 (g) to otherwise restrict the use of the proceeds of the Series 2008 Bonds or
13 amounts treated as proceeds of the Series 2008 Bonds, as may be necessary, so that the
14 Series 2008 Bonds do not otherwise contravene the requirements of section 148 of the
15 Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code
16 (relating to advance refundings); and
17

18 (h) to pay to the United States of America at least once during each five-year
19 period (beginning on the date of delivery of the Series 2008 Bonds) an amount that is at
20 least equal to 90 percent of the "Excess Earnings", within the meaning of section 148(f)
21 of the Code and to pay to the United States of America, not later than 60 days after the
22 Series 2008 Bonds have been paid in full, 100 percent of the amount then required to be
23 paid as a result of Excess Earnings under section 148(f) of the Code.
24

25 For purposes of the foregoing clauses (a) and (b) above, the City understands that the
26 term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations
27 and, in the case of a refunding bond, transferred proceeds (if any) and proceeds of the
28 refunded bonds expended prior to the date of the issuance of the Bonds. It is the
29 understanding of the City that the covenants contained herein are intended to assure
30 compliance with the Code and any regulations or rulings promulgated by the U.S.
31 Department of the Treasury pursuant thereto. In the event that regulations or rulings are
32 hereafter promulgated which modify or expand provisions of the Code, as applicable to
33 the Bonds, the City will not be required to comply with any covenant contained herein to
34 the extent that such failure to comply, in the opinion of nationally-recognized bond
35 counsel, will not adversely affect the exemption from federal income taxation of interest
36 on the Bonds under section 103 of the Code. In the event that regulations or rulings are
37 hereafter promulgated which impose additional requirements which are applicable to the
38 Bonds, the City agrees to comply with the additional requirements to the extent
39 necessary, in the opinion of nationally-recognized bond counsel, to preserve the
40 exemption from federal income taxation of interest on the Bonds under section 103 of the
41 Code. In furtherance of the foregoing, the Mayor, the City Manager, any Assistant City

1 Manager, and the Chief Financial Officer may execute any certificates or other reports
2 required by the Code and to make such elections, on behalf of the City, which may be
3 permitted by the Code as are consistent with the purpose for the issuance of the Bonds.
4

5 In order to facilitate compliance with the above clause (h), a "Rebate Fund" is
6 hereby established by the City for the sole benefit of the United States of America, and
7 such Rebate Fund shall not be subject to the claim of any other person, including without
8 limitation the registered owners of the Bonds. The Rebate Fund is established for the
9 additional purpose of compliance with section 148 of the Code.
10

11 12. DISPOSITION OF BOND-FINANCED PROPERTY. That the City
12 covenants that the property constituting an improvement to the City originally financed
13 with the proceeds of the Refunded Obligations will not be sold or otherwise disposed in a
14 transaction resulting in the receipt by the City of cash or other compensation, unless the
15 City obtains an opinion of nationally-recognized bond counsel substantially to the effect
16 that such sale or other disposition will not adversely affect the tax-exempt status of the
17 Bonds. For purposes of this Section, the portion of the property comprising personal
18 property and disposed of in the ordinary course of business shall not be treated as a
19 transaction resulting in the receipt of cash or other compensation. For purposes of this
20 Section, the City shall not be obligated to comply with this covenant if it obtains an
21 opinion of nationally-recognized bond counsel to the effect that such failure to comply
22 will not adversely affect the excludability for federal income tax purposes from gross
23 income of the interest.
24

25 13. CONTINUING ONGOING DISCLOSURE.

26
27 (a) Definitions. That as used in this Section, the following terms have the
28 meanings ascribed to such terms below:
29

30 "MAC" means the Municipal Advisory Council of Texas.

31
32 "MSRB" means the Municipal Securities Rulemaking Board.
33

34 "NRMSIR" means each person whom the SEC or its staff has determined to
35 be a nationally recognized municipal securities information repository within the
36 meaning of the Rule from time to time.
37

38 "Rule" means SEC Rule 15c2-12, as amended from time to time.
39

40 "SEC" means the United States Securities and Exchange Commission.
41

1 "SID" means any person designated by the State of Texas or an authorized
2 department, officer, or agency thereof as, and determined by the SEC or its staff to be, a
3 state information depository within the meaning of the Rule from time to time.
4

5 (b) Annual Reports.
6

7 (i) The City shall provide annually to each NRMSIR and any SID, within six
8 months after the end of each fiscal year ending in or after 2008, financial information and
9 operating data with respect to the City of the general type included in the final Official
10 Statement authorized by Section 10 of this Ordinance, being the information described in
11 Exhibit B hereto. Any financial statements so to be provided shall be (1) prepared in
12 accordance with the accounting principles described in Exhibit B hereto, or such other
13 accounting principles as the City may be required to employ from time to time pursuant
14 to state law or regulation, and (2) audited, if the City commissions an audit of such
15 statements and the audit is completed within the period during which they must be
16 provided. If the audit of such financial statements is not complete within such period,
17 then the City shall provide unaudited financial statements by the required time, and shall
18 provide audited financial statements for the applicable fiscal year to each NRMSIR and
19 any SID, when and if the audit report on such statements becomes available.
20

21 (ii) If the City changes its fiscal year, it will notify each NRMSIR and any SID of
22 the change (and of the date of the new fiscal year end) prior to the next date by which the
23 City otherwise would be required to provide financial information and operating data
24 pursuant to this Section. The financial information and operating data to be provided
25 pursuant to this Section may be set forth in full in one or more documents or may be
26 included by specific reference to any document (including an official statement or other
27 offering document, if it is available from the MSRB) that theretofore has been provided
28 to each NRMSIR and any SID or filed with the SEC. Any filing under this Section may
29 be made solely by transmitting such filing to the MAC as provided at
30 <http://www.disclosureusa.org>, unless the SEC has withdrawn the interpretive advice
31 stated in its letter to the MAC dated September 7, 2004.
32

33 (c) Material Event Notices. The City shall notify any SID and either each
34 NRMSIR or the MSRB, in a timely manner, of any of the following events with respect
35 to the Series 2008 Bonds, if such event is material within the meaning of the federal
36 securities laws:
37

- 38 1. Principal and interest payment delinquencies;
- 39 2. Non-payment related defaults;
- 40 3. Unscheduled draws on debt service reserves reflecting financial
41 difficulties;

4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or events affecting the tax-exempt status of the Series 2008 Bonds;
7. Modifications to rights of holders of the Series 2008 Bonds;
8. Series 2008 Bond calls;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Series 2008 Bonds; and
11. Rating changes.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection.

(d) Limitations, Disclaimers, and Amendments.

(i) The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Series 2008 Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with this Ordinance or applicable law that causes any Series 2008 Bonds no longer to be outstanding.

(ii) The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Series 2008 Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Series 2008 Bonds at any future date.

(iii) UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY SERIES 2008 BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT

1 SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY
2 SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY
3 SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR
4 SPECIFIC PERFORMANCE.
5

6 (iv) No default by the City in observing or performing its obligations under this
7 Section shall comprise a breach of or default under the Ordinance for purposes of any
8 other provision of this Ordinance. Nothing in this Section is intended or shall act to
9 disclaim, waive, or otherwise limit the duties of the City under federal and state securities
10 laws.
11

12 (v) The provisions of this Section may be amended by the City from time to time
13 to adapt to changed circumstances that arise from a change in legal requirements, a
14 change in law, or a change in the identity, nature, status, or type of operations of the City,
15 but only if (1) the provisions of this Section, as so amended, would have permitted an
16 underwriter to purchase or sell Series 2008 Bonds in the primary offering of the Series
17 2008 Bonds in compliance with the Rule, taking into account any amendments or
18 interpretations of the Rule since such offering as well as such changed circumstances and
19 (2) either (a) the holders of a majority in aggregate principal amount (or any greater
20 amount required by any other provision of this Ordinance that authorizes such an
21 amendment) of the outstanding Series 2008 Bonds consent to such amendment or (b) a
22 person that is unaffiliated with the City (such as nationally-recognized bond counsel)
23 determines that such amendment will not materially impair the interest of the holders and
24 beneficial owners of the Series 2008 Bonds. If the City so amends the provisions of this
25 Section, it shall include with any amended financial information or operating data next
26 provided in accordance with subsection (b) of this Section an explanation, in narrative
27 form, of the reason for the amendment and of the impact of any change in the type of
28 financial information or operating data so provided. The City may also amend or repeal
29 the provisions of this continuing disclosure agreement if the SEC amends or repeals the
30 applicable provision of the Rule or a court of final jurisdiction enters judgment that such
31 provisions of the Rule are invalid, but only if and to the extent that the provisions of this
32 sentence would not prevent an underwriter from lawfully purchasing or selling Series
33 2008 Bonds in the primary offering of the Series 2008 Bonds.
34

35 14. BOOK-ENTRY ONLY SYSTEM. That the Series 2008 Bonds initially shall
36 be issued and delivered in such manner that no physical distribution of the Series 2008
37 Bonds will be made to the public, and The Depository Trust Company ("DTC"), New
38 York, New York, initially will act as depository for the Series 2008 Bonds. DTC has
39 represented that it is a limited purpose trust company incorporated under the laws of the
40 State of New York, a member of the Federal Reserve System, a "clearing corporation"
41 within the meaning of the New York Uniform Commercial Code, and a "clearing agency"

1 registered under Section 17A of the Securities Exchange Act of 1934, as amended, and
2 the City accepts, but in no way verifies, such representations. The Series 2008 Bonds
3 initially authorized by this Ordinance and intended to be held by DTC shall be delivered
4 to and registered in the name of CEDE & CO., the nominee of DTC. It is expected that
5 DTC will hold the Series 2008 Bonds on behalf of the Underwriters (as defined in
6 Section 10) and their participants. So long as each Series 2008 Bonds is registered in the
7 name of CEDE & CO., the Paying Agent/Registrar shall treat and deal with DTC the
8 same in all respects as if it were the actual and beneficial owner thereof. It is expected
9 that DTC will maintain a book-entry system which will identify ownership of the Series
10 2008 Bonds in integral amounts of \$5,000, with transfers of ownership being effected on
11 the records of DTC and its participants pursuant to rules and regulations established by
12 them, and that the Series 2008 Bonds initially deposited with DTC shall be immobilized
13 and not be further exchanged for substitute Series 2008 Bonds except as hereinafter
14 provided. The City is not responsible or liable for any functions of DTC, will not be
15 responsible for paying any fees or charges with respect to its services, will not be
16 responsible or liable for maintaining, supervising, or reviewing the records of DTC or its
17 participants, or protecting any interests or rights of the beneficial owners of the Series
18 2008 Bonds. It shall be the duty of the DTC Participants, as defined in the Official
19 Statement herein approved, to make all arrangements with DTC to establish this book-
20 entry system, the beneficial ownership of the Series 2008 Bonds, and the method of
21 paying the fees and charges of DTC. The City does not represent, nor does it in any way
22 covenant that the initial book-entry system established with DTC will be maintained in
23 the future. Notwithstanding the initial establishment of the foregoing book-entry system
24 with DTC, if for any reason any of the originally delivered Series 2008 Bonds is duly
25 filed with the Paying Agent/Registrar with proper request for transfer and substitution, as
26 provided for in this Ordinance, substitute Series 2008 Bonds will be duly delivered as
27 provided in this Ordinance, and there will be no assurance or representation that any
28 book-entry system will be maintained for such Series 2008 Bonds. The initial Series
29 2008 Bonds submitted to the Attorney General of the State of Texas for review and
30 approval may be registered in the name of the representative for the Underwriters named
31 in Section 10. In connection with the initial establishment of the foregoing book-entry
32 system with DTC, the City heretofore has executed a "Blanket Letter of Representations"
33 prepared by DTC in order to implement the book-entry system described above.

34
35 15. DEFEASANCE. (a) Defeased Bonds. That any Series 2008 Bond and the
36 interest thereon shall be deemed to be paid, retired and no longer outstanding (a
37 "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in
38 subsection (d) of this Section, when payment of the principal of such Bond, plus interest
39 thereon to the due date (whether such due date be by reason of maturity or otherwise)
40 either (i) shall have been made or caused to be made in accordance with the terms
41 thereof, or (ii) shall have been provided for on or before such due date by irrevocably

1 depositing with or making available to the Paying Agent/Registrar in accordance with an
2 escrow agreement or other instrument (the "Future Escrow Agreement") for such
3 payment (1) lawful money of the United States of America sufficient to make such
4 payment and/or (2) Defeasance Securities, certified by an independent public accounting
5 firm of national reputation to mature as to principal and interest in such amounts and at
6 such times as will insure the availability, without reinvestment, of sufficient money to
7 provide for such payment, and when proper arrangements have been made by the City
8 with the Paying Agent/Registrar for the payment of its services until all Defeased Bonds
9 shall have become due and payable. At such time as a Series 2008 Bond shall be deemed
10 to be a Defeased Bond hereunder, as aforesaid, such Series 2008 Bond and the interest
11 thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad
12 valorem taxes herein levied and pledged as provided in this Ordinance, and such principal
13 and interest shall be payable solely from such money or Defeasance Securities.
14 Notwithstanding any other provision of this Ordinance to the contrary, it is hereby
15 provided that any determination not to redeem Defeased Bonds that is made in
16 conjunction with the payment arrangements specified in subsection 15(a)(i) or (ii) shall
17 not be irrevocable, provided that: (1) in the proceedings providing for such payment
18 arrangements, the City expressly reserves the right to call the Defeased Bonds for
19 redemption; (2) the City gives notice of the reservation of that right to the owners of the
20 Defeased Bonds immediately following the making of the payment arrangements; and (3)
21 the City directs that notice of the reservation be included in any redemption notices that it
22 authorizes.
23

24 (b) Investment in Defeasance Securities. Any moneys so deposited with the
25 Paying Agent/Registrar may at the written direction of the City be invested in Defeasance
26 Securities, maturing in the amounts and times as hereinbefore set forth, and all income
27 from such Defeasance Securities received by the Paying Agent/Registrar that is not
28 required for the payment of the Bonds and interest thereon, with respect to which such
29 money has been so deposited, shall be turned over to the City, or deposited as directed in
30 writing by the City. Any Future Escrow Agreement pursuant to which the money and/or
31 Defeasance Securities are held for the payment of Defeased Bonds may contain
32 provisions permitting the investment or reinvestment of such moneys in Defeasance
33 Securities or the substitution of other Defeasance Securities upon the satisfaction of the
34 requirements specified in subsection 15(a)(i) or (ii). All income from such Defeasance
35 Securities received by the Paying Agent/Registrar which is not required for the payment
36 of the Defeased Bonds, with respect to which such money has been so deposited, shall be
37 remitted to the City or deposited as directed in writing by the City.
38

39 (c) Defeasance Securities Defined. The term "Defeasance Securities" means (i)
40 direct, noncallable obligations of the United States of America, including obligations that
41 are unconditionally guaranteed by the United States of America., (ii) noncallable

obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the City adopts or approves the proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

(d) Paying Agent/Registrar Services. Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) Selection of Bonds for Defeasance. In the event that the City elects to defease less than all of the principal amount of Bonds of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Bonds by such random method as it deems fair and appropriate.

16. DEFAULT AND REMEDIES. (a) Events of Default. Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Registered Owners of the Bonds, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Registered Owner to the City.

(b) Remedies for Default.

(i) Upon the happening of any Event of Default, then and in every case, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the City, or any official, officer or employee of the City in their official capacity, for the purpose of protecting and enforcing

1 the rights of the Registered Owners under this Ordinance, by mandamus or other suit,
2 action or special proceeding in equity or at law, in any court of competent jurisdiction,
3 for any relief permitted by law, including the specific performance of any covenant or
4 agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or
5 in violation of any right of the Registered Owners hereunder or any combination of such
6 remedies.

7
8 (ii) It is provided that all such proceedings shall be instituted and maintained for
9 the equal benefit of all Registered Owners of Bonds then outstanding.

10
11 (c) Remedies Not Exclusive.

12
13 (i) No remedy herein conferred or reserved is intended to be exclusive of any other
14 available remedy or remedies, but each and every such remedy shall be cumulative and
15 shall be in addition to every other remedy given hereunder or under the Bonds or now or
16 hereafter existing at law or in equity; provided, however, that notwithstanding any other
17 provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall
18 not be available as a remedy under this Ordinance.

19
20 (ii) The exercise of any remedy herein conferred or reserved shall not be deemed a
21 waiver of any other available remedy.

22
23 (iii) By accepting the delivery of a Bond authorized under this Ordinance, such
24 Registered Owner agrees that the certifications required to effectuate any covenants or
25 representations contained in this Ordinance do not and shall never constitute or give rise
26 to a personal or pecuniary liability or charge against the officers, employees or trustees of
27 the City or the City Council.

28
29 (iv) None of the members of the City Council, nor any other official or officer,
30 agent, or employee of the City, shall be charged personally by the Registered Owners
31 with any liability, or be held personally liable to the Registered Owners under any term or
32 provision of this Ordinance, or because of any Event of Default or alleged Event of
33 Default under this Ordinance.

34
35 17. REASON FOR REFUNDING. That the City hereby finds that the issuance of
36 the Bonds for the purpose of refunding the Refunded Obligations to realize a net present
37 value savings is a public purpose. As a condition to the issuance of the Bonds, the
38 refunding of the aggregate principal amount of the Refunded Obligations must produce
39 (i) a net present value savings, calculated in accordance with GASB Statement No. 7, of
40 at least four and a quarter percent (4.25%), and (ii) a positive gross savings. The
41 principal amount of Bonds, if any, issued to refund Refunded Obligations, and the

1 Refunded Obligations to be refunded, shall be specifically identified in the Purchase
2 Agreement. An Authorized Representative may elect not to refund any or all of the
3 obligations listed in Schedule I, but in no event shall the Bonds be issued for the purpose
4 of refunding Refunded Obligations if the refunding of the aggregate principal amount of
5 the obligations selected for refunding does not result in the minimum savings threshold
6 established in this Section being realized. Should Bonds be sold for the purpose of
7 refunding the Refunded Obligations, on or before the date of delivery of the Bonds the
8 Chief Financial Officer of the City shall execute and deliver to the City Council a
9 certificate stating that the savings thresholds herein established have been realized. This
10 certificate shall specifically state both the net present value savings and the gross savings
11 realized by the City as a result of refunding the Refunded Obligations. The determination
12 of an Authorized Representative relating to the issuance and sale of Bonds to refund
13 Refunded Obligations in such principal amount as provided in the Purchase Agreement
14 shall have the same force and effect as if such determination were made by the City
15 Council.

16
17 18. ESCROW AGREEMENT. That concurrently with the delivery of the Bonds
18 the City shall cause to be deposited with U.S. Bank National Association, as Escrow
19 Agent, from the proceeds from the sale of the Bonds and other available moneys of the
20 City, all as described in the letter of instructions referred to in Section 20 hereof, an
21 amount sufficient to provide for the refunding of the Refunded Obligations in accordance
22 with Chapter 1207, Texas Government Code. The City Manager or any Assistant City
23 Manager and the City Clerk are hereby authorized, for and on behalf of the City, to
24 execute the Escrow Agreement to accomplish such purposes, in substantially the form
25 and substance attached to this Ordinance. The City Manager, any Assistant City
26 Manager or the Chief Financial Officer of the City, and the City Clerk, are further
27 authorized, on behalf of the City, to take such actions as may be necessary to obtain the
28 securities to be held by the Escrow Agent in accordance with the terms of the Escrow
29 Agreement.

30
31 19. REDEMPTION OF REFUNDED OBLIGATIONS. That the City hereby
32 determines that, subject to the delivery of the Bonds, the Refunded Obligations shall be
33 called for redemption on the respective redemption dates set forth in Schedule I, at the
34 redemption price of par plus accrued interest to the date fixed for redemption, all in
35 accordance with the applicable provisions of the instruments authorizing their issuance.
36 The City Manager or the designee thereof shall take such actions as are necessary to
37 cause the required notice of redemption to be given in accordance with the terms of the
38 respective proceedings for the Refunded Obligations called for redemption.

39
40 20. USE OF BOND PROCEEDS. That the proceeds from the sale of the Series
41 2008 Bonds shall be used in the manner described in a letter of instructions executed by

1 or on behalf of the City. The foregoing notwithstanding, proceeds representing accrued
2 interest on the Series 2008 Bonds shall be deposited to the credit of the Interest and
3 Sinking Fund and proceeds representing premium on the Series 2008 Bonds shall be used
4 in a manner consistent with the provisions of Section 1201.042(d), Texas Government
5 Code.
6

7 21. OFFICIALS AUTHORIZED TO ACT ON BEHALF OF THE CITY. That
8 the Mayor, the City Clerk, the City Manager, any Assistant City Manager or the Chief
9 Financial Officer of the City, and all other officers, employees, and agents of the City,
10 and each of them, shall be and they are hereby expressly authorized, empowered, and
11 directed from time to time and at any time to do and perform all such acts and things and
12 to execute, acknowledge, and deliver in the name and under the seal and on behalf of the
13 City all such instruments, whether or not herein mentioned, as may be necessary or
14 desirable in order to carry out the terms and provisions of this Ordinance, the Bonds, the
15 Escrow Agreement, the Purchase Agreement, the offering documents prepared in
16 connection with the sale of the Bonds, or the Paying Agent/Registrar Agreement in
17 substantially the form attached to this Ordinance. In case any officer whose signature
18 appears on any Bond shall cease to be such officer before the delivery of such Bond, such
19 signature shall nevertheless be valid and sufficient for all purposes the same as if he or
20 she had remained in office until such delivery.
21

22 22. RULES OF CONSTRUCTION. That for all purposes of this Ordinance,
23 unless the context requires otherwise, all references to designated Sections and other
24 subdivisions are to the Sections and other subdivisions of this Ordinance. The words
25 "herein", "hereof" and "hereunder" and other words of similar import refer to this
26 Ordinance as a whole and not to any particular Section or other subdivision. Except
27 where the context otherwise requires, terms defined in this Ordinance to impart the
28 singular number shall be considered to include the plural number and vice versa.
29 References to any named person means that party and its successors and assigns.
30 References to any constitutional, statutory or regulatory provision means such provision
31 as it exists on the date this Ordinance is adopted by the City and any future amendments
32 thereto or successor provisions thereof. Any reference to the payment of principal in this
33 Ordinance shall be deemed to include the payment of any mandatory sinking fund
34 redemption payments as described herein. Any reference to "FORM OF BOND" shall
35 refer to the form of the Bonds set forth in Exhibit A to this Ordinance. The titles and
36 headings of the Sections and subsections of this Ordinance have been inserted for
37 convenience of reference only and are not to be considered a part hereof and shall not in
38 any way modify or restrict any of the terms or provisions hereof. The findings set forth
39 in the preamble to this Ordinance are hereby incorporated into the body of this Ordinance
40 and made a part hereof for all purposes.
41

1 23. CONFLICTING ORDINANCES REPEALED. That all ordinances and
2 resolutions or parts thereof in conflict herewith are hereby repealed.
3

4 24. IMMEDIATE EFFECT. That in accordance with the provisions of V.T.C.A.,
5 Government Code, Section 1201.028, this Ordinance shall be effective immediately upon
6 its adoption by the City Council.
7

8 This ordinance takes effect on _____, 2008.

9 PASSED AND APPROVED

10
11
12 _____, 2008

§
§
§

Will Wynn
Mayor

13
14
15
16
17
18
19 **APPROVED:** _____
20 David Allan Smith
21 City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk